

2008

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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

No. , 2008

(Environment, Heritage and the Arts)

**A Bill for 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**

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1 **A Bill for an Act to deal with transitional and**
2 **consequential matters in connection with the *Screen***
3 ***Australia Act 2008* and the *National Film and Sound***
4 ***Archive Act 2008*, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

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

10 **2 Commencement**

11 (1) Each provision of this Act specified in column 1 of the table
12 commences, or is taken to have commenced, in accordance with

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

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. | |
| 2. Schedule 1 | At the same time as subsection 5(1) of the <i>Screen Australia Act 2008</i> commences. | |
| 3. Schedule 2 | The day on which this Act receives the Royal Assent. | |

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

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

10 **3 Schedule(s)**

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12 repealed as set out in the applicable items in the Schedule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

15 **4 Extended geographic application of this Act**

16 (1) This Act extends to every external Territory.

17 (2) This Act applies both within and outside Australia.

1

**Schedule 1—Repeal and consequential
amendments**

2

3

4

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

5

6

Australian Film Commission Act 1975

7

1 The whole of the Act

8

Repeal the Act.

1

2 **Part 2—Consequential amendments**

3 *Australian Film, Television and Radio School Act 1973*

4 **2 At the end of Part VI**

5 Add:

6 **35A Long service leave for the School’s employees**

7 The *Long Service Leave (Commonwealth Employees) Act 1976*
8 applies to a person employed by the School under section 34 of this
9 Act as if the person were engaged under the *Public Service Act*
10 *1999*.

11 *Income Tax Assessment Act 1997*

12 **3 Subsection 376-55(3)**

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

14 **4 After subparagraph 376-170(4)(a)(iv)**

15 Insert:

16 (v) Screen Australia;

1
2 **Schedule 2—Transitional provisions**

3 **Part 1—Introduction**

4 **1 Definitions**

5 In this Schedule:

6 **AFC** means the Australian Film Commission established by subsection
7 4(1) of the *Australian Film Commission Act 1975*.

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

11 **asset** means:

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

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

17 **FFC** means Film Finance Corporation Australia Limited (ACN 008 642
18 564).

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

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

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

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

1

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

3 **2 Transfer of assets and liabilities of AFC**

4 *Application*

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

7 *AFC to Screen Australia*

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

13 *AFC to NFSA or AFTRS*

14 (3) Before the transition time, the Minister may determine, in writing, that
15 some of the assets or liabilities are to become assets or liabilities of
16 NFSA or AFTRS.

17 (4) If the Minister makes a determination that the assets or liabilities are to
18 become the assets or liabilities of NFSA, then, at the transition time, the
19 assets or liabilities cease to be assets or liabilities of AFC and become
20 assets or liabilities of NFSA without any conveyance, transfer or
21 assignment. NFSA becomes the successor in law in relation to those
22 assets or liabilities.

23 (5) If the Minister makes a determination that the assets or liabilities are to
24 become the assets or liabilities of AFTRS, then, at the transition time,
25 the assets or liabilities cease to be assets or liabilities of AFC and
26 become assets or liabilities of AFTRS without any conveyance, transfer
27 or assignment. AFTRS becomes the successor in law in relation to those
28 assets or liabilities.

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

30 *Assets subject to trust*

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

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

4 **3 Transfer of assets and liabilities of FAL and FFC**

5 (1) This item applies to assets and liabilities of FAL and FFC immediately
6 before the transition time.

7 (2) At the transition time, the assets and liabilities cease to be assets and
8 liabilities of FAL and FFC and become assets and liabilities of Screen
9 Australia without any conveyance, transfer or assignment. Screen
10 Australia becomes the successor in law in relation to those assets and
11 liabilities.

12 (3) If an asset that has become an asset of Screen Australia under this item
13 was, immediately before the transition time, held by FAL and FFC on
14 trust, that asset is taken, at and after the transition time, to be held by
15 Screen Australia on trust and subject to the terms of the trust on which
16 the asset was so held by FAL and FFC.

17 **4 Certificates relating to vesting of land**

18 (1) This item applies if:

19 (a) any land vests in Screen Australia, NFSA or AFTRS under
20 item 2 or 3; and

21 (b) there is lodged with a land registration official a certificate
22 that:

23 (i) is signed by the Minister; and

24 (ii) identifies the land, whether by reference to a map or
25 otherwise; and

26 (iii) states that the land has become vested in Screen
27 Australia, NFSA or AFTRS under this Act.

28 (2) The land registration official may:

29 (a) register the matter in a way that is the same as, or similar to,
30 the way in which dealings in land of that kind are registered;
31 and

32 (b) deal with, and give effect to, the certificate.

33 (3) A certificate made under subitem (1) is not a legislative instrument.

34 (4) In this item:

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

1

2 **Part 3—Office holders of AFC, FAL and FFC**

3 **8 Termination of office holders of FAL and FFC**

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

14 Note: The appointment of a member of AFC and the Chief Executive Officer of AFC is

15 terminated at the transition time because of the repeal of the *Australian Film*

16 *Commission Act 1975* (see item 1 of Schedule 1 to this Act).

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

20 **9 No transfer of appointment, engagement or employment**

21 **etc. of office holders**

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

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

1

2 **Part 4—Staff of AFC, FAL and FFC**

3 **Division 1—Staff of AFC**

4 **10 Non-APS employees in AFC transferred to Screen**
5 **Australia as non-APS employees**

- 6 (1) This item applies to a person who:
7 (a) is an officer appointed, or employee engaged, by AFC under
8 subsection 29(1) of the *Australian Film Commission Act*
9 *1975* immediately before the transition time; and
10 (b) is not covered by a determination that:
11 (i) is made under section 72 of the *Public Service Act 1999*;
12 and
13 (ii) causes the person, at the transition time, to become a
14 member of the staff of NFSA engaged under the *Public*
15 *Service Act 1999*.

- 16 (2) At the transition time, the person ceases to be appointed or engaged by
17 AFC and is taken to have been employed by Screen Australia under
18 subsection 31(2) of the *Screen Australia Act 2008*.

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

- 22 (3) The person is taken to have accrued an entitlement to benefits, in
23 connection with that employment by Screen Australia, that is equivalent
24 to the entitlement that the person had as an officer or employee of AFC
25 immediately before the transition time.

- 26 (4) The service of the person as an employee of Screen Australia is taken,
27 for all purposes, to be continuous with his or her service as an officer or
28 employee of AFC.

29 **11 Non-APS employees in AFC transferred to NFSA as APS**
30 **employees**

- 31 (1) This item applies to a person who:
32 (a) is an officer appointed, or employee engaged, by AFC under
33 subsection 29(1) of the *Australian Film Commission Act*
34 *1975* immediately before the transition time; and
-

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

16 **12 APS employees in AFC transferred to AFTRS as**
17 **employees of AFTRS**

- 18 (1) This item applies to a person who:
19 (a) is a member of the staff of AFC engaged under the *Public*
20 *Service Act 1999* immediately before the transition time; and
21 (b) is covered by a determination made under section 72 of the
22 *Public Service Act 1999* that causes the person, at the
23 transition time:
24 (i) to cease to be engaged under the *Public Service Act*
25 *1999*; and
26 (ii) to become an employee of AFTRS under section 34 of
27 the *Australian Film, Television and Radio School Act*
28 *1973*.
- 29 (2) The person is taken to have accrued an entitlement to benefits, in
30 connection with becoming an employee of AFTRS, that is equivalent to
31 the entitlement that the person had as a member of the staff of AFC
32 engaged under the *Public Service Act 1999* immediately before the
33 transition time.
- 34 (3) The service of the person as an employee of AFTRS is taken, for all
35 purposes, to have been continuous with his or her service as a member
36 of the staff of AFC engaged under the *Public Service Act 1999*.

1 **Division 2—Staff of FAL and FFC**

2 **13 Non-APS employees in FAL or FFC on contract of**
3 **employment transferred to Screen Australia as**
4 **non-APS employees**

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

- 1 (b) the Managing Director/Chief Executive of FAL;
2 (c) the Chief Executive of FFC.
- 3 (8) In this item:
4 *vary*, in relation to a contract of employment, includes:
5 (a) omitting any of the terms and conditions of the contract; or
6 (b) adding to the terms and conditions of the contract; or
7 (c) substituting new terms or conditions for any of the terms and
8 conditions of the contract.

9 **14 Non-APS employees in FAL not on contract of**
10 **employment transferred to Screen Australia as**
11 **non-APS employees**

- 12 (1) This item applies to a person if:
13 (a) the person is employed by FAL immediately before the
14 transition time; and
15 (b) item 13 does not apply to the person; and
16 (c) the person is not covered by a determination that:
17 (i) is made under section 72 of the *Public Service Act 1999*;
18 and
19 (ii) causes the person, at the transition time, to become a
20 member of the staff of Screen Australia engaged under
21 the *Public Service Act 1999*.
- 22 (2) At the transition time, the person ceases to be employed by FAL and is
23 taken to have been employed by Screen Australia under subsection
24 31(2) of the *Screen Australia Act 2008*.
- 25 (3) The person is taken to have accrued an entitlement to benefits, in
26 connection with that employment by Screen Australia, that is equivalent
27 to the entitlement that the person had as an employee of FAL
28 immediately before the transition time.
- 29 (4) The service of the person as an employee of Screen Australia is taken,
30 for all purposes, to have been continuous with his or her service as an
31 employee of FAL.
- 32 (5) To avoid doubt, this item does not apply to the following:
33 (a) a director of FAL;
34 (b) the Managing Director/Chief Executive of FAL.

1 **15 Non-APS employees in FAL or FFC, on a contract of**
2 **employment or otherwise, transferred to Screen**
3 **Australia as APS employees**

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

22 **Division 3—Other matters relating to staff**

23 **16 Limited transfer of appointment, engagement or**
24 **employment etc. of staff**

- 25 (1) Nothing in this Act (except items 10, 13, and 14) produces the result
26 that the appointment, engagement or employment of a person by AFC,
27 FAL or FFC immediately before the transition time has effect at or after
28 the transition time as if it were an appointment, engagement or
29 employment by Screen Australia, NFSA or AFTRS.
- 30 Note: See determinations under section 72 of the *Public Service Act 1999* and regulations
31 made under this Act for the transfer of the appointment, engagement or employment of
32 persons not covered by items 10, 13 and 14.
- 33 (2) Nothing in this Act produces the result that an instrument (within the
34 meaning of Part 11 of the *Workplace Relations Act 1996*) or a
35 transitional instrument (within the meaning of Schedule 9 to that Act)

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

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

6 **17 No payments as a result of transfer**

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

11 **18 Long service leave for staff of Screen Australia and NFSA**

12 (1) This item applies to a person if:

13 (a) immediately before the transition time, the person is:

14 (i) an officer appointed, or employee engaged, by AFC
15 under subsection 29(1) of the *Australian Film*
16 *Commission Act 1975*; or

17 (ii) employed by FAL or FFC; and

18 (b) as a result of the operation of this Part, the regulations or the
19 *Public Service Act 1999*, the person, at the transition time,
20 becomes:

21 (i) a member of the staff of Screen Australia under
22 subsection 31(1) of the *Screen Australia Act 2008*; or

23 (ii) a member of the staff of NFSA under subsection 31(1)
24 of the *National Film and Sound Archive Act 2008*.

25 (2) For the purposes of the *Long Service Leave (Commonwealth*
26 *Employees) Act 1976*, the person's service before the transition time as
27 an officer or employee of AFC, FAL or FFC is to be treated, at and after
28 the transition time, as if it had been service by the person as an
29 employee of the Commonwealth engaged under the *Public Service Act*
30 *1999*.

31 **19 Maternity leave for staff of Screen Australia**

32 (1) This item applies to a person if:

33 (a) immediately before the transition time, the person is
34 employed by FAL or FFC; and

Schedule 2 Transitional provisions
Part 4 Staff of AFC, FAL and FFC

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

1

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

5 **Division 1—AFC**

6 **20 Things done by, or in relation to, AFC**

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

21 **21 References in instruments to AFC**

22 *Application*

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

26 *AFC to Screen Australia*

- 27 (2) If the instrument relates to:

Schedule 2 Transitional provisions

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

- 1 (a) an asset or liability of AFC that, as a result of the operation
2 of item 2, becomes an asset or liability of Screen Australia;
3 or
4 (b) a thing done by, or in relation to, AFC, that, as a result of the
5 operation of item 20, is taken to have been done by, or in
6 relation to, Screen Australia;
7 then the reference to AFC has effect, at and after the transition time, as
8 if it were a reference to Screen Australia.

9 *AFC to NFSA*

- 10 (3) If the instrument relates to:
11 (a) an asset or liability of AFC that, as a result of the operation
12 of item 2, becomes an asset or liability of NFSA; or
13 (b) a thing done by, or in relation to, AFC, that, as a result of the
14 operation of item 20, is taken to have been done by, or in
15 relation to, NFSA;
16 then the reference to AFC has effect, at and after the transition time, as
17 if it were a reference to NFSA.

18 *AFC to AFTRS*

- 19 (4) If the instrument relates to:
20 (a) an asset or liability of AFC that, as a result of the operation
21 of item 2, becomes an asset or liability of AFTRS; or
22 (b) a thing done by, or in relation to, AFC, that, as a result of the
23 operation of item 20, is taken to have been done by, or in
24 relation to, AFTRS;
25 then the reference to AFC has effect, at and after the transition time, as
26 if it were a reference to AFTRS.

27 *AFC to Screen Australia, NFSA, AFTRS or Commonwealth*

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

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

5 *Instrument*

- 6 (9) In this item:
7 *instrument*:
8 (a) includes:
9 (i) a contract, deed, undertaking or agreement; and
10 (ii) a notice, authority, order or instruction; and
11 (iii) an instrument made under an Act or regulations; but
12 (b) does not include:
13 (i) an Act; or
14 (ii) instruments made under this Act.

15 **22 Legal proceedings of AFC**

16 *Application*

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

21 *AFC to Screen Australia*

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

26 *AFC to NFSA*

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

Schedule 2 Transitional provisions

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

1 *AFC to AFTRS*

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

6 *AFC to Screen Australia, NFSA, AFTRS or Commonwealth*

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

19 **23 Transfer of custody of records of AFC**

20 *Application*

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

23 *AFC to Screen Australia*

- 24 (2) If the record or document relates to:
25 (a) an asset or liability of AFC that, as a result of the operation
26 of item 2, becomes an asset or liability of Screen Australia;
27 or
28 (b) a thing done by, or in relation to, AFC, that, as a result of the
29 operation of item 20, is taken to have been done by, or in
30 relation to, Screen Australia;
31 then, after the transition time, the record or document is to be
32 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

1 *Commonwealth Authorities and Companies Act 1997*

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

5 **24 Variation of the operation of this Division**

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

17 **Division 2—FAL and FFC**

18 **25 Things done by, or in relation to, FAL or FFC**

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

23 **26 References in instruments to FAL or FFC**

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

- 1 (a) includes:
2 (i) a contract, deed, undertaking or agreement; and
3 (ii) a notice, authority, order or instruction; and
4 (iii) an instrument made under an Act or regulations; but
5 (b) does not include:
6 (i) an Act; or
7 (ii) instruments made under this Act; or
8 (iii) the constitutions of FAL and FFC.

9 **27 Legal proceedings of FAL or FFC**

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

14 **28 Transfer of custody of records of FAL or FFC**

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

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

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29 Final annual report of AFC

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(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.

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(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*.

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(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.

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(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:

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(a) references in that Schedule, or those Orders, to the directors were references to the members of the Board of Screen Australia; and

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(b) references in that Schedule, or those Orders, to an annual report were references to the report; and

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(c) references in that Schedule, or those Orders, to a financial year were references to the transitional reporting period.

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(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.

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(6) The Minister must table the report in each House of the Parliament as soon as practicable.

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(7) In this item:

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

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

4 **30 Contravention of final annual reporting requirement**

- 5 (1) If a final annual reporting requirement is contravened, each member of
6 the Board of Screen Australia who:
7 (a) caused the contravention; or
8 (b) failed to take all reasonable steps to comply with the
9 requirement, or secure compliance with the requirement;
10 contravenes this subitem.
- 11 (2) Schedule 2 to the *Commonwealth Authorities and Companies Act 1997*
12 applies in relation to a contravention of subitem (1) of this item as if:
13 (a) subitem (1) of this item were a civil penalty provision
14 specified in clause 1 of that Schedule; and
15 (b) subparagraphs 3(1)(b)(i) and (ii), clauses 4 and 5, subclauses
16 6(2) and (3) and paragraphs 8(a) and 11(c) of that Schedule
17 were omitted; and
18 (c) the reference to “or a compensation order” in subclause 6(1)
19 were omitted.
- 20 (3) If a contravention of a final annual reporting requirement consists of an
21 omission from the financial statements, it is a defence if the defendant
22 proves that the information omitted was immaterial and did not affect
23 the giving of a true and fair view of the matters required by the Finance
24 Minister’s Orders to be included in the statements.
- 25 (4) In this item:
26 ***final annual reporting requirement*** means subitem 19(1), (3) or (5) of
27 this Schedule.
28 ***member*** of the Board of Screen Australia means a member appointed
29 under section 11 of the *Screen Australia Act 2008*.

30 **31 Other reports, returns etc. of AFC, FAL and FFC**

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

Schedule 2 Transitional provisions

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

- 1 (a) AFC, FAL or FFC is required, by or under a law of the
2 Commonwealth, to prepare or lodge the report, return or
3 document; or
4 (b) any of the following persons is required, by or under a law of
5 the Commonwealth, to prepare or lodge the report, return or
6 document in relation to AFC, FAL or FFC:
7 (i) a member or former member of AFC;
8 (ii) a CEO or former CEO of AFC;
9 (iii) a director or former director of FAL or FFC;
10 (iv) the Managing Director/Chief Executive or former
11 Managing Director/Chief Executive of FAL;
12 (v) the Chief Executive or former Chief Executive of FFC;
13 (vi) any other officer or member of the staff, or former
14 officer or member of the staff, of AFC, FAL or FFC;
15 (vii) a member or former member of FAL or FFC.
- 16 However, this item does not apply to a report, return or document to
17 which another item of this Schedule applies.
- 18 (2) The Minister may determine, in writing, that Screen Australia is instead
19 required, at the relevant time, to prepare or lodge the report, return or
20 document.
- 21 (3) A determination made under subitem (2) has effect accordingly.
- 22 (4) A determination made under subitem (2) is not a legislative instrument.
- 23 (5) This item does not limit the operation of item 2 or 3.

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2 **Part 7—Appointment of first CEO of Screen Australia**
3 **and NFSA**

4 **32 Appointment of first CEO of Screen Australia**

5 (1) Despite subsection 22(1) of the *Screen Australia Act 2008*, the Minister
6 is to appoint the first CEO of Screen Australia.

7 (2) The appointment is to take effect at the later of:
8 (a) the time specified in the instrument of appointment; and
9 (b) the transition time.

10 (3) The *Screen Australia Act 2008* (other than subsection 22(1) of that Act)
11 applies in relation to the CEO appointed under subitem (1) as if the
12 CEO had been appointed under subsection 22(1) of that Act.

13 **33 Appointment of first CEO of NFSA**

14 (1) Despite subsection 22(1) of the *National Film and Sound Archive Act*
15 *2008*, the Minister is to appoint the first CEO of NFSA.

16 (2) The appointment is to take effect at the later of:
17 (a) the time specified in the instrument of appointment; and
18 (b) the transition time.

19 (3) The *National Film and Sound Archive Act 2008* (other than subsection
20 22(1) of that Act) applies in relation to the CEO appointed under
21 subitem (1) as if the CEO had been appointed under subsection 22(1) of
22 that Act.

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2 **Part 8—Other transitional matters**

3 **34 National Film and Sound Archive**

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

9 **35 Directors' obligations—FAL and FFC**

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

14 **36 Transfer of appropriated money**

- 15 (1) For the purposes of the operation of an Appropriation Act after the
16 transition time, the Finance Minister may determine, by legislative
17 instrument, that:
- 18 (a) one part of the amount referred to in that Act that relates to
19 AFC is to be read as the amount that relates to Screen
20 Australia; and
- 21 (b) the other part of the amount referred to in that Act that relates
22 to AFC is to be read as the amount that relates to NFSA.
- 23 (2) A determination made under subitem (1) has effect accordingly.
- 24 (3) A determination made under subitem (1) is a legislative instrument, but
25 neither section 42 (disallowance) nor Part 6 (sunsetting) of the
26 *Legislative Instruments Act 2003* applies to the determination.
- 27 (4) In this item:
- 28 **Appropriation Act** means an Act appropriating money for expenditure
29 out of the Consolidated Revenue Fund.
- 30 **Finance Minister** means the Minister administering the *Financial*
31 *Management and Accountability Act 1997*.

32 **37 Compensation for acquisition of property**

- 1 (1) If the operation of this Act would result in an acquisition of property
2 from a person otherwise than on just terms, the Commonwealth is liable
3 to pay a reasonable amount of compensation to the person.
- 4 (2) If the Commonwealth and the person do not agree on the amount of the
5 compensation, the person may institute proceedings in the Federal Court
6 of Australia for the recovery from the Commonwealth of such
7 reasonable amount of compensation as the court determines.
- 8 (3) In this item:
9 *acquisition of property* has the same meaning as in paragraph 51(xxxi)
10 of the Constitution.
11 *just terms* has the same meaning as in paragraph 51(xxxi) of the
12 Constitution.

13 **38 Delegation by Minister**

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

21 **39 Regulations**

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

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