



# **Australian Astronomical Observatory (Transition) Act 2018**

**No. 59, 2018**

***An Act to amend the *Australian Astronomical  
Observatory Act 2010* and to repeal the *Australian  
Astronomical Observatory (Transitional Provisions)  
Act 2010*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
Part 1—Amendments		3
<i>Australian Astronomical Observatory Act 2010</i>		3
Part 2—Repeals		5
<i>Australian Astronomical Observatory (Transitional Provisions) Act 2010</i>		5
<b>Schedule 2—Transitional provisions</b>		<b>6</b>
Part 1—Preliminary		6
Part 2—Assets and liabilities		7
Part 3—Transfer of other matters		9
Part 4—Miscellaneous		11





# Australian Astronomical Observatory (Transition) Act 2018

No. 59, 2018

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**An Act to amend the *Australian Astronomical Observatory Act 2010* and to repeal the *Australian Astronomical Observatory (Transitional Provisions) Act 2010*, and for related purposes**

[Assented to 29 June 2018]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Australian Astronomical Observatory (Transition) Act 2018*.

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Amendments

#### *Australian Astronomical Observatory Act 2010*

##### 1 Title

Omit “to establish the Australian Astronomical Observatory”, substitute “to provide for astronomical functions”.

##### 2 Section 1

Omit “*Australian Astronomical Observatory Act 2010*”, substitute “*Astronomical Functions Act 2010*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

##### 3 Section 3

Repeal the section, substitute:

##### 3 Simplified outline of this Act

This Act provides that the Secretary has various functions relating to optical astronomy.

The Commonwealth may charge fees in connection with things done in the performance of the Secretary’s functions.

The Secretary may delegate functions and powers under this Act to APS employees in the Department.

##### 4 Section 4

Repeal the following definitions:

- (a) definition of *Advisory Committee*;
- (b) definition of *Advisory Committee member*;
- (c) definition of *constitutional corporation*;
- (d) definition of *Director*.

**5 Parts 2 and 4**

Repeal the Parts.

**6 Subsections 23(1) and (2)**

Repeal the subsections, substitute:

- (1) The Secretary may, by writing, delegate all or any of the Secretary's functions or powers under this Act to an APS employee in the Department who has expertise appropriate to the function or power delegated.



## **Part 2—Repeals**

### *Australian Astronomical Observatory (Transitional Provisions) Act 2010*

#### **7 The whole of the Act**

Repeal the Act.

## Schedule 2—Transitional provisions

### Part 1—Preliminary

#### 1 Definitions

- (1) In this Schedule:

**AAO** means the Australian Astronomical Observatory that was established by section 8 of the *Australian Astronomical Observatory Act 2010*.

**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, means the person or authority who:

- (a) under a law of the Commonwealth, a State or a Territory; or
- (b) under a trust instrument; or
- (c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

**designated entity** means a person determined to be a designated entity under subitem (2).

**Director** means the Director of the Australian Astronomical Observatory.

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

**transition time** means the commencement of Schedule 1.

- (2) The Minister may, by writing, determine that a person is a designated entity for the purposes of this Schedule.
- (3) A determination under subitem (2) is not a legislative instrument.

#### 2 Extra-territorial operation

This Schedule applies both within and outside Australia.

## **Part 2—Assets and liabilities**

### **3 Transfer of assets and liabilities from Commonwealth to designated entities**

#### *Application*

- (1) This item applies to assets and liabilities of the Commonwealth that immediately before the transition time relate to the AAO.

#### *Ministerial declarations*

- (2) The Minister may, by writing, declare that:
  - (a) a specified asset or liability to which this item applies vests in a designated entity at a specified time (that is at or after the transition time) without any conveyance, transfer or assignment; and
  - (b) the designated entity becomes the successor in law in relation to that asset or liability at that specified time.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (3) A declaration under subitem (2) has effect accordingly.
- (4) A declaration under subitem (2) is not a legislative instrument.

#### *Assets subject to trust*

- (5) If an asset vests in a designated entity at a particular time under a declaration under subitem (2) and the asset was, immediately before that time, held by the Commonwealth on trust, that asset is taken, at and after that time, to be held by the designated entity on trust and subject to the terms of the trust on which the asset was so held by the Commonwealth.

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

- (1) This item applies if:
  - (a) an asset vests in a designated entity 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 the designated entity; and

**Schedule 2** Transitional provisions

**Part 2** Assets and liabilities

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- (iii) states that the asset has become vested in the designated entity.
- (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 Part.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

## **Part 3—Transfer of other matters**

### **5 References in certain instruments**

- (1) This item applies to an instrument if:
- (a) the instrument is in force immediately before the transition time; and
  - (b) the instrument contains a reference to the Commonwealth, the Director, or the AAO; and
  - (c) the instrument:
    - (i) relates to an asset or liability that vests in a designated entity under Part 2; or
    - (ii) otherwise relates to the activities of the AAO; and
  - (d) the instrument is declared by the Minister, by writing, as being an instrument to which this item applies.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (2) The instrument has effect, from a time (that is at or after the transition time) specified in the declaration under paragraph (1)(d), as if the reference to the Commonwealth, the Director, or the AAO (as the case may be) were a reference to a designated entity specified by the Minister in the declaration.
- (3) A declaration under paragraph (1)(d) is not a legislative instrument.
- (4) In this item:  
**instrument:**
- (a) includes:
    - (i) a contract, undertaking, deed, agreement or memorandum; and
    - (ii) a notice, authority, order or instruction; and
    - (iii) an instrument made under an Act or under a legislative instrument; but
  - (b) does not include:
    - (i) an Act; or
    - (ii) an instrument made under this Act; or
    - (iii) an instrument specified in rules made under item 12.

## **6 Legal proceedings**

- (1) This item applies to proceedings in a court or tribunal to which the Commonwealth is a party if:
- (a) the proceedings were pending immediately before the transition time; and
  - (b) the proceedings:
    - (i) relate to an asset or liability that vests in a designated entity under Part 2; or
    - (ii) otherwise relate to the activities of the AAO; and
  - (c) the proceedings are declared by the Minister, by writing, as being proceedings to which this item applies.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (2) A designated entity specified by the Minister in the declaration under paragraph (1)(c) is, from a time (that is at or after the transition time) specified in the declaration, substituted for the Commonwealth as a party to the proceedings.
- (3) A declaration under paragraph (1)(c) is not a legislative instrument.

## **Part 4—Miscellaneous**

### **7 Nothing in this Schedule to affect staff**

- (1) Nothing in this Schedule produces the result that the appointment, engagement or employment of a person as an officer of the AAO before the transition time has effect, at or after that time, as if it were an appointment, engagement or employment of the person by or in relation to a designated entity.
- (2) In this item:  
*officer of the AAO* means:
  - (a) the Director; or
  - (b) an APS employee engaged in operations associated with the AAO.

### **8 Exemption from stamp duty and other State or Territory taxes**

- (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 this Schedule; 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 under subitem (3) is not a legislative instrument.

### **9 Certificates taken to be authentic**

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

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

## **10 Delegation by Minister**

- (1) The Minister may, by writing, delegate all or any of the Minister's functions or powers under this Schedule to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or an acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising functions or powers under a delegation, the delegate must comply with any directions of the Minister.
- (3) Subitem (1) does not apply in relation to the Minister's powers under item 12.

## **11 Compensation for acquisition of property**

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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 or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## **12 Transitional rules**

- (1) The Minister may, by legislative instrument (and subject to subitem (3)), make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the repeals made by this Act.
- (2) Without limiting subitem (1), rules made for the purposes of that subitem, before the end of the period of 12 months starting at the



transition time, may provide that this Schedule has effect with any modifications prescribed by the rules.

- (3) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty provision;
  - (b) provide:
    - (i) powers of arrest or detention; or
    - (ii) powers relating to entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).

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*[Minister's second reading speech made in—  
House of Representatives on 28 March 2018  
Senate on 19 June 2018]*

(68/18)

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