



Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008

No. 13, 2008

**An Act to deal with transitional and consequential
matters in connection with the *Screen Australia Act
2008* and the *National Film and Sound Archive Act
2008*, and for related purposes**

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

Contents

1	Short title	2
2	Commencement	2
3	Schedule(s)	2
4	Extended geographic application of this Act	3
Schedule 1—Repeal and consequential amendments		4
Part 1—Repeal of the Australian Film Commission Act 1975		4
<i>Australian Film Commission Act 1975</i>		4
Part 2—Consequential amendments		5
<i>Australian Film, Television and Radio School Act 1973</i>		5
<i>Income Tax Assessment Act 1997</i>		5
Schedule 2—Transitional provisions		6
Part 1—Introduction		6
Part 2—Assets and liabilities of AFC, FAL and FFC		7
Part 3—Office holders of AFC, FAL and FFC		11
Part 4—Staff of AFC, FAL and FFC		13
Division 1—Staff of AFC		13
Division 2—Staff of FAL and FFC		15
Division 3—Other matters relating to staff		17
Part 5—Things done by, references in instruments to, legal proceedings of and records of AFC, FAL and FFC		20
Division 1—AFC		20
Division 2—FAL and FFC		25
Part 6—Annual reports, returns etc. of AFC, FAL and FFC		27
Part 7—Appointment of first CEO of Screen Australia and NFSA		30
Part 8—Other transitional matters		31



Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008

No. 13, 2008

An Act to deal with transitional and consequential matters in connection with the *Screen Australia Act 2008* and the *National Film and Sound Archive Act 2008*, and for related purposes

[Assented to 20 March 2008]

The Parliament of Australia enacts:

Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008 No. 13, 2008 1

1 Short title

This Act may be cited as the *Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	20 March 2008
2. Schedule 1	At the same time as subsection 5(1) of the <i>Screen Australia Act 2008</i> commences.	1 July 2008
3. Schedule 2	The day on which this Act receives the Royal Assent.	20 March 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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.

4 Extended geographic application of this Act

- (1) This Act extends to every external Territory.
- (2) This Act applies both within and outside Australia.

Schedule 1 Repeal and consequential amendments

Part 1 Repeal of the Australian Film Commission Act 1975

**Schedule 1—Repeal and consequential
amendments**

**Part 1—Repeal of the Australian Film Commission
Act 1975**

Australian Film Commission Act 1975

1 The whole of the Act

Repeal the Act.

⁴ *Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008* No. 13, 2008

Part 2—Consequential amendments

Australian Film, Television and Radio School Act 1973

2 At the end of Part VI

Add:

35A Long service leave for the School’s employees

The *Long Service Leave (Commonwealth Employees) Act 1976* applies to a person employed by the School under section 34 of this Act as if the person were engaged under the *Public Service Act 1999*.

Income Tax Assessment Act 1997

3 Subsection 376-55(3)

Omit all the words after “means”, substitute “Screen Australia”.

4 After subparagraph 376-170(4)(a)(iv)

Insert:

(v) Screen Australia;

Schedule 2—Transitional provisions

Part 1—Introduction

1 Definitions

In this Schedule:

AFC means the Australian Film Commission established by subsection 4(1) of the *Australian Film Commission Act 1975*.

AFTRS means the Australian Film, Television and Radio School established by subsection 4(1) of the *Australian Film, Television and Radio School Act 1973*.

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.

FAL means Film Australia Limited (ACN 008 639 316).

FFC means Film Finance Corporation Australia Limited (ACN 008 642 564).

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

NFSA means the National Film and Sound Archive established by subsection 5(1) of the *National Film and Sound Archive Act 2008*.

Screen Australia means Screen Australia established by subsection 5(1) of the *Screen Australia Act 2008*.

transition time means the commencement of subsection 5(1) of the *Screen Australia Act 2008*.

Part 2—Assets and liabilities of AFC, FAL and FFC

2 Transfer of assets and liabilities of AFC

Application

- (1) This item applies to assets and liabilities of AFC immediately before the transition time.

AFC to Screen Australia

- (2) Subject to this item, at the transition time, the assets and liabilities cease to be assets and liabilities of AFC and become assets and liabilities of Screen Australia without any conveyance, transfer or assignment. Screen Australia becomes the successor in law in relation to those assets and liabilities.

AFC to NFSA or AFTRS

- (3) Before the transition time, the Minister may determine, in writing, that some of the assets or liabilities are to become assets or liabilities of NFSA or AFTRS.
- (4) If the Minister makes a determination that the assets or liabilities are to become the assets or liabilities of NFSA, then, at the transition time, the assets or liabilities cease to be assets or liabilities of AFC and become assets or liabilities of NFSA without any conveyance, transfer or assignment. NFSA becomes the successor in law in relation to those assets or liabilities.
- (5) If the Minister makes a determination that the assets or liabilities are to become the assets or liabilities of AFTRS, then, at the transition time, the assets or liabilities cease to be assets or liabilities of AFC and become assets or liabilities of AFTRS without any conveyance, transfer or assignment. AFTRS becomes the successor in law in relation to those assets or liabilities.
- (6) A determination made under subitem (3) is not a legislative instrument.

Assets subject to trust

- (7) If an asset that has become an asset of Screen Australia, NFSA or AFTRS under this item was, immediately before the transition time,
-

held by AFC on trust, that asset is taken, at and after the transition time, to be held by the body to which it is transferred on trust and subject to the terms of the trust on which the asset was so held by AFC.

3 Transfer of assets and liabilities of FAL and FFC

- (1) This item applies to assets and liabilities of FAL and FFC immediately before the transition time.
- (2) At the transition time, the assets and liabilities cease to be assets and liabilities of FAL and FFC and become assets and liabilities of Screen Australia without any conveyance, transfer or assignment. Screen Australia becomes the successor in law in relation to those assets and liabilities.
- (3) If an asset that has become an asset of Screen Australia under this item was, immediately before the transition time, held by FAL and FFC on trust, that asset is taken, at and after the transition time, to be held by Screen Australia on trust and subject to the terms of the trust on which the asset was so held by FAL and FFC.

4 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in Screen Australia, NFSA or AFTRS under item 2 or 3; 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 Screen Australia, NFSA or AFTRS under this Act.
 - (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 certificate made under subitem (1) is not a legislative instrument.
 - (4) In this item:
-

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.

5 Certificates for vesting of assets other than land

- (1) This item applies if:
- (a) an asset other than land becomes an asset of Screen Australia, NFSA or AFTRS under item 2 or 3; 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 Screen Australia, NFSA or AFTRS under this Act.
- (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 in relation to assets of that kind as are necessary, having regard to the effect of this Part.
- (3) A certificate made under subitem (1) is not a legislative instrument.
- (4) In this item:

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.

6 Certificates taken to be authentic

A document that appears to be a certificate made under item 4 or 5:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

7 Exemption from stamp duty and other State or Territory taxes

Schedule 2 Transitional provisions

Part 2 Assets and liabilities of AFC, FAL and FFC

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
 - (a) the vesting of an asset or liability under item 2 or 3; or
 - (b) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.
- (5) A certificate made under subitem (3) is not a legislative instrument.

Part 3—Office holders of AFC, FAL and FFC

8 Termination of office holders of FAL and FFC

- (1) Before the transition time, the Minister may, in writing:
- (a) terminate the appointment, engagement or employment of any of the following:
 - (i) a director of FAL or FFC;
 - (ii) the Managing Director/Chief Executive of FAL;
 - (iii) the Chief Executive of FFC; and
 - (b) terminate any contract, agreement or other instrument relating to that appointment, engagement or employment; and
 - (c) make provision in relation to a termination under paragraph (a) or (b).

Note: The appointment of a member of AFC and the Chief Executive Officer of AFC is terminated at the transition time because of the repeal of the *Australian Film Commission Act 1975* (see item 1 of Schedule 1 to this Act).

- (2) An instrument made under subitem (1) has effect accordingly and takes effect immediately before the transition time.
- (3) An instrument made under subitem (1) is not a legislative instrument.

9 No transfer of appointment, engagement or employment etc. of office holders

- (1) Nothing in this Act produces the result that the appointment, engagement or employment of an office holder has effect at or after the transition time as if it were an appointment, engagement or employment of the office holder in relation to Screen Australia, NFSA or AFTRS.
- (2) Nothing in this Act produces the result that a contract, agreement or other instrument relating to the appointment, engagement or employment of an office holder has effect at or after the transition time as if it were a contract, agreement or instrument made by, or in relation to, Screen Australia, NFSA or AFTRS.
- (3) In this item:
office holder means the following:
 - (a) a member of AFC;

Schedule 2 Transitional provisions

Part 3 Office holders of AFC, FAL and FFC

- (b) the Chief Executive Officer of AFC;
- (c) a director of FAL or FFC;
- (d) the Managing Director/Chief Executive of FAL;
- (e) the Chief Executive of FFC.

Part 4—Staff of AFC, FAL and FFC

Division 1—Staff of AFC

10 Non-APS employees in AFC transferred to Screen Australia as non-APS employees

- (1) This item applies to a person who:
 - (a) is an officer appointed, or employee engaged, by AFC under subsection 29(1) of the *Australian Film Commission Act 1975* immediately before the transition time; and
 - (b) is not covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become a member of the staff of NFSA engaged under the *Public Service Act 1999*.
- (2) At the transition time, the person ceases to be appointed or engaged by AFC and is taken to have been employed by Screen Australia under subsection 31(2) of the *Screen Australia Act 2008*.

Note: This item does not deal with the transfer of staff of AFC who are APS employees. Those employees will be transferred to Screen Australia, NFSA or AFTRS by a determination made under section 72 of the *Public Service Act 1999*.

- (3) The person is taken to have accrued an entitlement to benefits, in connection with that employment by Screen Australia, that is equivalent to the entitlement that the person had as an officer or employee of AFC immediately before the transition time.
- (4) The service of the person as an employee of Screen Australia is taken, for all purposes, to be continuous with his or her service as an officer or employee of AFC.

11 Non-APS employees in AFC transferred to NFSA as APS employees

- (1) This item applies to a person who:
 - (a) is an officer appointed, or employee engaged, by AFC under subsection 29(1) of the *Australian Film Commission Act 1975* immediately before the transition time; and

- (b) is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become a member of the staff of NFSA engaged under the *Public Service Act 1999*.
- (2) The person is taken to have accrued an entitlement to benefits, in connection with becoming a member of the staff of NFSA engaged under the *Public Service Act 1999*, that is equivalent to the entitlement that the person had as an officer or employee of AFC immediately before the transition time.
- (3) The service of the person as a member of the staff of NFSA engaged under the *Public Service Act 1999* is taken, for all purposes, to have been continuous with his or her service as an officer or employee of AFC.

12 APS employees in AFC transferred to AFTRS as employees of AFTRS

- (1) This item applies to a person who:
 - (a) is a member of the staff of AFC engaged under the *Public Service Act 1999* immediately before the transition time; and
 - (b) is covered by a determination made under section 72 of the *Public Service Act 1999* that causes the person, at the transition time:
 - (i) to cease to be engaged under the *Public Service Act 1999*; and
 - (ii) to become an employee of AFTRS under section 34 of the *Australian Film, Television and Radio School Act 1973*.
 - (2) The person is taken to have accrued an entitlement to benefits, in connection with becoming an employee of AFTRS, that is equivalent to the entitlement that the person had as a member of the staff of AFC engaged under the *Public Service Act 1999* immediately before the transition time.
 - (3) The service of the person as an employee of AFTRS is taken, for all purposes, to have been continuous with his or her service as a member of the staff of AFC engaged under the *Public Service Act 1999*.
-

Division 2—Staff of FAL and FFC

13 Non-APS employees in FAL or FFC on contract of employment transferred to Screen Australia as non-APS employees

- (1) This item applies to a person if:
 - (a) the person is employed by FAL or FFC, on a contract of employment, immediately before the transition time; and
 - (b) Part 11 of, and Schedule 9 to, the *Workplace Relations Act 1996* do not apply to the contract of employment; and
 - (c) the person is not covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become a member of the staff of Screen Australia engaged under the *Public Service Act 1999*.
 - (2) At the transition time, the person ceases to be employed by FAL or FFC and is taken to have been employed by Screen Australia under subsection 31(2) of the *Screen Australia Act 2008*.
 - (3) The contract of employment continues in force at and after the transition time as if it were a contract of employment between the person and Screen Australia.
 - (4) The person is taken to have accrued an entitlement to benefits, in connection with that employment by Screen Australia, that is equivalent to the entitlement that the person had as an employee of FAL or FFC immediately before the transition time.
 - (5) The service of the person as an employee of Screen Australia is taken, for all purposes, to have been continuous with his or her service as an employee of FAL or FFC.
 - (6) This item does not prevent the contract of employment of the person from being varied after the transition time:
 - (a) in accordance with that contract; or
 - (b) by or under a law, award, determination or agreement.
 - (7) To avoid doubt, this item does not apply to the following:
 - (a) a director of FAL or FFC;
-

- (b) the Managing Director/Chief Executive of FAL;
- (c) the Chief Executive of FFC.

- (8) In this item:
vary, in relation to a contract of employment, includes:
- (a) omitting any of the terms and conditions of the contract; or
 - (b) adding to the terms and conditions of the contract; or
 - (c) substituting new terms or conditions for any of the terms and conditions of the contract.

14 Non-APS employees in FAL not on contract of employment transferred to Screen Australia as non-APS employees

- (1) This item applies to a person if:
- (a) the person is employed by FAL immediately before the transition time; and
 - (b) item 13 does not apply to the person; and
 - (c) the person is not covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become a member of the staff of Screen Australia engaged under the *Public Service Act 1999*.
- (2) At the transition time, the person ceases to be employed by FAL and is taken to have been employed by Screen Australia under subsection 31(2) of the *Screen Australia Act 2008*.
- (3) The person is taken to have accrued an entitlement to benefits, in connection with that employment by Screen Australia, that is equivalent to the entitlement that the person had as an employee of FAL immediately before the transition time.
- (4) The service of the person as an employee of Screen Australia is taken, for all purposes, to have been continuous with his or her service as an employee of FAL.
- (5) To avoid doubt, this item does not apply to the following:
- (a) a director of FAL;
 - (b) the Managing Director/Chief Executive of FAL.
-

15 Non-APS employees in FAL or FFC, on a contract of employment or otherwise, transferred to Screen Australia as APS employees

- (1) This item applies to a person who:
 - (a) is employed by FAL or FFC, on a contract of employment or otherwise, immediately before the transition time; and
 - (b) is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become a member of the staff of Screen Australia engaged under the *Public Service Act 1999*.
- (2) The person is taken to have accrued an entitlement to benefits, in connection with becoming a member of the staff of Screen Australia engaged under the *Public Service Act 1999*, that is equivalent to the entitlement that the person had as an employee of FAL or FFC immediately before the transition time.
- (3) The service of the person as a member of the staff of Screen Australia engaged under the *Public Service Act 1999* is taken, for all purposes, to have been continuous with his or her service as an employee of FFC and FAL.

Division 3—Other matters relating to staff

16 Limited transfer of appointment, engagement or employment etc. of staff

- (1) Nothing in this Act (except items 10, 13, and 14) produces the result that the appointment, engagement or employment of a person by AFC, FAL or FFC immediately before the transition time has effect at or after the transition time as if it were an appointment, engagement or employment by Screen Australia, NFSA or AFTRS.

Note: See determinations under section 72 of the *Public Service Act 1999* and regulations made under this Act for the transfer of the appointment, engagement or employment of persons not covered by items 10, 13 and 14.
- (2) Nothing in this Act produces the result that an instrument (within the meaning of Part 11 of the *Workplace Relations Act 1996*) or a transitional instrument (within the meaning of Schedule 9 to that Act)

has effect at or after the transition time as if it were an instrument or transitional instrument made by, or in relation to, Screen Australia, NFSA or AFTRS.

Note: See Part 11 of, and Schedule 9 to, the *Workplace Relations Act 1996* for the transmission of these instruments to Screen Australia, NFSA or AFTRS.

17 No payments as a result of transfer

To avoid doubt, a person who ceases to be an officer or employee of AFC, FAL or FFC by the operation of this Part is not entitled to receive any payment or other benefit merely because he or she stopped being such an officer or employee.

18 Long service leave for staff of Screen Australia and NFSA

- (1) This item applies to a person if:
- (a) immediately before the transition time, the person is:
 - (i) an officer appointed, or employee engaged, by AFC under subsection 29(1) of the *Australian Film Commission Act 1975*; or
 - (ii) employed by FAL or FFC; and
 - (b) as a result of the operation of this Part, the regulations or the *Public Service Act 1999*, the person, at the transition time, becomes:
 - (i) a member of the staff of Screen Australia under subsection 31(1) of the *Screen Australia Act 2008*; or
 - (ii) a member of the staff of NFSA under subsection 31(1) of the *National Film and Sound Archive Act 2008*.
- (2) For the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976*, the person's service before the transition time as an officer or employee of AFC, FAL or FFC is to be treated, at and after the transition time, as if it had been service by the person as an employee of the Commonwealth engaged under the *Public Service Act 1999*.

19 Maternity leave for staff of Screen Australia

- (1) This item applies to a person if:
- (a) immediately before the transition time, the person is employed by FAL or FFC; and
-

- (b) as a result of the operation of this Part, the regulations or the *Public Service Act 1999*, the person, at the transition time, becomes a member of the staff of Screen Australia under subsection 31(1) of the *Screen Australia Act 2008*.
- (2) For the purposes of the *Maternity Leave (Commonwealth Employees) Act 1973*, the person's service before the transition time as an officer or employee of FAL or FFC is to be treated, at and after the transition time, as if it had been service by the person as an employee of the Commonwealth engaged under the *Public Service Act 1999*.

Part 5—Things done by, references in instruments to, legal proceedings of and records of AFC, FAL and FFC

Division 1—AFC

20 Things done by, or in relation to, AFC

- (1) This item applies to a thing done by, or in relation to, AFC before the transition time.
- (2) The Minister may determine, in writing, that the thing is taken, at and after the transition time, to have been done by, or in relation to, one or more of the following:
 - (a) Screen Australia;
 - (b) NFSA;
 - (c) AFTRS;
 - (d) the Commonwealth.
- (3) A determination made under subitem (2) has effect accordingly.
- (4) The Minister may make a determination under subitem (2) before or after the transition time.
- (5) A determination made under subitem (2) is not a legislative instrument.
- (6) This item does not limit the operation of item 2.

21 References in instruments to AFC

Application

- (1) This item applies to an instrument that:
 - (a) is in force immediately before the transition time; and
 - (b) contains a reference to AFC.

AFC to Screen Australia

- (2) If the instrument relates to:
-

- (a) an asset or liability of AFC that, as a result of the operation of item 2, becomes an asset or liability of Screen Australia;
or
- (b) a thing done by, or in relation to, AFC, that, as a result of the operation of item 20, is taken to have been done by, or in relation to, Screen Australia;

then the reference to AFC has effect, at and after the transition time, as if it were a reference to Screen Australia.

AFC to NFSA

- (3) If the instrument relates to:
 - (a) an asset or liability of AFC that, as a result of the operation of item 2, becomes an asset or liability of NFSA; or
 - (b) a thing done by, or in relation to, AFC, that, as a result of the operation of item 20, is taken to have been done by, or in relation to, NFSA;

then the reference to AFC has effect, at and after the transition time, as if it were a reference to NFSA.

AFC to AFTRS

- (4) If the instrument relates to:
 - (a) an asset or liability of AFC that, as a result of the operation of item 2, becomes an asset or liability of AFTRS; or
 - (b) a thing done by, or in relation to, AFC, that, as a result of the operation of item 20, is taken to have been done by, or in relation to, AFTRS;

then the reference to AFC has effect, at and after the transition time, as if it were a reference to AFTRS.

AFC to Screen Australia, NFSA, AFTRS or Commonwealth

- (5) If subitem (2), (3) or (4) does not apply to the instrument, then the Minister may determine, in writing, that the reference to AFC has effect, at and after the transition time, as if it were a reference to one or more of the following:
 - (a) Screen Australia;
 - (b) NFSA;
 - (c) AFTRS;
 - (d) the Commonwealth.

Schedule 2 Transitional provisions

Part 5 Things done by, references in instruments to, legal proceedings of and records of AFC, FAL and FFC

- (6) A determination made under subitem (5) has effect accordingly.
- (7) The Minister may make a determination under subitem (5) before or after the transition time.
- (8) A determination made under subitem (5) is not a legislative instrument.

Instrument

- (9) In this item:
 - 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; but
 - (b) does not include:
 - (i) an Act; or
 - (ii) instruments made under this Act.

22 Legal proceedings of AFC

Application

- (1) This item applies to any proceedings:
 - (a) that were pending in any court or tribunal immediately before the transition time; and
 - (b) to which AFC was a party.

AFC to Screen Australia

- (2) If the proceedings related, in whole or part, to an asset or liability that, as a result of the operation of item 2, becomes an asset or liability of Screen Australia, then Screen Australia is taken, at and after the transition time, to be substituted for AFC as a party to the proceedings.

AFC to NFSA

- (3) If the proceedings related, in whole or part, to an asset or liability that, as a result of the operation of item 2, becomes an asset or liability of NFSA, then NFSA is taken, at and after the transition time, to be substituted for AFC as a party to the proceedings.
-

AFC to AFTRS

- (4) If the proceedings related, in whole or part, to an asset or liability that, as a result of the operation of item 2, becomes an asset or liability of AFTRS, then AFTRS is taken, at and after the transition time, to be substituted for AFC as a party to the proceedings.

AFC to Screen Australia, NFSA, AFTRS or Commonwealth

- (5) If subitem (2), (3) or (4) does not apply to the proceedings, then the Minister may determine, in writing, that one or more of the following bodies is taken, at and after the transition time, to be substituted for AFC as a party to the proceedings:
- (a) Screen Australia;
 - (b) NFSA;
 - (c) AFTRS;
 - (d) the Commonwealth.
- (6) A determination made under subitem (5) has effect accordingly.
- (7) The Minister may make a determination under subitem (5) before or after the transition time.
- (8) A determination made under subitem (5) is not a legislative instrument.

23 Transfer of custody of records of AFC

Application

- (1) This item applies to a record or document that, immediately before the transition time, is in the custody of AFC.

AFC to Screen Australia

- (2) If the record or document relates to:
- (a) an asset or liability of AFC that, as a result of the operation of item 2, becomes an asset or liability of Screen Australia;
 - or
 - (b) a thing done by, or in relation to, AFC, that, as a result of the operation of item 20, is taken to have been done by, or in relation to, Screen Australia;

then, after the transition time, the record or document is to be transferred into the custody of Screen Australia.

Schedule 2 Transitional provisions

Part 5 Things done by, references in instruments to, legal proceedings of and records of AFC, FAL and FFC

AFC to NFSA

- (3) If the record or document relates to:
- (a) an asset or liability of AFC that, as a result of the operation of item 2, becomes an asset or liability of NFSA; or
 - (b) a thing done by, or in relation to, AFC, that, as a result of the operation of item 20, is taken to have been done by, or in relation to, NFSA;

then, after the transition time, the record or document is to be transferred into the custody of NFSA.

AFC to AFTRS

- (4) If the record or document relates to:
- (a) an asset or liability of AFC that, as a result of the operation of item 2, becomes an asset or liability of AFTRS; or
 - (b) a thing done by, or in relation to, AFC, that, as a result of the operation of item 20, is taken to have been done by, or in relation to, AFTRS;

then, after the transition time, the record or document is to be transferred into the custody of AFTRS.

AFC to Screen Australia, NFSA, AFTRS or Commonwealth

- (5) If subitem (2), (3) or (4) does not apply to the record or document, then the Minister may determine, in writing, that the record or document is to be transferred after the transition time into the custody of:
- (a) Screen Australia; or
 - (b) NFSA; or
 - (c) AFTRS; or
 - (d) the Commonwealth.
- (6) A determination made under subitem (5) has effect accordingly.
- (7) The Minister may make a determination under subitem (5) before or after the transition time.
- (8) A determination made under subitem (5) is not a legislative instrument.
-

Commonwealth Authorities and Companies Act 1997

- (9) Section 20 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to accounting records transferred to a body under this item as if the records were records of that body.

24 Variation of the operation of this Division

- (1) The Minister may determine, in writing, that a provision of item 21, 22 or 23 does not apply in relation to instruments, proceedings, records or documents specified in the determination.
- (2) A determination under subitem (1) has effect accordingly, and takes effect:
- (a) at the time specified in the determination (which may be a time before the determination is made but not a time earlier than the transition time); or
 - (b) if a time is not specified—at the beginning of the day on which the determination is made.
- (3) A determination under subitem (2) is not a legislative instrument.

Division 2—FAL and FFC

25 Things done by, or in relation to, FAL or FFC

- (1) If, before the transition time, a thing was done by, or in relation to, FAL or FFC, then, at and after the transition time, the thing is taken to have been done by, or in relation to, Screen Australia.
- (2) This item does not limit the operation of item 3.

26 References in instruments to FAL or FFC

- (1) If:
- (a) an instrument is in force immediately before the transition time; and
 - (b) the instrument contains a reference to FAL or FFC;
- then the reference to FAL or FFC has effect, at and after the transition time, as if it were a reference to Screen Australia.
- (2) In this item:
- instrument:*
-

Schedule 2 Transitional provisions

Part 5 Things done by, references in instruments to, legal proceedings of and records of AFC, FAL and FFC

- (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; but
- (b) does not include:
 - (i) an Act; or
 - (ii) instruments made under this Act; or
 - (iii) the constitutions of FAL and FFC.

27 Legal proceedings of FAL or FFC

If any proceedings to which FAL or FFC was a party were pending in any court or tribunal immediately before the transition time, then Screen Australia is taken, at and after the transition time, to be substituted for FAL or FFC as a party to the proceedings.

28 Transfer of custody of records of FAL or FFC

- (1) A record or document that, immediately before the transition time, is in the custody of FAL or FFC is to be transferred, after the transition time, into the custody of Screen Australia.
- (2) Section 20 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to accounting records transferred to Screen Australia under this item as if the records were records of Screen Australia.

Part 6—Annual reports, returns etc. of AFC, FAL and FFC

29 Final annual report of AFC

- (1) The members of the Board of Screen Australia must prepare a report in accordance with Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* for AFC for the transitional reporting period.
- (2) However, the report need not cover a period that has already been covered by a report given to the Minister by the members of AFC under section 9 of the *Commonwealth Authorities and Companies Act 1997*.
- (3) The report must include the matters described in subsections 6(4) to (6) of the *Australian Film Commission Act 1975* as in force immediately before the transition time.
- (4) Schedule 1 to the *Commonwealth Authorities and Companies Act 1997*, and the Finance Minister's Orders referred to in that Schedule, apply in relation to the report as if:
 - (a) references in that Schedule, or those Orders, to the directors were references to the members of the Board of Screen Australia; and
 - (b) references in that Schedule, or those Orders, to an annual report were references to the report; and
 - (c) references in that Schedule, or those Orders, to a financial year were references to the transitional reporting period.
- (5) The members of the Board of Screen Australia must give the report to the Minister by the 15th day of the fourth month after the end of the transitional reporting period. The Minister may grant an extension of time in special circumstances.
- (6) The Minister must table the report in each House of the Parliament as soon as practicable.
- (7) In this item:

member of the Board of Screen Australia means a member appointed under section 11 of the *Screen Australia Act 2008*.

transitional reporting period means the period beginning at the start of the financial year before the financial year in which the transition time occurs and ending immediately before the transition time.

30 Contravention of final annual reporting requirement

- (1) If a final annual reporting requirement is contravened, each member of the Board of Screen Australia who:
 - (a) caused the contravention; or
 - (b) failed to take all reasonable steps to comply with the requirement, or secure compliance with the requirement;contravenes this subitem.
- (2) Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* applies in relation to a contravention of subitem (1) of this item as if:
 - (a) subitem (1) of this item were a civil penalty provision specified in clause 1 of that Schedule; and
 - (b) subparagraphs 3(1)(b)(i) and (ii), clauses 4 and 5, subclauses 6(2) and (3) and paragraphs 8(a) and 11(c) of that Schedule were omitted; and
 - (c) the reference to “or a compensation order” in subclause 6(1) were omitted.
- (3) If a contravention of a final annual reporting requirement consists of an omission from the financial statements, it is a defence if the defendant proves that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by the Finance Minister’s Orders to be included in the statements.
- (4) In this item:

final annual reporting requirement means subitem 19(1), (3) or (5) of this Schedule.

member of the Board of Screen Australia means a member appointed under section 11 of the *Screen Australia Act 2008*.

31 Other reports, returns etc. of AFC, FAL and FFC

- (1) This item applies to a report, return or other document if, at a time (the *relevant time*) that is immediately before, at or after the transition time:
-

- (a) AFC, FAL or FFC is required, by or under a law of the Commonwealth, to prepare or lodge the report, return or document; or
- (b) any of the following persons is required, by or under a law of the Commonwealth, to prepare or lodge the report, return or document in relation to AFC, FAL or FFC:
 - (i) a member or former member of AFC;
 - (ii) a CEO or former CEO of AFC;
 - (iii) a director or former director of FAL or FFC;
 - (iv) the Managing Director/Chief Executive or former Managing Director/Chief Executive of FAL;
 - (v) the Chief Executive or former Chief Executive of FFC;
 - (vi) any other officer or member of the staff, or former officer or member of the staff, of AFC, FAL or FFC;
 - (vii) a member or former member of FAL or FFC.

However, this item does not apply to a report, return or document to which another item of this Schedule applies.

- (2) The Minister may determine, in writing, that Screen Australia is instead required, at the relevant time, to prepare or lodge the report, return or document.
- (3) A determination made under subitem (2) has effect accordingly.
- (4) A determination made under subitem (2) is not a legislative instrument.
- (5) This item does not limit the operation of item 2 or 3.

Part 7—Appointment of first CEO of Screen Australia and NFSA

32 Appointment of first CEO of Screen Australia

- (1) Despite subsection 22(1) of the *Screen Australia Act 2008*, the Minister is to appoint the first CEO of Screen Australia.
- (2) The appointment is to take effect at the later of:
 - (a) the time specified in the instrument of appointment; and
 - (b) the transition time.
- (3) The *Screen Australia Act 2008* (other than subsection 22(1) of that Act) applies in relation to the CEO appointed under subitem (1) as if the CEO had been appointed under subsection 22(1) of that Act.

33 Appointment of first CEO of NFSA

- (1) Despite subsection 22(1) of the *National Film and Sound Archive Act 2008*, the Minister is to appoint the first CEO of NFSA.
- (2) The appointment is to take effect at the later of:
 - (a) the time specified in the instrument of appointment; and
 - (b) the transition time.
- (3) The *National Film and Sound Archive Act 2008* (other than subsection 22(1) of that Act) applies in relation to the CEO appointed under subitem (1) as if the CEO had been appointed under subsection 22(1) of that Act.

Part 8—Other transitional matters

34 National Film and Sound Archive

Any programs and related materials that, immediately before the transition time, were included in the collection known as the National Film and Sound Archive, are taken, at the transition time, to be part of the national collection referred to in paragraph 6(1)(a) of the *National Film and Sound Archive Act 2008*.

35 Directors' obligations—FAL and FFC

Subsection 601AD(5) of the *Corporations Act 2001* has effect at and after the transition time in relation to FAL and FFC as if the reference to the directors of the company immediately before deregistration were a reference to Screen Australia.

36 Transfer of appropriated money

- (1) For the purposes of the operation of an Appropriation Act after the transition time, the Finance Minister may determine, by legislative instrument, that:
 - (a) one part of the amount referred to in that Act that relates to AFC is to be read as the amount that relates to Screen Australia; and
 - (b) the other part of the amount referred to in that Act that relates to AFC is to be read as the amount that relates to NFSA.
- (2) A determination made under subitem (1) has effect accordingly.
- (3) A determination made under subitem (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination.
- (4) In this item:

Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

37 Compensation for acquisition of property

- (1) If the operation of this Act 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 the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
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.

38 Delegation by Minister

- (1) The Minister may delegate, in writing, all or any of his or her powers and functions under this Act to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

39 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
 - (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act, the *Screen Australia Act 2008* or the *National Film and Sound Archive Act 2008*; or
 - (c) the termination, at or after the transition time, of an appointment, engagement or employment of any of the following persons:
-

- (i) a director of FAL or FFC;
 - (ii) the Managing Director/Chief Executive of FAL;
 - (iii) the Chief Executive of FFC; or
 - (d) the termination, at or after the transition time, of a contract, agreement or other instrument relating to the appointment, engagement or employment of a person referred to in paragraph (c); or
 - (e) the employment, at or after the transition time, by Screen Australia, NFSA or AFTRS of a person appointed, engaged or employed, immediately before the transition time, by AFC, FAL or FFC; or
 - (f) leave of employees or staff of AFC, FAL or FFC approved before the transition time.
-

*[Minister's second reading speech made in—
House of Representatives on 20 February 2008
Senate on 13 March 2008]*

(37/08)
