



National Film and Sound Archive Act 2008

No. 14, 2008

**An Act to establish the National Film and Sound
Archive, and for related purposes**

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

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National Film and Sound Archive Act 2008

No. 14, 2008

An Act to establish the National Film and Sound Archive, and for related purposes

[Assented to 20 March 2008]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Film and Sound Archive 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 and 2 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. Sections 3 to 43	At the same time as subsection 5(1) of the <i>Screen Australia Act 2008</i> commences.	1 July 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 Definitions

In this Act:

Board means the Board of the National Film and Sound Archive.

CEO means the Chief Executive Officer of the National Film and Sound Archive.

Chair means the Chair of the Board.

Deputy Chair means the Deputy Chair of the Board.

member means a member of the Board and includes the Chair and Deputy Chair.

program means any of the following:

- (a) a screen production;
- (b) an aggregate of sounds embodied in any material;
- (c) an aggregate of images or sounds, or of images and sounds, that is, or is intended to be, distributed without first having been embodied in any material.

screen production means an aggregate of images, or of images and sounds, embodied in any material that can be viewed on a screen (including, for example, a film).

4 Extended geographic application of this Act

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

Part 2—National Film and Sound Archive

5 Establishment

- (1) The National Film and Sound Archive is established by this section.
- (2) The National Film and Sound Archive:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the National Film and Sound Archive. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (3) The seal of the National Film and Sound Archive is to be kept in such custody as the Board directs, and is not to be used except as authorised by the Board.
- (4) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the National Film and Sound Archive appearing on a document; and
 - (b) presume that the document was duly sealed.

6 Functions

Functions

- (1) The functions of the National Film and Sound Archive are to:
 - (a) develop, preserve, maintain, promote and provide access to a national collection of programs and related material; and
 - (b) support and promote the collection by others of programs and related material in Australia; and
 - (c) support, promote or engage in:

- (i) the preservation and maintenance of programs and related material that are not in the national collection; and
- (ii) the provision of access to programs and related material that are not in the national collection; and
- (d) support and promote greater understanding and awareness in Australia of programs; and
- (e) undertake any other function conferred on it by any other law of the Commonwealth.

Ways in which support may be provided

- (2) The ways in which the National Film and Sound Archive may provide support as mentioned in subsection (1) include (but are not limited to) doing any of the following:
 - (a) providing financial assistance (whether by way of loan, grant, investment or otherwise and whether on commercial terms or otherwise);
 - (b) commissioning or sponsoring programs or other activities;
 - (c) providing services, facilities, programs or equipment;but does not include providing guarantees.

Considerations governing the performance of functions

- (3) In performing its functions, the National Film and Sound Archive is, as far as practical, to:
 - (a) place an emphasis on the historical and cultural significance of programs and related material; and
 - (b) use every endeavour to make the most advantageous use of the national collection in the national interest; and
 - (c) apply the highest curatorial standards; and
 - (d) promote the efficient, effective and ethical use of public resources.

National Film and Sound Archive may charge fees

- (4) The National Film and Sound Archive may charge fees for things done in performing its functions.

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National Film and Sound Archive may cooperate with others

- (5) The National Film and Sound Archive may perform its functions alone or together with other persons.

Severability

- (6) Without limiting its effect apart from this subsection, this Act also has the effect it would have if the powers and functions of the National Film and Sound Archive were confined to powers and functions that were to be exercised and performed:
- (a) in so far as it is appropriate for those powers and functions to be exercised and performed by the National Film and Sound Archive on behalf of the Government of the Commonwealth as the national Government of Australia; and
 - (b) for purposes for which it is appropriate for the Parliament, as the national Parliament of Australia, to authorise the National Film and Sound Archive to exercise powers and perform functions; and
 - (c) in relation to expenditure of money that is available for the purposes of the National Film and Sound Archive in accordance with an appropriation made by the Parliament; and
 - (d) in relation to trade and commerce with other countries, among the States, between Territories or between a Territory and a State; and
 - (e) in relation to postal, telegraphic, telephonic, and other like services; and
 - (f) in relation to the collection of statistics; and
 - (g) in relation to external affairs; and
 - (h) in relation to a Territory; and
 - (i) in relation to the executive power of the Commonwealth; and
 - (j) in relation to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

7 Powers

- (1) The National Film and Sound Archive has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The National Film and Sound Archive's powers include, but are not limited to, the following powers:
 - (a) to accept gifts, devises, bequests and assignments (whether on trust or otherwise);
 - (b) to act as trustee of money, programs or other property vested in the National Film and Sound Archive on trust;
 - (c) to act on behalf of the Commonwealth or an authority of the Commonwealth in the administration of a trust relating to programs or to matters connected with programs;
 - (d) to do anything incidental to any of its functions.
- (3) Despite anything contained in this Act, any money, programs or other property held by the National Film and Sound Archive on trust must be dealt with in accordance with the obligations of the National Film and Sound Archive as trustee of the trust.

Part 3—The Board of the National Film and Sound Archive

Division 1—The Board

8 Establishment

The Board of the National Film and Sound Archive is established by this section.

9 Role

- (1) The Board is responsible for ensuring the proper and efficient performance of the National Film and Sound Archive's functions.
- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its duties.
- (3) All acts and things done in the name of, or on behalf of, the National Film and Sound Archive by the Board, or with the authority of the Board, are taken to have been done by the National Film and Sound Archive.
- (4) If a function or power of the National Film and Sound Archive is dependent on the opinion, belief or state of mind of the National Film and Sound Archive in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

10 Membership

The Board consists of the following members:

- (a) the Chair of the Board;
- (b) the Deputy Chair of the Board;
- (c) no less than 3 and no more than 7 other members.

11 Appointment of members

- (1) The members are to be appointed by the Minister by written instrument.
- (2) A member holds office on a part-time basis.
- (3) A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (4) A person must not be appointed for a period if the sum of:
 - (a) that period; and
 - (b) any periods of previous appointment of the person as a member;exceeds 9 years.
- (5) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of the number of members falling below 5 for a period of not more than 6 months.

12 Acting in positions

- (1) The Deputy Chair is to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) While the Deputy Chair is acting as the Chair:
 - (a) the Deputy Chair has, and may exercise, all the Chair's powers, and must perform all the Chair's functions and duties; and
 - (b) this Act, and all other Acts, apply to the Deputy Chair as if he or she were the Chair.
- (3) Anything done by or in relation to the Deputy Chair when purporting to act under subsection (1) is not invalid merely because the occasion to act had not arisen or had ceased.

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- (4) The Minister may appoint a member to act as the Deputy Chair:
- (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair:
 - (i) is acting as the Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.
- (5) The Minister may appoint a person to act as a member (other than as Chair or Deputy Chair):
- (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member:
 - (i) is acting as the Deputy Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.
- (6) Anything done by or in relation to a person purporting to act under an appointment under subsection (4) or (5) 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.

Note: For more information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

13 Remuneration of members

- (1) A member 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 member is to be paid the remuneration that is prescribed.

- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

14 Leave of members

- (1) The Minister may grant the Chair leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants to a member leave of absence for a period that exceeds 6 months.

15 Resignation of members

- (1) A member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

16 Termination of appointment

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a member if:
 - (a) the member:
 - (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 member fails, without reasonable excuse, to comply with an obligation imposed on him or her by section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*; or

Part 3 The Board of the National Film and Sound Archive

Division 1 The Board

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- (c) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board.

17 Other terms and conditions of members

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 2—Board Procedures

18 Meetings

- (1) The Chair must convene such meetings of the Board as are, in his or her opinion, necessary for the efficient conduct of its affairs.
- (2) The quorum for a meeting is a majority of the current members.
- (3) However, if:
 - (a) a member is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;those remaining members constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.
- (4) A question arising at a meeting of the Board is to be decided by a majority of the votes of the members present and voting.
- (5) The Chair must preside at all meetings at which he or she is present.
- (6) If the Chair is not present at a meeting the Deputy Chair, if present, must preside at the meeting.
- (7) If neither the Chair nor the Deputy Chair is present at a meeting the members present must elect one of their number to preside at the meeting.
- (8) At a meeting, the presiding member has a deliberative vote and, in the event of an equality of votes, has a casting vote.
- (9) The Board must keep a record of any decisions made at a meeting.

Section 19

- (10) Subject to this Act and the *Commonwealth Authorities and Companies Act 1997*, the Board may regulate the conduct of its meetings as it thinks fit.

19 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
- (a) without a meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies if the Board:
- (a) has determined that it may make decisions of that kind without a meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 4—Chief Executive Officer, staff and consultants

Division 1—Chief Executive Officer

20 Establishment

There is to be a Chief Executive Officer of the National Film and Sound Archive.

21 Role

- (1) The CEO is responsible for the day-to-day administration of the National Film and Sound Archive.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) Except in relation to the CEO's powers under the *Public Service Act 1999*, the CEO is to act in accordance with any policies determined, and any directions given, by the Board.
- (4) All acts and things done in the name of, or on behalf of, the National Film and Sound Archive by the CEO, or with the authority of the CEO, are taken to have been done by the National Film and Sound Archive.
- (5) If a function or power of the National Film and Sound Archive is dependent on the opinion, belief or state of mind of the National Film and Sound Archive in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (4) in relation to that matter.
- (6) If a policy or direction under subsection (3) is in writing, the policy or direction is not a legislative instrument.

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22 Appointment

- (1) The CEO is to be appointed by the Board after consultation with the Minister.
- (2) The CEO holds office on a full-time basis.
- (3) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) The CEO must not be a member of the Board.

23 Acting appointments

- (1) The Board may, after consultation with the Minister, 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:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) 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.

24 Other employment

- (1) The CEO must not engage in paid employment outside the duties of the CEO's office without the Chair's approval.
- (2) The Chair must notify the Minister of any approval given under subsection (1).

25 Remuneration

- (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*.

26 Leave

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chair may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants to the CEO leave for a period that exceeds one month.

27 Disclosure of interests

The CEO must give written notice to the Minister and the Board of all material personal interests that the CEO has or acquires that conflict or could conflict with the proper performance of the CEO's duties.

28 Resignation

- (1) The CEO may resign his or her appointment by giving the Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Chair or, if a later day is specified in the resignation, on that later day.
- (3) If the CEO resigns under this section, the Chair must notify the Minister of the resignation.

Section 29

29 Termination

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period.
- (2) The Board must 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 fails, without reasonable excuse, to comply with section 27; or
 - (d) the CEO engages, except with the Chair's approval, in paid employment outside the duties of his or her office.
- (3) If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination.

30 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

Division 2—Staff and consultants

31 Staff

- (1) The staff of the National Film and Sound Archive must 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 National Film and Sound Archive together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

32 Consultants

The National Film and Sound Archive may engage consultants to assist in the performance of its functions.

Part 5—Planning

33 Corporate plan

- (1) The Board must prepare a corporate plan for the National Film and Sound Archive at least once a year.
- (2) The plan must cover a period of at least 3 years.
- (3) The Minister may give the Board written instructions with which the Board must comply in preparing the plan and any variations to the plan.
- (4) An instruction given under subsection (3) is not a legislative instrument.

34 Contents of corporate plan

- (1) The plan must include details of the following matters:
 - (a) a statement of the objectives that the National Film and Sound Archive will pursue;
 - (b) the strategies and policies that the National Film and Sound Archive will adopt to achieve those objectives;
 - (c) performance indicators for the assessment of the National Film and Sound Archive's performance of its functions;
 - (d) the financial targets and projections for the National Film and Sound Archive;
 - (e) an analysis of factors likely to affect achievement of targets or create significant financial risk for the National Film and Sound Archive or for the Commonwealth;
 - (f) a review of performance since the start of the year previous to the year in which the plan is prepared, measured against the most recent plan for any part of that period;
 - (g) such other matters (if any) as the Minister directs.
- (2) The plan may include any other matters.

- (3) If a direction under paragraph (1)(g) is in writing, the direction is not a legislative instrument.

35 Approval of corporate plan by Minister

- (1) The plan must be given to the Minister for his or her approval before the start of the period to which the plan relates.
- (2) The Minister may, by written notice given to the Board:
- (a) approve the plan; or
 - (b) request the Board to revise it for the reasons set out in the request.
- (3) The Board must:
- (a) comply with the Minister's request to revise the plan; and
 - (b) give the revised plan to the Minister for his or her approval.
- (4) The plan comes into force on the later of:
- (a) the day on which it is approved by the Minister; or
 - (b) the first day of the period to which it relates.
- (5) A notice given under subsection (2) is not a legislative instrument.

36 Variation of corporate plan

- (1) The Board may, at any time, vary a corporate plan, whether or not it has come into force.
- (2) The Minister may, at any time, request the Board to vary a corporate plan, whether or not it has come into force. The Board must comply with the request.
- (3) A variation must be given to the Minister for his or her approval.
- (4) A variation comes into force on the day on which it is approved by the Minister.
- (5) If a variation of a corporate plan is approved by the Minister after the plan has come into force, the plan continues in force on and after the day on which the variation is approved as so varied.

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- (6) If a request under subsection (2), or an approval under subsection (4), is in writing, the request or approval is not a legislative instrument.

Part 6—Finance

37 Money payable to the National Film and Sound Archive

- (1) There is payable to the National Film and Sound Archive such money as is appropriated by the Parliament for the purposes of the National Film and Sound Archive.
- (2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the National Film and Sound Archive.
- (3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.
- (4) In this section:

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

38 Application of money by the National Film and Sound Archive

- (1) The money of the National Film and Sound Archive is to be applied only:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred or undertaken by the National Film and Sound Archive in the performance of its functions and the exercise of its powers; and
 - (b) in payment of any remuneration or allowances payable under this Act.
- (2) Subsection (1) does not prevent investment of surplus money of the National Film and Sound Archive under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

39 Restrictions on financial transactions

- (1) The National Film and Sound Archive must not, without the approval of the Minister:
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Section 40

- (a) acquire any property, right or privilege for a consideration exceeding in amount or value the amount prescribed by the regulations for the purposes of this paragraph; or
 - (b) dispose of any property, right or privilege if the amount or value of the consideration for the disposal, or the value of the property, right or privilege, exceeds the amount prescribed by the regulations for the purposes of this paragraph; or
 - (c) enter into a contract for the construction of a building for the National Film and Sound Archive, being a contract under which the National Film and Sound Archive is to pay an amount exceeding the amount prescribed by the regulations for the purposes of this paragraph; or
 - (d) enter into a lease of land for a period exceeding 10 years.
- (2) Paragraphs (1)(a) and (b) do not apply to the investment of money by the National Film and Sound Archive under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
- (3) If an approval under subsection (1) is in writing, the approval is not a legislative instrument.

40 Taxation

- (1) The National Film and Sound Archive is not subject to taxation under any law of the Commonwealth or of a State or Territory.

Note: Despite this subsection, the National Film and Sound Archive may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999* and section 66 of the *Fringe Benefits Tax Assessment Act 1986*).

- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

Part 7—Other matters

41 Annual reports

The annual report on the National Film and Sound Archive under section 9 of the *Commonwealth Authorities and Companies Act 1997* must include particulars of all disposals of items in the national collection referred to in paragraph 6(1)(a), during the period to which the report relates, that the National Film and Sound Archive considers were significant items in the national collection.

42 Ministerial direction

- (1) The Minister may, by legislative instrument, give written directions to the Board:
 - (a) in relation to the performance of the functions of, and the exercise of powers of, the National Film and Sound Archive; or
 - (b) requiring the provision of a report or advice on a matter that relates to any of the National Film and Sound Archive's functions or powers.
- Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.
- Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 54 of that Act.
- (2) The Minister must not give a direction in relation to a decision by the Board to provide support to a particular person or for a particular program.
- (3) The Board must ensure that any direction given by the Minister under subsection (1) is complied with.
- (4) This section does not limit the operation of section 16 of the *Commonwealth Authorities and Companies Act 1997*.

Section 43

43 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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*[Minister's second reading speech made in—
House of Representatives on 20 February 2008
Senate on 13 March 2008]*

(38/08)
