

# **Australian Industry Development Corporation Act 1970**

**REPRINT No. 4**

Consolidated to 26 June 1997



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**An Act to establish an Australian Industry Development Corporation**

**Part I—Preliminary**

**1 Short title** [see Notes 1 and 3]

This Act may be cited as the Australian Industry Development Corporation Act 1970.

**2 Commencement** [see Notes 1 and 3]

This Act shall come into operation on a date to be fixed by Proclamation.

**4 Interpretation**

- (1) In this Act, unless the contrary intention appears:

*Australia* includes the external Territories.

*Australian company* means a company incorporated or formed in Australia.

*Chairman* means the Chairman of the Board.

*Chief Executive* means the Chief Executive of the Corporation.

*company* includes any corporation and any unincorporated body or association of persons.

*core functions*, in relation to the Corporation, means the functions referred to in paragraphs 6(1)(a) and (b).

*designated time* has the meaning given by section 34W.

*Director* means a member of the Board.

*eligible subsidiary*, in relation to the Corporation, means a subsidiary of the Corporation other than:

- (a) the receiving subsidiary; or
- (b) a subsidiary of the receiving subsidiary.

*goods* includes:

- (a) minerals, whether under or attached to land or not;
- (b) water; and
- (c) gas and electricity.

*minerals* includes petroleum and natural gas.

*ordinary Director* means a Director referred to in paragraph 11(1)(c).

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**receiving subsidiary** means the company that is nominated under subsection 29B(1).

**shares**, in relation to a company, means shares in the capital of the company and includes stock.

**subsidiary** has the meaning given by subsection (3).

**the Board** means the Board of Directors of the Corporation.

**the Corporation** means the Australian Industry Development Corporation established by this Act.

- (2) A reference in this Act, in relation to any time, to the amount of the capital of the Corporation shall be read as a reference to the total of the amounts paid to the Corporation before that time under section 24.
- (3) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.

### 4A External Territories

This Act extends to each of the external Territories.

### 4B Application of Act

This Act applies both within and outside Australia.

### 4C Crown to be bound

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

## **Part II—The Australian Industry Development Corporation**

### **5 Establishment of Australian Industry Development Corporation**

- (1) For the purposes of this Act, there is hereby established a body by the name of the Australian Industry Development Corporation.
- (2) The Corporation:
  - (a) is a body corporate;
  - (b) shall have a seal;
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Corporation appearing on a document and shall presume that the document was duly sealed.

### **6 Functions of the Corporation**

- (1) The functions of the Corporation are:
  - (a) to facilitate and encourage, and to facilitate participation by Australian residents and enterprises in, the establishment, development and advancement of Australian industries by:
    - (i) providing, or assisting in the provision of, the financial resources required by persons engaging, or proposing to engage, in any such industries or in activities that are connected with, or incidental to, those industries; and
    - (ii) engaging or participating in enterprises or developmental projects in relation to any such industries or activities; and
  - (b) to secure, to the greatest extent that is practicable, participation by Australian residents in the ownership and control of businesses engaging in any such industries or activities; and
  - (c) such other functions as are conferred on the Corporation by Part VI.
- (1AA) Paragraphs (1)(a) and (b) have effect subject to section 9 (which deals with directions to the Corporation).

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- (1A) Before the designated time, the Corporation shall:
- (a) give priority in the performance of its core functions to serving the financial needs of industries concerned with, or activities connected with or incidental to:
    - (i) the manufacture, assembly, construction, processing, treatment, transportation or distribution of goods;
    - (ii) the provision of services (including services in the tourist industry) of a kind that are or may become subject to competition in markets within or outside Australia from industries outside Australia; and
    - (iii) the development, marketing or use of new or improved technology, including research leading to such development, marketing or use; and
  - (b) perform its core functions in such a manner as will:
    - (i) promote greater efficiency in and competitiveness of Australian industry;
    - (ii) facilitate reconstruction of Australian industry to achieve long-term viability and competitiveness; and
    - (iii) promote new industries or enterprises that have good growth prospects.
- (2) Before the designated time, the Corporation shall, so far as it is reasonably practicable for it to do so, perform its core functions with a view to securing an improvement in the balance of Australia's external trading operations.
- (3) The Corporation shall perform its core functions in such manner as will:
- (a) promote trade and commerce between Australia and places outside Australia;
  - (b) promote trade and commerce among the States, between the States and Territories and within the Territories;
  - (c) promote the economic development of the Territories; and
  - (d) further the development of Australian resources necessary for the defence of the Commonwealth.
- (4) Without limiting the generality of subsection (1), the core functions of the Corporation may be performed:
- (a) in the capacity of, and to the extent that they are appropriate to be performed by, a trading or financial corporation formed within the limits of Australia; or

(b) for the purpose of assisting Australian companies, being trading or financial corporations formed within the limits of Australia, in their trading or financial operations; and subsection (3) does not restrict the performance by the Corporation of its core functions in accordance with this subsection.

## **7 Powers of Corporation**

- (1) Subject to subsection (3), the Corporation has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions.
- (2) Without limiting the generality of subsection (1) but subject to subsection (3), the powers of the Corporation include power:
  - (a) to borrow moneys;
  - (b) to lend moneys;
  - (ba) to draw, make, accept, indorse and discount bills of exchange and promissory notes;
  - (bb) to enter into:
    - (i) arrangements known as swaps, foreign exchange agreements, forward rate agreements, option agreements, futures agreements or hedge agreements; or
    - (ii) arrangements having a similar purpose or effect;
  - (c) to form, or participate in the formation of, a company;
  - (d) to subscribe for or otherwise acquire, and to dispose of, shares in, or debentures or other securities of, a company;
  - (e) to enter into a partnership or an arrangement for sharing of profits;
  - (f) to give guarantees and indemnities;
  - (g) to underwrite issues of shares in, or debentures or other securities of, a company;
  - (h) to appoint agents and attorneys;
  - (ha) to act as trustee;
  - (j) to act as agent for other persons; and
  - (k) to do anything incidental to any of its powers.
- (2A) Subsections (1) and (2) have effect subject to section 9 (which deals with directions to the Corporation).

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- (3) Before the designated time, the consolidated borrowings of the Corporation and its subsidiaries (other than borrowings for temporary purposes) shall not exceed 15 times the consolidated capital, and retained profits, accumulated losses and other reserves, of the Corporation and its subsidiaries.

### **8 Matters to be taken into account by Corporation**

- (1A) This section does not apply to the Corporation after the designated time.
- (1) In the performance of its core functions the Corporation shall have regard to the current monetary policy of the Commonwealth Government and to the policies of the Commonwealth Government in relation to trade practices, the environment, industrial relations, urban and regional development and the efficiency of industry.
- (2) The Corporation shall act in accordance with sound business principles in the performance of its core functions.
- (3) The Corporation shall, in deciding whether to provide finance to a particular person or to engage or participate in a particular enterprise or project, have regard to:
  - (a) the importance of the industry concerned to the Australian economy; and
  - (b) the extent to which the provision of that finance, or the engaging or participating by the Corporation in that enterprise or project, would contribute to the effective performance of the core functions of the Corporation.

### **8A Enterprises or projects in the national interest**

- (1A) This section does not apply to the Corporation after the designated time.
- (1) The Minister may, from time to time, by notice in writing to the Corporation, inform the Corporation of the policy of the Commonwealth Government in relation to the establishment, development and advancement of an industry referred to in the notice or in relation to the participation by Australian residents in such an industry or in an activity that is connected with or incidental to such an industry.
- (2) Where:

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- (a) the provision of finance by the Corporation in relation to an enterprise or project, or the engaging or participation by the Corporation in an enterprise or project, would be within the core functions of the Corporation;
  - (b) the Board decides for any reason not to provide finance for, or not to engage or participate in, the enterprise or project; and
  - (c) it is in accordance with the policy of the Commonwealth Government as notified to the Corporation under subsection (1) that:
    - (i) the enterprise or project should be carried out; and
    - (ii) the Corporation should provide finance in relation to, or engage or participate in, the enterprise or project;

the Corporation shall furnish to the Minister a report in writing in relation to the enterprise or project.
  - (3) The Corporation shall not furnish a report under subsection (2) in relation to the provision of finance by the Corporation to a person in relation to an enterprise or project, or the engaging or participation by the Corporation in an enterprise or project in association with a person, except with the consent of that person.
  - (4) If the Minister considers that:
    - (a) the carrying out of an enterprise or project in connexion with an industry or activity referred to in subsection 6(1); and
    - (b) the provision of finance by the Corporation in relation to the enterprise or project or the engaging or participation of the Corporation in the enterprise or project;

would be in accordance with the policy of the Commonwealth Government in relation to the establishment, development or advancement of the industry or in relation to the participation by Australian residents in the industry or activity, the Minister may direct the Corporation to furnish a report in writing in relation to the enterprise or project.
  - (5) Where the Corporation is required by subsection (2), or by a direction given by the Minister under subsection (4), to furnish a report to the Minister in relation to an enterprise or project, the Corporation shall conduct such inquiries, investigations, studies or negotiations in connection with the enterprise or project as are necessary to determine whether, and by what means, the Commonwealth Government could enable the Corporation to

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provide finance for, or to engage or participate in, the enterprise or project and shall include the results of the inquiries, investigations, studies or negotiations in the report.

- (6) Where, after having received a report in pursuance of subsection (2) or subsection (4) in relation to an enterprise or project, the Minister is of the opinion that it is in the national interest that the Commonwealth Government should:
- (a) facilitate the provision of finance by the Corporation in relation to the enterprise or project; or
  - (b) assist the Corporation to engage or participate in the enterprise or project;
- the Minister may:
- (c) give such guarantees as will enable the Corporation to provide finance for, or engage or participate in, the enterprise or project;
  - (d) out of moneys appropriated by the Parliament for the purpose, make payments to the Corporation (whether by way of loan or otherwise) for use by the Corporation in providing finance for, or engaging or participating in, the enterprise or project on such terms and conditions as the Minister determines; and
  - (e) authorize the Corporation to borrow moneys to provide finance for, or engage or participate in, the enterprise or project.
- (7) The Minister shall not give a guarantee under subsection (6) unless each House of the Parliament has passed a resolution approving the giving of the guarantee.
- (8) Where any moneys are lent to the Corporation in accordance with paragraph (6)(d) in relation to an enterprise or project:
- (a) the Corporation shall apply those moneys for the purpose for which they were lent to the Corporation;
  - (b) those moneys shall not be taken into account for the purposes of subsection 7(3); and
  - (c) the Corporation shall not repay those moneys, or pay interest on those moneys, out of moneys of the Corporation other than moneys, or the proceeds of the sale of assets, acquired by the Corporation as a result of the application of the first-mentioned moneys in providing finance in relation to, or engaging or participating in, the enterprise or project.



- (9) Where any moneys are paid (otherwise than by way of loan) to the Corporation in accordance with paragraph (6)(d) in relation to an enterprise or project, the Corporation shall apply those moneys for the purpose for which they were paid to the Corporation.
- (9A) Where, in pursuance of an authorization by the Minister under paragraph (6)(e) the Corporation borrows moneys:
  - (a) the Corporation shall apply those moneys for the purpose for which the Corporation was authorized to borrow the moneys; and
  - (b) those moneys shall not be taken into account for the purposes of subsection 7(3).
- (10) The Corporation shall keep separate accounts and records in its books of account in respect of operations of the Corporation involving the application of moneys paid to or borrowed by the Corporation under this section and shall include in its annual report to the Minister a separate report on each such operation carried on during the year to which the report relates and shall prepare and furnish to the Minister financial statements in respect of those operations in such form as the Treasurer approves.
- (12) Subsections 37(3) to (5), inclusive, apply in relation to financial statements referred to in subsection (10) of this section in like manner as those subsections apply in relation to financial statements referred to in subsection 37(1) except that the report referred to in subsection 37(3) as that subsection applies in relation to the first-mentioned financial statements shall be furnished to the Minister.
- (13) Where moneys are paid to or borrowed by the Corporation in pursuance of paragraph (6)(d) or (e), the Treasurer is liable to reimburse the Corporation for any expenses (including expenses of management or administration), charges, obligations or liabilities incurred or undertaken by the Corporation in applying those moneys to the extent, if any, to which the Corporation is not able to pay or discharge those expenses, charges, obligations or liabilities out of those moneys or out of income or profits derived by the Corporation from the application of those moneys.

## **9 Ministerial directions**

- (1) The Minister may, by written notice given to the Board, give directions to the Corporation about the performance of the

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Corporation's functions or the exercise of the Corporation's powers.

- (2) A direction under subsection (1) may be given for the purposes of winding down the various activities of the Corporation and, in particular, a direction may:
  - (a) require the Corporation to:
    - (i) cease to perform a specified function; or
    - (ii) cease to exercise a specified power; or
  - (b) impose restrictions or conditions on:
    - (i) the performance by the Corporation of a specified function; or
    - (ii) the exercise by the Corporation of a specified power.
- Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.
- (3) A direction under subsection (1) may make provision for or in relation to a matter by conferring a power on the Minister.
- (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
- (5) The Corporation must comply with a direction under subsection (1).
- (6) A copy of a direction under subsection (1) is to be published in the *Gazette* within 14 days after the giving of the direction.

## **Part III—The Board of Directors of the Corporation**

### **10 Management of the Corporation**

- (1) There shall be a Board of Directors of the Corporation, which shall be constituted as provided by this Part.
- (2) There shall be a Chief Executive of the Corporation, who shall be appointed and hold office as provided by this Part.
- (3) It is the function of the Board to determine the policies to be pursued by the Corporation in the performance of its functions.
- (4) The affairs of the Corporation shall be managed by the Chief Executive but, in managing any of the affairs of the Corporation, the Chief Executive shall act in accordance with any policies determined, and any directions given, by the Board.

### **11 Membership of Board**

- (1) The Board consists of the following members:
  - (a) the Chairman of the Board;
  - (b) the Chief Executive of the Corporation;
  - (c) such number of other members as the Minister appoints.
- (2) The Chairman and the ordinary Directors are to be appointed by the Minister by written instrument. The appointment takes effect from the day specified in the instrument.
- (3) The Chairman and the ordinary Directors hold office during the Minister's pleasure.
- (4) The Chairman and the ordinary Directors hold office on a part-time basis.
- (5) The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

### **13 Appointment of Chief Executive**

- (1) The Chief Executive is to be appointed by the Board.

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- (2) The Board must not appoint the Chairman or an ordinary Director as the Chief Executive.
- (3) The appointment of a person as Chief Executive is not invalid merely because of a defect or irregularity in relation to the appointment.

**14 Chief Executive holds office during Board's pleasure etc.**

The Chief Executive:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office during the Board's pleasure.

**14A Resignation of Chief Executive**

The Chief Executive may resign by writing signed by him or her and sent to the Board.

**15 Terms and conditions of Chief Executive not provided for by Act**

The Chief Executive holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board.

**15A Disclosure of interests by Chief Executive**

The Chief Executive shall give written notice to the Chairman of all direct and indirect pecuniary interests that the Chief Executive has or acquires in any business or in any body corporate carrying on any business.

**16 Remuneration and allowances**

- (1) The Chairman and the ordinary Directors are to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, the Chairman and the ordinary Directors are to be paid such remuneration as is prescribed.
- (3) The Chairman and the ordinary Directors are to be paid such allowances as are prescribed.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **18 Resignation**

The Chairman or an ordinary Director may resign by writing signed by him or her and sent to the Minister.

## **20 Acting Chairman**

- (1) Subject to subsection (2), the Minister may appoint a Director or another person to act as Chairman:
- (a) during a vacancy in the office of Chairman; or
  - (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
- (2) The Chief Executive must not be appointed to act as the Chairman.
- (3) Anything done by or in relation to a person purporting to act as Chairman is not invalid merely because:
- (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in relation to the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **20A Acting Director**

- (1) The Minister may appoint a person to act as an ordinary Director:
- (a) during a vacancy in an office of ordinary Director; or
  - (b) during any period, or during all periods, when an ordinary Director is acting as Chairman, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act as a Director under subsection (1) is not invalid merely because:
- (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in relation to the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

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**20B Acting Chief Executive**

- (1) The Board may appoint a person to act as Chief Executive:
  - (a) during a vacancy in the office of Chief Executive, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Chief Executive is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) Anything done by or in relation to a person purporting to act as Chief Executive is not invalid merely because:
  - (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in relation to the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**21 Meetings of Board**

- (1) Subject to this section, the Chairman shall convene such meetings of the Board as the Chairman thinks necessary for the efficient conduct of the affairs of the Corporation.
- (2) The Chairman shall convene a meeting of the Board upon being requested in writing to do so by not less than 2 Directors.
- (3) Meetings of the Board shall be held at such places as the Chairman determines.
- (4) The Chairman shall preside at all meetings of the Board at which the Chairman is present and, in the Chairman's absence from a meeting, the Directors present shall appoint one of their number to preside at that meeting.
- (5) At a meeting of the Board, a quorum is constituted by 2 Directors, of whom one is the Chairman or the Chief Executive and the other is neither the Chairman nor the Chief Executive.
- (6) Subject to this Act, questions arising at a meeting of the Board shall be decided by a majority of the votes of the Directors present and voting.

- (7) The Director presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) If a majority of the Directors (being Directors who, if they were present at a meeting of the Board, would constitute a quorum) sign a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly constituted meeting of the Board held on the day on which the document was signed or, if the Directors sign the document on different days, on the day on which the document was last signed by a Director.
- (9) For the purposes of subsection (8), 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

## **22 Disclosure of pecuniary interests**

- (1) A Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the Director shall not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to that matter; or
  - (b) take part in any decision of the Board with respect to that matter.
- (3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a Director who has made a disclosure under subsection (1), a Director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination; or

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- (b) take part in the making by the Board of the determination.

**23 Delegation by the Corporation**

- (1) The Corporation may, by instrument in writing or resolution of the Board, delegate to a Director, to a committee of the Board consisting of 2 or more Directors or to an officer or employee of the Corporation or the receiving subsidiary all or any of its powers under this Act.
- (2) Subsection (1) does not apply to an officer or employee of the receiving subsidiary unless the receiving subsidiary is a subsidiary of the Corporation.

**23A Delegation by the Chief Executive**

- (1) The Chief Executive may, by signed writing, delegate to an officer or employee of the Corporation or the receiving subsidiary all or any of the Chief Executive's powers under this Act.
- (2) Subsection (1) does not apply to an officer or employee of the receiving subsidiary unless the receiving subsidiary is a subsidiary of the Corporation.



## **Part IIIA—Corporate Plans**

### **23B Corporate plans**

- (1) The Board shall prepare corporate plans.
- (2) The first corporate plan shall be for the period commencing on 1 July 1989 and ending on 30 June 1992.
- (3) Each subsequent corporate plan shall be for a period of 3 years commencing immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.

### **23C General matters to be included in corporate plans**

Each corporate plan shall:

- (a) set out the objectives of the Corporation and its eligible subsidiaries; and
- (b) outline the overall strategies and policies that the Corporation and its eligible subsidiaries are to follow to achieve the objectives.

### **23D Financial matters to be included in corporate plans**

Each corporate plan shall:

- (a) include a financial target;
- (b) outline the overall financial strategies for the Corporation and its eligible subsidiaries; and
- (c) include a forecast of the revenue and expenditure of the Corporation and its eligible subsidiaries, including a forecast of capital expenditure and borrowings.

### **23E Matters to be considered in setting financial target**

In preparing or revising a financial target, the Board shall have regard to:

- (a) the need to earn a reasonable rate of return on the Corporation's capital and reserves;
- (b) the need to maintain the Corporation's financial viability; and

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- (c) any other commercial considerations the Board considers appropriate.

**23F Corporate plans to be given to Minister**

When the Board prepares or revises a corporate plan, it shall, as soon as practicable, give a copy of the plan to the Minister.

**23G Minister may direct certain variations of corporate plan**

- (1) When the Board prepares or revises a corporate plan and gives a copy of the plan to the Minister, the Minister may, within 30 days after receiving the copy of the plan and after consultation with the Board, direct the Board to vary the financial target under the plan.
- (2) In exercising powers under subsection (1), the Minister shall have regard to:
  - (a) the matters referred to in paragraphs 23E(a) and (b); and
  - (b) any other considerations the Minister considers appropriate.
- (3) A direction under subsection (1) shall be in writing and shall set out the Minister's reasons for the direction.
- (4) The Minister shall cause a copy of any direction given to the Board under subsection (1) to be laid before each House of the Parliament within 10 sitting days of that House after the giving of the direction.

**23H Board to notify Minister of significant affecting events etc.**

If the Board forms the opinion that matters have arisen that may prevent, or significantly affect, the achievement of:

- (a) the objectives of the Corporation and its eligible subsidiaries under the corporate plan; or
  - (b) the financial target under the corporate plan;
- the Board shall, as soon as practicable, notify the Minister of its opinion and the reasons for the opinion.

## **Part IV—Finance**

### **24 Capital of Corporation**

- (1) The amount of \$200,000,000 (in this section called the *capital amount*) is payable to the Corporation as its capital.
- (2) Amounts paid to the Corporation before the commencement of this section as capital of the Corporation form part of the capital amount.
- (3) The amount that would, but for this subsection, have been payable by the Corporation to the Commonwealth as dividend for the financial year that commenced on 1 July 1987 shall be retained by the Corporation and shall be taken to have been paid to the Corporation as part of the capital amount.
- (4) The remainder of the capital amount is payable to the Corporation, out of money appropriated by the Parliament for the purpose, in such instalments as the Minister for Finance, subject to subsection (5), determines, in writing.
- (5) The part of the remainder of the capital amount that has not, at any time, been paid to the Corporation is to be available for the purpose of enabling the Corporation to discharge its obligations.
- (6) The Board may, at any time, request the Minister for Finance to arrange for payment to it of any part of the remainder of the capital amount that has not been paid.

#### **24A Payment of amounts to the Commonwealth**

- (1) The Minister may give the Corporation a written direction requiring the Corporation to pay a specified amount to the Commonwealth before a specified time.
- (2) The Corporation must comply with a direction under subsection (1).

### **25 Bank accounts**

- (1) The Corporation may open and maintain an account or accounts with such bank or banks as the Board thinks fit and shall maintain at all times at least one such account.

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- (2) The Corporation shall pay all moneys received by it into an account referred to in this section.

**26 Application of moneys**

- (1) Subject to subsection (2), moneys of the Corporation shall be applied only:
  - (a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Corporation in the exercise of its powers under this Act;
  - (b) in payment of the remuneration and allowances of the Directors; and
  - (c) in making any other payments that the Corporation is authorized or required to make under this Act.
- (2) The capital of the Corporation and moneys of the Corporation not immediately required for the purposes of the performance of the functions of the Corporation may be invested or dealt with in such manner as the Board thinks fit.

**27 Liability to taxation**

- (1) The Corporation is subject to taxation under the laws of the Commonwealth.
- (1A) Except as prescribed, the Corporation is not subject to taxation under a law of a State or Territory.
- (1B) Subject to section 33X, the Corporation is subject to stamp duty or any similar tax under a law of a State or Territory in respect of transactions entered into by, and documents executed by or on behalf of, the Corporation.
- (1C) Nothing in subsection (1B) limits the regulations that may be made for the purposes of subsection (1A).
- (2) The Corporation is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.
- (3) Securities issued by the Corporation are not public securities or Commonwealth securities for the purposes of the *Income Tax Assessment Act 1936*.

**27A Corporation not subject to State or Territory laws to which the Commonwealth is not subject**

Subject to section 27, the Corporation is not subject to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which the Commonwealth is not subject.

**28 Proper accounts to be kept**

The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of the moneys of the Corporation are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities by the Corporation.

**29 Audit**

- (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Corporation and of each Australian subsidiary of the Corporation, and records relating to assets of, or in the custody of, the Corporation and of each such subsidiary, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify so doing.
- (2) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).
- (3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under subsection (1).
- (4) The Auditor-General or a person authorized by the Auditor-General is entitled at all reasonable times to full and free access to all accounts and records of the Corporation or of an Australian subsidiary of the Corporation relating directly or indirectly to the receipt or payment of moneys by the Corporation or subsidiary or to the acquisition, receipt, custody or disposal of assets by the Corporation or subsidiary.

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- (5) The Auditor-General or a person authorized by the Auditor-General may make copies of, or take extracts from, any such accounts or records.
- (6) The Auditor-General or a person authorized by the Auditor-General may require any person to furnish such information in the possession of the person, or to which the person has access, as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this section, and the person shall comply with the requirement.
- (7) A person who contravenes subsection (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.
- (7A) The Auditor-General is to be appointed auditor of each Australian subsidiary of the Corporation where any law of the Commonwealth, a State or a Territory relating to companies requires the appointment of an auditor for such a subsidiary.
- (7B) When the Auditor-General is appointed auditor under subsection (7A), he or she may appoint an agent to conduct the audit on his or her behalf.
- (8) Nothing in this section:
  - (a) prevents the Board from arranging for the accounts and records of financial transactions of the Corporation, and records relating to assets of, or in the custody of, the Corporation to be audited by a person registered as a company auditor under a law in force in a State or Territory in addition to the audit of those accounts and records conducted by the Auditor-General under this section; or
  - (b) affects the application to an Australian subsidiary of the Corporation of any other law in force in a State or Territory relating to:
    - (i) the appointment of an auditor or auditors of the subsidiary; or
    - (ii) the powers and duties of an auditor or auditors of the subsidiary appointed under such a law.
- (9) A reference in this section to an Australian subsidiary of the Corporation is a reference to a body corporate that is a subsidiary of the Corporation and is incorporated in Australia.

## **Part IVA—Re-Organisation of the Business of the Corporation**

### **Division 1—Interpretation**

#### **29A Interpretation** [see Note 2]

In this Part, unless the contrary intention appears:

**asset** means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description;
- (b) any chose in action;
- (c) any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936*.

**authorised person** means the Minister or a person authorised, in writing, by the Minister for the purposes of this definition.

**charge** means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

**debenture** has the same meaning as in Division 7 of Part IV of the *Companies Act 1981*.

**holder**, in relation to a charge, includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement.

**income tax** means tax the liability to which arises under the *Income Tax Assessment Act 1936*.

**instrument** means an instrument of any kind, and includes:

- (a) any contract, deed, undertaking or agreement;
- (b) any mandate, instruction, notice, authority or order;
- (c) any lease, licence, transfer, conveyance or other assurance;

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(d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and

(e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing.

***instrument to which this Part applies*** means an instrument:

- (a) to which the Corporation is a party;
- (b) that was given to, by or in favour of the Corporation;
- (c) in which a reference is made to the Corporation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the Corporation.

***interest***, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land.

***joint instrument*** means an instrument to which a determination under paragraph 29C(1)(e) applies.

***liability*** means a liability of any kind, and includes an obligation of any kind (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

***nominated staff member*** means a person to whom a determination under section 29S applies.

***non-reimbursable liability*** means a liability to which a determination under paragraph 29C(1)(c) applies.

***non-transferring asset*** means an asset to which a determination under paragraph 29C(1)(a) applies.

***non-transferring instrument*** means an instrument to which a determination under paragraph 29C(1)(d) applies.

***non-transferring liability*** means a liability to which a determination under paragraph 29C(1)(b) applies.

***proceeding to which this Part applies*** means a proceeding to which the Corporation is a party, other than a proceeding that does not relate to the transferred business.

***re-organisation day*** means the day fixed under section 29D.



**share** means a share in the share capital of a company, and includes stock.

**special non-transferring asset** means a non-transferring asset arising under an instrument that relates to or evidences a non-transferring liability (other than a non-reimbursable liability).

**staff member** means a person who is an officer or employee of the Corporation.

**tax exempt matter** means:

- (a) the nomination of the receiving subsidiary under section 29B;
- (b) the making of determinations under section 29C;
- (c) business of the Corporation ceasing, under this Part, to be business of the Corporation and becoming business of the receiving subsidiary;
- (d) the making of payments, and the entering into of agreements, for the purposes of section 29L;
- (e) the issue of shares under section 29N;
- (f) the operation of this Part (other than Division 6) in any other respect; and
- (g) giving effect to a matter referred to in another paragraph of this definition or otherwise giving effect to this Part (other than Division 6).

**transfer day**, in relation to a nominated staff member, means the day applicable to the staff member in the determination under section 29S that is applicable to the staff member.

**transferred asset** means an asset that becomes, under this Part, an asset of the receiving subsidiary.

**transferred business** means the business that becomes, under this Part, business of the receiving subsidiary, and includes the transferred assets and transferred liabilities.

**transferred liability** means a liability that becomes, under this Part, a liability of the receiving subsidiary.

**transferred staff member** means a staff member who, under this Part, becomes employed by the receiving subsidiary.

**wholly-owned subsidiary**, in relation to the Corporation, means a body corporate:

- (a) that is a subsidiary of the Corporation;
- (b) none of whose members is a person other than:

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- (i) the Corporation;
  - (ii) a body corporate that is, under any other applications of this definition, a wholly-owned subsidiary of the Corporation; or
  - (iii) a nominee of the Corporation or of a body of the kind referred to in subparagraph (ii); and
- (c) no share in which is beneficially owned by a person other than:
- (i) the Corporation; or
  - (ii) a body of the kind referred to in subparagraph (b)(ii).

## **Division 2—Steps leading to re-organisation**

### **29B Nomination of subsidiary to which business is to be transferred—the receiving subsidiary**

- (1) Subject to subsection (2), the Minister shall, by notice published in the *Gazette*, nominate a subsidiary of the Corporation as the receiving subsidiary for the purposes of this Part.
- (2) The Minister shall not nominate a subsidiary under subsection (1) unless the subsidiary is:
  - (a) a company incorporated under the *Companies Act 1981*;
  - (b) a wholly-owned subsidiary;
  - (c) a trading or financial corporation within the meaning of paragraph 51(20) of the Constitution;
  - (d) a public company, and a company limited by shares, within the meaning of the *Companies Act 1981*; and
  - (e) subject to a provision in its articles of association prohibiting more than 30% of its voting shares (within the meaning of the *Companies Act 1981*) being held by members of the public.
- (3) If a subsidiary nominated under subsection (1) ceases, on or before the re-organisation day, to be a subsidiary of the Corporation of the kind described in subsection (2), the Minister shall, by notice published in the *Gazette*, revoke the nomination.
- (4) For all purposes and in all proceedings, proof of the fact that a body corporate was nominated under subsection (1) is conclusive evidence:
  - (a) that the body corporate was, on the day of the nomination, a subsidiary of the Corporation of the kind described in subsection (2); and
  - (b) that the body corporate did not cease, on or before the re-organisation day, to be such a subsidiary;unless the contrary is established.

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**29C Determination of assets, instruments and liabilities not to be transferred etc.—the non-transferring assets, instruments and liabilities, non-reimbursable liabilities and joint instruments**

- (1) The Minister may, by notice published in the *Gazette*, determine:
  - (a) that specified assets of the Corporation are non-transferring assets;
  - (b) that specified liabilities of the Corporation are non-transferring liabilities;
  - (c) that specified non-transferring liabilities are non-reimbursable liabilities;
  - (d) that specified instruments to which this Part applies are non-transferring instruments; or
  - (e) that specified instruments to which this Part applies are joint instruments.
- (2) Where the Minister determines that specified instruments to which this Part applies are joint instruments, the Minister shall, in the same *Gazette* notice, determine in relation to each of those instruments:
  - (a) which references (if any) in the instrument to the Corporation are to have effect as if they were references to the receiving subsidiary; and
  - (b) which references (if any) in the instrument to the Corporation are to have effect as if they included references to the receiving subsidiary.

**29D Fixing of day on which re-organisation is to take place—the re-organisation day**

The Minister shall, by notice published in the *Gazette*, fix a day as the day on which the re-organisation under this Part is to take place.

**29E Notices not to be published after re-organisation day**

The Minister shall not publish a notice under this Division after the re-organisation day.

**29F Proof of notices**

For all purposes and in all courts, evidence of any notice under this Division may be given by the production of a copy of the *Gazette* purporting to contain it.

## **Division 3—The re-organisation**

### **29G Business of Corporation becomes business of receiving subsidiary**

- (1) On the re-organisation day, the business of the Corporation ceases, by force of this subsection, to be business of the Corporation and becomes business of the receiving subsidiary.
- (2) Subsection (1) does not apply in relation to the non-transferring assets and non-transferring liabilities.

### **29H Assets and liabilities of Corporation become assets and liabilities of receiving subsidiary**

- (1) Without limiting subsection 29G(1), on the re-organisation day, all assets and liabilities of the Corporation (other than the non-transferring assets and non-transferring liabilities) cease to be assets and liabilities of the Corporation and become assets and liabilities of the receiving subsidiary.
- (2) For all purposes and in all proceedings, an asset or liability of the Corporation existing immediately before the re-organisation day shall be taken to have become an asset or liability of the receiving subsidiary on the re-organisation day, unless the contrary is established.

### **29J Instruments**

- (1) Without limiting subsection 29G(1), an instrument to which this Part applies continues, subject to subsections (2) and (3), in full force and effect on and after the re-organisation day.
- (2) An instrument to which this Part applies (other than a non-transferring instrument or a joint instrument) has effect, in relation to acts, transactions and matters done, entered into or occurring on or after the re-organisation day, as if a reference in the instrument to the Corporation were a reference to the receiving subsidiary.
- (3) An instrument to which this Part applies that is a joint instrument has effect, in relation to acts, transactions or matters done, entered into or occurring on or after the re-organisation day, in accordance with the determination under subsection 29C(2) that is applicable to the instrument.

**29K Pending proceedings**

Without limiting subsection 29G(1), where a proceeding to which this Part applies is, immediately before the re-organisation day, pending in a court, the receiving subsidiary is, on that day, substituted for the Corporation as a party.

**29L Receiving subsidiary to indemnify Corporation in relation to certain non-transferring liabilities**

- (1) The receiving subsidiary shall, in relation to each non-transferring liability (other than a non-reimbursable liability):
  - (a) reimburse the Corporation for any amount paid under the liability on or after the re-organisation day; and
  - (b) indemnify the Corporation against all expenses and costs incurred in relation to the liability on or after that day.
- (2) Subsection (1) has effect subject to any agreement between the receiving subsidiary and the Corporation.

**29LA Corporation to pay amounts received under special non-transferring assets to receiving subsidiary**

- (1) The Corporation must, in relation to each special non-transferring asset, pay to the receiving subsidiary each amount paid to it under the asset on or after the re-organisation day.
- (2) Subsection (1) has effect subject to any agreement between the receiving subsidiary and the Corporation.

**29M Valuation of transferred business**

- (1) The Minister shall, by written notice given to the receiving subsidiary not later than 7 days after the re-organisation day, determine the net value of the transferred business.
- (2) In determining the net value of the transferred business, the Minister shall take into account the operation of section 29L.
- (3) For all purposes and in all proceedings, the net value of the transferred business shall be taken to be the net value determined under subsection (1), unless the contrary is established.

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**29N Issue of shares in receiving subsidiary to Corporation in relation to transferred business**

- (1) On the day on which the receiving subsidiary is given the notice under subsection 29M(1), the receiving subsidiary shall, subject to subsection (2), issue shares in the receiving subsidiary to the Corporation.
- (2) The Minister shall determine, in writing, the total nominal value of the shares to be issued to the Corporation.
- (3) The shares issued to the Corporation shall be taken to have been fully paid up and to have been issued for valuable consideration other than cash.

**29P Authorised person may certify matters in relation to re-organisation**

- (1) An authorised person may, by signed writing, certify any matter in relation to the operation of this Division and, in particular, may certify:
  - (a) whether a specified body corporate is the receiving subsidiary;
  - (b) whether specified assets are or are not transferred assets or non-transferring assets;
  - (c) whether specified liabilities are or are not transferred liabilities, non-transferring liabilities or non-reimbursable liabilities; and
  - (d) whether specified instruments are or are not joint instruments, non-transferring instruments or other instruments to which this Part applies.
- (2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.
- (3) A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be taken to be such a certificate and to have been properly given.

**29Q Extraterritorial operation of Division**

It is the intention of the Parliament that this Division should apply, to the greatest extent possible, in relation to:



- (a) things situated outside Australia;
- (b) acts, transactions and matters done, entered into or occurring outside Australia; and
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.

**29R Corporation to take steps necessary to carry out re-organisation**

The Corporation shall take such steps as are necessary to ensure that this Division is fully effective, particularly in relation to its operation outside Australia.

## **Division 4—Transfer of staff**

### **29S Determination of staff to be transferred to receiving subsidiary**

The Chief Executive may, in writing, determine that the employment of specified staff members is to be transferred to the receiving subsidiary on and from such respective days as are specified in the determination.

### **29T Employment of nominated staff member to continue with receiving subsidiary**

Subject to sections 29U and 29V, each nominated staff member who is a staff member immediately before his or her transfer day shall, on and from the transfer day, be taken to be employed by the receiving subsidiary on the terms and conditions on which he or she was employed by the Corporation immediately before the transfer day.

### **29U Act not to affect certain matters relating to transferred staff members**

- (1) This section has effect for the purposes of the application, at any time on or after the transfer day of a transferred staff member, of a law, award, determination or agreement in relation to the employment of the transferred staff member.
- (2) Neither the transferred staff member's contract of employment, nor his or her period of employment, shall be taken to have been broken by the operation of this Part.
- (3) Without limiting section 29T or subsection (2) of this section, this Part does not affect any accrued rights that the transferred staff member had immediately before the transfer day in relation to any kind of leave.
- (4) Where:
  - (a) if the transferred staff member had, immediately before the transfer day, ceased to be employed by the Corporation, it would have been necessary to take into account a period during which the transferred staff member was employed by the Corporation or any other person to determine:
    - (i) an amount payable to the transferred staff member; or

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- (ii) a benefit to which the transferred staff member would have been entitled;  
because of his or her so ceasing; and
- (b) but for this subsection, some or all of that period would not have to be taken into account as a period during which the staff member was employed by the receiving subsidiary;  
the receiving subsidiary shall treat the whole of the first-mentioned period as a period during which the transferred staff member was employed by it.

**29V Variation of terms and conditions of employment**

- (1) It is a term of each transferred staff member's employment after his or her transfer day that the terms and conditions of that employment may be varied to the extent to which, and the manner in which, the terms and conditions of his or her employment could be varied under this Act immediately before the transfer day.
- (2) Nothing in this Part prevents the terms and conditions of a transferred staff member's employment after his or her transfer day from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, award, determination or agreement.
- (3) In this section:  
*terms and conditions* includes a term or condition existing because of subsection (1).  
*vary*, in relation to terms and conditions, includes vary by way of:
  - (a) omitting any of those terms and conditions;
  - (b) adding to those terms and conditions; or
  - (c) substituting new terms or conditions for any of those terms and conditions.

**29W Application of Part IV of Public Service Act**

- (1) For the purposes of the application of Part IV of the *Public Service Act 1922* in relation to a transferred staff member, the receiving subsidiary is taken to be a Commonwealth authority for the purposes of that Part throughout the period:
  - (a) beginning at the start of the transfer day of the transferred staff member; and

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- (b) ending when the receiving subsidiary ceases to be a subsidiary of the Corporation.
- (2) Subsection (1) does not prevent the receiving subsidiary from being a Commonwealth authority for the purposes of Part IV of the *Public Service Act 1922* if paragraph (b) of the definition of ***Commonwealth authority*** in section 87 of that Act applies to the receiving subsidiary.

## **Division 5—Taxation matters**

### **29X Exemptions relating to tax exempt matters**

- (1) Tax under a law of the Commonwealth or a State or Territory is not payable in relation to:
  - (a) a tax exempt matter; or
  - (b) anything done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a tax exempt matter.
- (2) In subsection (1):  
*tax* includes:
  - (a) sales tax;
  - (b) tax imposed by the *Debits Tax Act 1982*;
  - (c) fees payable under the *Companies (Fees) Act 1981*;
  - (d) stamp duty; and
  - (e) any other tax, fee, duty, levy or charge;but does not include income tax.

### **29Y Authorised person may certify in relation to tax exempt matters**

- (1) An authorised person may, by signed writing, certify that:
  - (a) a specified matter or thing is a tax exempt matter; or
  - (b) a specified thing was done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified tax exempt matter.
- (2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.
- (3) A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be taken to be such a certificate and to have been properly given.

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**29Z Application of Income Tax Assessment Act to certain assets and liabilities** [see Note 2]

- (1) This section applies to:
  - (a) the transferred assets;
  - (b) the transferred liabilities;
  - (c) the non-transferring liabilities (other than the non-reimbursable liabilities); and
  - (d) the special non-transferring assets.
- (2) It is the intention of the Parliament:
  - (a) that, on and after the re-organisation day, the receiving subsidiary should, for income tax purposes, be placed in the same position in relation to the assets and liabilities to which this section applies as the Corporation would have been but for the enactment and operation of this Part; and
  - (b) that, in relation to the financial year in which the re-organisation day occurs, the operation of this Part in relation to the assets and liabilities to which this section applies should, for income tax purposes, be revenue neutral, that is to say, that no assessable income, deduction, capital gain or capital loss should be derived, allowed or incurred, or should accrue, by or to the Corporation or the receiving subsidiary in relation to those assets and liabilities in relation to that year merely because of the enactment and operation of this Part.
- (3) So far as it is necessary to achieve that intention:
  - (a) this Part (other than this section) shall be taken not to have been enacted and the operation of this Part (other than this section) shall be disregarded;
  - (b) the receiving subsidiary shall be taken to be, and always to have been, the Corporation;
  - (c) deductions that would have been allowable to the Corporation but for the enactment and operation of this Part shall be taken to be allowable to the receiving subsidiary, and not to the Corporation; and
  - (d) the *Income Tax Assessment Act 1936* shall be applied as if any necessary modifications had been made by this Act.
- (4) Nothing in any other provision of this Part is to be taken by implication to limit the operation of this section.

**29ZA Application of Income Tax Assessment Act to partnerships**

[see Note 2]

Where the receiving subsidiary becomes, under this Part, a member of a partnership, the constitution of the partnership shall, for the purposes of the *Income Tax Assessment Act 1936* (other than section 92 of that Act), be taken not to have been varied merely because of the receiving subsidiary becoming, under this Part, a member of the partnership.

**29ZB Payments in relation to certain non-transferring assets and liabilities** [see Note 2]

- (1) A deduction shall be allowable to the receiving subsidiary under the *Income Tax Assessment Act 1936* in relation to a payment made, or required to be made, by it under section 29L of this Act (whether or not the payment is made, or required to be made, to the Corporation) in relation to an outgoing incurred by the Corporation, or that would have been incurred by the Corporation but for the enactment and operation of this Part, to the extent to which, and at the time at which, a deduction would have been allowable to the Corporation under that Act in relation to the outgoing but for the enactment and operation of this Part.
- (2) A deduction shall not be allowable to the Corporation under the *Income Tax Assessment Act 1936* in relation to an outgoing incurred by it, or that would have been incurred by it but for the enactment and operation of this Part, to the extent to which a deduction is, under subsection (1), allowable to the receiving subsidiary under that Act in relation to the outgoing.
- (3) The assessable income of the Corporation for the purposes of the *Income Tax Assessment Act 1936* is not to include:
  - (a) any payment made by the receiving subsidiary under section 29L of this Act (whether or not the payment is made, or required to be made, to the Corporation); or
  - (b) any payment made to the Corporation in relation to which section 29LA of this Act applies.

**29ZC Conversion to accruals basis for returning interest**

- (1) The provisions of this section apply in relation to the Corporation and the receiving subsidiary if the Corporation has converted, for income tax purposes, to an accruals basis for returning interest

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payable and interest receivable in the financial year commencing on 1 July 1987.

- (2) The Corporation shall not be entitled, or required, to convert, for income tax purposes, to an accruals basis for returning interest payable and interest receivable in a financial year commencing before 1 July 1987.
- (3) Subject to subsections (5) and (6), a deduction of an amount equal to one-fifth of the amount (if any) by which the **Undeducted Interest** exceeds the **Deducted Interest** shall be allowed to the Corporation under the *Income Tax Assessment Act 1936* in relation to the financial year commencing on 1 July 1987 and each of the four immediately following financial years:

where:

**Undeducted Interest** is the total of amounts of interest payable by the Corporation that accrued before 1 July 1987 in relation to which, and to the extent to which, a deduction is allowable, or would have been allowable but for the conversion, to the Corporation under subsection 51(1) of that Act, but has not been allowed to the Corporation in relation to a financial year commencing before that day; and

**Deducted Interest** is the total of amounts of interest payable by the Corporation that accrue on or after 1 July 1987 in relation to which, and to the extent to which, a deduction has been allowed to the Corporation under subsection 51(1) of that Act in relation to a financial year commencing before that day.

- (4) Subject to subsections (5) and (6), an amount equal to one-fifth of the amount (if any) by which the **Unassessed Interest** exceeds the **Assessed Interest** shall, for the purposes of the *Income Tax Assessment Act 1936*, be included in the assessable income of the Corporation in relation to the financial year commencing on 1 July 1987 and each of the four immediately following financial years:

where:

**Unassessed Interest** is the total of amounts of interest receivable by the Corporation that accrued before 1 July 1987 to the extent to which those amounts are assessable income of the Corporation, or would have been assessable income of the Corporation but for the



conversion, but had not been included in the assessable income of the Corporation in relation to a financial year commencing before that day; and

**Assessed Interest** is the total of amounts of interest receivable by the Corporation that accrue on or after 1 July 1987 to the extent to which those amounts have been included in the assessable income of the Corporation in relation to a financial year commencing before that day.

- (5) If the re-organisation day is a day other than 1 July, the following provisions apply, for the purposes of the *Income Tax Assessment Act 1936*, in relation to the Corporation and the receiving subsidiary in relation to the financial year in which the re-organisation day occurs:

- (a) the amount (in this paragraph called the ***net undeducted interest amount***) of the deduction that would, but for this paragraph, have been allowable to the Corporation under subsection (3) in relation to the financial year shall be reduced by an amount (in paragraph (b) called the ***receiving subsidiary deduction amount***) calculated in accordance with the formula:

$$\frac{\text{days in remainder of year}}{\text{days in year}} \times \text{net undeducted interest amount}$$

where:

**days in remainder of year** is the number of days in the financial year that occur on and after the re-organisation day; and

**days in year** is the number of days in the financial year;

- (b) a deduction of an amount equal to the receiving subsidiary deduction amount shall be allowed to the receiving subsidiary in relation to the financial year;
- (c) the amount (in this paragraph called the ***net assessable income amount***) that would, but for this paragraph, have been included in the assessable income of the Corporation under subsection (4) in relation to the financial year shall be reduced by an amount (in paragraph (d) called the ***receiving***

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*subsidiary assessable income amount*) calculated in accordance with the formula:

$$\frac{\text{days in remainder of year}}{\text{days in year}} \times \text{net assessable income amount}$$

where:

**days in remainder of year** is the number of days in the financial year that occur on and after the re-organisation day; and

**days in year** is the number of days in the financial year;

- (d) an amount equal to the receiving subsidiary assessable income amount shall be included in the assessable income of the receiving subsidiary in relation to the financial year.
- (6) Subsections (3) and (4) have effect in relation to a financial year commencing on or after the re-organisation day as if the first reference in each of those subsections to the Corporation were a reference to the receiving subsidiary.

**29ZD Treatment for capital gains tax purposes of shares issued to Corporation by receiving subsidiary**

- (1) This section has effect for the purposes of Part IIIA of the *Income Tax Assessment Act 1936* if:
- (a) transferred assets (in this section called the *pre-CGT assets*) were acquired by the Corporation before 20 September 1985;
- (b) the Corporation, by written notice given to the Commissioner of Taxation on or before the day on which it lodges its return of income for the year of income in which the re-organisation day occurs, or within such further period as the Commissioner allows, nominates as pre-CGT shares such of the shares issued to the Corporation under section 29N as are specified in the notice; and
- (c) the number of shares nominated does not exceed the number calculated in accordance with the formula:

$$\text{Shares} \times \frac{\text{Net Value of Pre-CGT Assets}}{\text{Net Value of Total Assets}}$$

where:

**Shares** is the number of shares issued to the Corporation under section 29N;

**Net Value of Pre-CGT Assets** is the number of dollars in the market value, on the re-organisation day, of the pre-CGT assets reduced by the number of dollars in the total, on the re-organisation day, of the transferring liabilities and the non-transferring liabilities, to the extent to which those liabilities are attributable to the pre-CGT assets; and

**Net Value of Total Assets** is the number of dollars in the market value, on the re-organisation day, of the transferred assets reduced by the number of dollars in the total, on the re-organisation day, of the transferring liabilities and the non-transferring liabilities, to the extent to which those liabilities are attributable to the transferred assets.

- (2) The Corporation shall be taken to have acquired, before 20 September 1985, the shares nominated under paragraph (1)(b).
- (3) The rest of the issued shares are post-CGT shares for the purposes of subsection (4).
- (4) For the purpose of:
  - (a) ascertaining whether a capital gain accrued to the Corporation; or
  - (b) ascertaining whether the Corporation incurred a capital loss; in the event of a later disposal of a post-CGT share by the Corporation, the Corporation shall be taken to have acquired the shares for a consideration equal to the amount calculated in accordance with the formula:

$$\frac{\text{Relevant Cost Bases} - \text{Attributable Liabilities}}{\text{Post-CGT Shares}}$$

where:

**Relevant Cost Bases** is the sum of the respective amounts that would have been, for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*:

- (a) if the later disposal occurs within 12 months after the re-organisation day—the cost bases or the reduced cost bases, as the case may be; or
- (b) in any other case—the indexed cost bases, or the reduced cost bases, as the case may be;

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to the Corporation of the transferred assets (other than the pre-CGT assets) if the Corporation had disposed of those assets on the re-organisation day;

**Attributable Liabilities** is the total amount, on the re-organisation day, of the transferred liabilities and the non-transferring liabilities, to the extent that they are attributable to the transferred assets (other than pre-CGT assets); and

**Post-CGT Shares** is the number of post-CGT shares.

- (5) For the purposes of this section, to the extent that, apart from this subsection, they are not attributable to the transferred assets, the transferred liabilities and the non-transferring liabilities (other than the non-reimbursable liabilities) shall be taken to be attributable to a particular transferred asset to the extent of the amount calculated in accordance with the formula:

$$\text{General Liabilities} \times \frac{\text{Market Value of Particular Asset}}{\text{Market Value of Total Assets}}$$

where:

**General Liabilities** is the total amount of those liabilities, to the extent that, apart from this subsection, they are not attributable to the transferred assets;

**Market Value of Particular Asset** is the number of dollars in the market value, on the re-organisation day, of the particular transferred asset; and

**Market Value of Total Assets** is the number of dollars in the market value, on the re-organisation day, of the transferred assets.

- (6) In this section:  
*transferred assets* includes the special non-transferring assets.

## **Division 6—Raising of share capital from public**

### **29ZE Issue of shares to public**

- (1) The receiving subsidiary may issue shares to members of the public after the day on which shares in the receiving subsidiary are issued to the Corporation under section 29N, and not earlier.
- (2) The Minister may give written directions to the receiving subsidiary in relation to the first invitation to the public to purchase shares in the receiving subsidiary, and the receiving subsidiary shall comply with any such directions.
- (3) Subsection (1) does not prevent the allocation of shares to members of the public on or before the day referred to in that subsection.

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**Division 7—Miscellaneous**

**29ZF Certificates in relation to land and interests in land**

Where:

- (a) land or an interest in land becomes, under this Part, land or an interest in land of the receiving subsidiary; and
- (b) a certificate that:
  - (i) is signed by an authorised person;
  - (ii) identifies the land or interest, whether by reference to a map or otherwise; and
  - (iii) states that the land or interest has, under this Part, become land or an interest in land of the receiving subsidiary;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may:

- (c) register the matter in like manner to the manner in which dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the receiving subsidiary that had been properly executed under the laws in force in the State or Territory.

**29ZG Certificates in relation to charges**

Where:

- (a) the receiving subsidiary becomes, under this Part, the holder of a charge; and
- (b) a certificate that:
  - (i) is signed by an authorised person;
  - (ii) identifies the charge; and

- (iii) states that the receiving subsidiary has, under this Part, become the holder of the charge;  
is lodged with the National Companies and Securities Commission;  
the Commission may:
  - (c) register the matter in like manner to the manner in which assignments of charges are registered; and
  - (d) deal with, and give effect to, the certificate;as if it were a notice of assignment of the charge that had been properly lodged with the Commission.

**29ZH Certificates in relation to shares etc.**

Where:

- (a) the receiving subsidiary becomes, under this Part, the holder of a share, debenture or interest in a company; and
- (b) a certificate that:
  - (i) is signed by an authorised person;
  - (ii) identifies the share, debenture or interest; and
  - (iii) states that the receiving subsidiary has become, under this Part, the holder of the share, debenture or interest;is delivered to the company;

the company shall:

- (c) register the matter in like manner to the manner in which transfers of shares, debentures or interests, as the case may be, in the company are registered;
  - (d) complete all the appropriate certificates, debentures or other documents in relation to the matter; and
  - (e) deliver the completed certificates, debentures or other documents to the receiving subsidiary;
- as if the certificate were a proper instrument of transfer.

**29ZI Certificates in relation to other assets**

Where:

- (a) an asset (other than an asset in relation to which section 29ZF, 29ZG or 29ZH applies) becomes, under this Part, an asset of the receiving subsidiary; and
- (b) a certificate that:

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- (i) is signed by an authorised person;
- (ii) identifies the asset; and
- (iii) states that the asset has, under this Part, become an asset of the receiving subsidiary;

is given to the person or authority who has, under the law of the Commonwealth or of a State or Territory, responsibility for keeping a register in relation to assets of that kind;

the person or authority may:

- (c) register the matter in like manner to the manner in which transactions in relation to assets of that kind are registered; and

- (d) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

**29ZJ Part to have effect in spite of laws and agreements prohibiting transfer etc.**

- (1) This Part has effect, and shall be given effect to, in spite of anything in:
  - (a) any other law of the Commonwealth or any law of a State or Territory; or
  - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by this Part, and nothing done by a person because of, or for a purpose connected with or arising out of this Part:
  - (a) shall be regarded as:
    - (i) placing the Corporation, a subsidiary of the Corporation or another person in breach of contract or confidence; or
    - (ii) otherwise making the Corporation, a subsidiary of the Corporation or another person guilty of a civil wrong;
  - (b) shall be regarded as placing the Corporation, a subsidiary of the Corporation or another person in breach of:
    - (i) any law of the Commonwealth or of a State or Territory; or
    - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or



- (c) shall be taken to release any surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), where, but for this section, the consent of a person would be necessary in order to give effect to this Part in a particular respect, the consent shall be taken to have been given.

**29ZK Compensation for acquisition of property**

- (1) Where, but for this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Corporation such reasonable amount of compensation as is agreed on between the person and the Corporation or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered or other remedy given in a proceeding that is instituted otherwise than under this section shall be taken into account in assessing compensation payable in a proceeding that is instituted under this section and that arises out of the same event or transaction.
- (3) In this section, *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(31) of the Constitution.

## **Part V—Staff**

### **30 Staff of the Corporation**

- (1) Subject to this section, the Corporation may appoint such officers and engage such employees as it thinks necessary for the purposes of this Act.
- (2) The terms and conditions of employment of persons appointed or engaged under subsection (1) shall be as determined by the Corporation.

### **32 Preservation of certain awards**

Nothing in this Act prevents the making of an industrial award, order, determination or agreement under any Act in relation to officers or employees of the Corporation or affects the operation of any such award, order, determination or agreement in relation to those officers or employees.

### **33 Power of Corporation to provide benefits for staff and reimburse losses of expenditure**

- (1) The Corporation may pay any allowances, and provide any other benefits (including benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave and superannuation), for an officer or employee of the Corporation that in the opinion of the Board are necessary or desirable to assist the officer or employee in, or place the officer or employee in a position that may facilitate, the performance of his or her duties.
- (2) The Corporation may reimburse the Chairman, an ordinary Director, the Chief Executive or any officer or employee of the Corporation for any loss or expenditure incurred by reason of, or in the course of, the performance of his or her duties.

## **Part VI—Transfer of assets of AIDC bodies**

### **Division 1—Preliminary**

#### **33A Simplified outline**

The following is a simplified outline of this Part:

- This Part sets up a scheme under which assets of AIDC bodies may be transferred to other persons.
- An *AIDC body* is defined to mean:
  - (a) the Corporation; or
  - (b) a wholly-owned subsidiary of the Corporation.
- AIDC Ltd is the principal subsidiary of the Corporation as at the commencement of this section. If a minority of shares in AIDC Ltd are owned by persons other than the Corporation, provision is made for the compulsory acquisition of those shares by the Corporation.
- An AIDC body may be directed to sell or transfer any of its assets.
- The assets, contracts and liabilities of an AIDC body may be transferred by declaration.
- If assets, contracts or liabilities of an AIDC body have been transferred to the Commonwealth, the assets, contracts or liabilities may be transferred by the Commonwealth to other persons.
- Commonwealth guarantees relating to the Corporation's liabilities will continue even if the liabilities are transferred.
- An AIDC body may be required to pay to the Commonwealth an amount equal to any consideration received for the sale or transfer of any of the body's assets or contracts.
- Provision is made for the adjustment of the dividend franking account balances of companies that cease to be wholly-owned subsidiaries of the Corporation.

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- Certain transactions under this Part are exempt from stamp duty and similar taxes.
- The Commonwealth may take over obligations of AIDC bodies.
- AIDC bodies, directors of AIDC bodies, and certain other persons, may be required to assist the Commonwealth or the Corporation in connection with the implementation of this Part.
- The Federal Court may grant injunctions relating to the enforcement of this Part.
- Provision is made for compensation for acquisition of property.
- Provision is made for transitional arrangements relating to:
  - (a) long service leave; and
  - (b) the *Safety, Rehabilitation and Compensation Act 1988*; and
  - (c) the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

**33B Interpretation**

In this Part, unless the contrary intention appears:

***AIDC body*** means:

- (a) the Corporation; or
- (b) a wholly-owned subsidiary of the Corporation.

***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.

***contract*** includes:

- (a) a deed; and
- (b) a deed poll.

***Federal Court*** means the Federal Court of Australia.

***instrument*** includes a document.

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**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

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

**sale day**, in relation to AIDC Ltd, has the meaning given by section 33D.

**sale scheme body** means:

- (a) an AIDC body; or
- (b) if all the shares in a particular company have vested in the Commonwealth under section 33K:
  - (i) that company; or
  - (ii) a wholly-owned subsidiary of that company.

**voting share** has the same meaning as in the Corporations Law.

**wholly-owned subsidiary** has the meaning given by section 33C.

### 33C Wholly-owned subsidiary

For the purposes of this Part, a body corporate (the **first body**) is a **wholly-owned subsidiary** of another body corporate (the **second body**) if, and only if:

- (a) the first body has a share capital; and
- (b) there is no share in the first body that is not beneficially owned by:
  - (i) the second body; or
  - (ii) a company that is a wholly-owned subsidiary of the second body because of any other application or applications of this section.

### 33D Sale day for AIDC Ltd

- (1) If, in the opinion of the Minister for Finance, a particular day is the first day after the commencement of this Part on which a majority of the voting shares in AIDC Ltd are or were acquired by a person, or persons, other than:
  - (a) the Corporation; or
  - (b) a nominee of the Corporation;
  - (c) the Commonwealth; or
  - (d) a nominee of the Commonwealth;

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the Minister for Finance must, by notice in the *Gazette*, declare the day to be the *sale day* for AIDC Ltd.

- (2) The declaration has effect accordingly.
- (3) The notice must be published within 21 days after the sale day.

## **Division 2—Transfer of minority interests in AIDC Ltd to the Corporation**

### **33E Transfer of minority interests in AIDC Ltd to the Corporation**

- (1) This section applies to a person (other than the Corporation) if the person legally owns one or more shares in AIDC Ltd.
- (2) The Minister for Finance must, before 1 July 1998, by writing, make any or all of the following declarations:
  - (a) a declaration that the legal and beneficial interests in all of those shares vest in the Corporation at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to any or all of those shares continues to have effect after the legal and beneficial interests in those shares vest in the Corporation as if a reference in the instrument to the person were a reference to the Corporation;
  - (c) a declaration that the Corporation becomes the person's successor in law in relation to those shares immediately after the legal and beneficial interests in those shares vest in the Corporation.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) A time specified under paragraph (2)(a) must be a time when the percentage of the total paid-up share capital of AIDC Ltd in which the Corporation holds a beneficial interest is at least 90%.

### **33F Registration of shareholder**

- (1) If the legal and beneficial interest in a share vests in the Corporation under section 33E, AIDC Ltd must register the Corporation as the holder of the share.
- (2) Subsection (1) has effect despite anything in the Corporations Law.

### **33G Notification of acquisition of minority interests**

If a declaration is made under subsection 33E(2) in relation to one or more shares legally owned by a person, the Minister for Finance

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must give a copy of the declaration to the person as soon as practicable after the legal and beneficial interests in the shares vest in the Corporation.

**33H Compensation**

- (1) If the operation of section 33E results in the acquisition of property from a person, the Corporation is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Corporation and the person cannot agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Corporation of such reasonable amount of compensation as the court determines.



## **Division 3—Transfers of assets, liabilities etc. of AIDC bodies**

### **33J Minister for Finance may direct AIDC body to sell or transfer assets**

- (1) The Minister for Finance may, by written notice given to an AIDC body, direct the body to sell or transfer a specified asset of the body.

Note: An asset may be specified by name, by inclusion in a specified class or in any other way.

- (2) The direction may impose on the body requirements that are ancillary or incidental to the sale or transfer, including (but not limited to) any of the following requirements:
- (a) a requirement that the sale or transfer must be to a specified person;
  - (b) a requirement that the sale or transfer must be completed before a specified time;
  - (c) a requirement that the sale or transfer must be undertaken in a specified manner;
  - (d) in the case of a sale—a requirement that the asset must be sold for a price that is within a specified range;
  - (e) in the case of a sale—a requirement that the asset must be marketed, and that the sale must be undertaken, through a specified agent.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (3) The body must comply with the direction.
- (4) This section does not limit section 33K or 33L.

### **33K Transfer of assets by declaration**

- (1) This section applies to an asset of an AIDC body.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;

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- (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the body were a reference to the person;
- (c) a declaration that a specified person becomes the body's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) Subsection (2) does not prevent the body from transferring an asset to a person otherwise than under that subsection.
- (6) If a share in a company vests in a person under this section, the company must register the person as the holder of the share.
- (7) Subsection (6) has effect despite anything in the Corporations Law.

**33KA Special provisions relating to shares in the Australian Submarine Corporation**

- (1) If an AIDC body is the holder of legal or beneficial interests in shares in the Australian Submarine Corporation, the Minister for Finance must:
  - (a) make such a declaration under section 33K as will result in the Australian Industry Development Corporation becoming the holder of those interests before 1 September 1997; or
  - (b) make such a series of successive declarations under section 33K as will result in the Australian Industry Development Corporation ultimately becoming the holder of those interests before 1 September 1997 as a consequence of one or more interposed transfers to other AIDC bodies.
- (2) If the Australian Industry Development Corporation becomes the holder of those interests as a result of the declaration or any of those declarations, this Act does not prevent those interests from being subsequently sold or transferred.
- (3) If the Australian Industry Development Corporation becomes the holder of those interests as a result of the declaration or any of

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those declarations, the Australian Industry Development Corporation must not subsequently sell or transfer those interests to a foreign person (within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*) unless:

- (a) immediately before the commencement of this section, the foreign person had an entitlement to acquire those interests; and
- (b) immediately before the commencement of this section, the foreign person was a registered shareholder in the Australian Submarine Corporation; and
- (c) that entitlement:
  - (i) arises out of a shareholders' agreement; or
  - (ii) relates, directly or indirectly, to the foreign person's capacity as a registered shareholder in the Australian Submarine Corporation; and
- (d) the sale or transfer:
  - (i) gives effect to that entitlement; or
  - (ii) would have given effect to that entitlement if it were assumed that AIDC bodies and the Australian Industry Development Corporation were the same entity.
- (4) For the purposes of this section, a person is ***entitled to acquire*** any thing if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.
- (5) In this section:  
***Australian Submarine Corporation*** means Australian Submarine Corporation Pty Limited.

**33L Transfer of contractual rights and obligations by declaration**

- (1) This section applies to a contract to which an AIDC body is a party.
- (2) The Minister for Finance may, by writing, declare that the body's rights and obligations under a specified contract:
  - (a) cease to be rights and obligations of the body at a specified time; and
  - (b) become rights and obligations of a specified person at that time.

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- (3) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the body were a reference to a specified person.
- (4) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect after the body's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the body were a reference to the person.
- (5) The Minister for Finance may, by writing, declare that a specified person becomes the body's successor in law, in relation to the body's rights and obligations under a specified contract, immediately after the body's rights and obligations under the contract become rights and obligations of the person.
- (6) A declaration under this section has effect accordingly.
- (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
- (8) This section does not, by implication, limit section 33K.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

**33M Transfer of liabilities by declaration**

- (1) This section applies to a liability of an AIDC body.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified liability ceases to be a liability of the body and becomes a liability of a specified person at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the body were a reference to the person;
  - (c) a declaration that a specified person becomes the body's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
- (3) A declaration under subsection (2) has effect accordingly.

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- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

**33N Consideration**

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

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## **Division 4—Transfers by the Commonwealth**

### **33P Transfer of assets**

- (1) This section applies to an asset that has vested in the Commonwealth under section 33K.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
  - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the person.

**Note:** An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) Subsection (2) does not prevent the Commonwealth from transferring an asset to a person otherwise than under that subsection.

### **33Q Transfer of contractual rights and obligations**

- (1) This section applies to a contract where rights and obligations under the contract became rights and obligations of the Commonwealth under section 33L.
- (2) The Minister for Finance may, by writing, declare that the Commonwealth's rights and obligations under a specified contract:
  - (a) cease to be rights and obligations of the Commonwealth at a specified time; and
  - (b) become rights and obligations of a specified person at that time.

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- (3) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to a specified person.
- (4) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the Commonwealth were a reference to the person.
- (5) The Minister for Finance may, by writing, declare that a specified person becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the person.
- (6) A declaration under this section has effect accordingly.
- (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
- (8) This section does not, by implication, limit section 33P.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

**33R Transfer of liabilities**

- (1) This section applies to a liability that became a liability of the Commonwealth under section 33M.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of a specified person at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
  - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified

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liability immediately after the liability becomes a liability of the person.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

**33S Consideration**

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.



## **Division 5—Transfer of Commonwealth guarantees**

### **33T Transfer of Commonwealth guarantees**

- (1) This section applies to a liability or obligation of the Corporation if:
  - (a) the liability or obligation is transferred to a person (the *transferee*) under this Part (whether directly or indirectly through an interposed transfer to the Commonwealth); and
  - (b) assuming that the liability or obligation had not been transferred, the payment by the Corporation of money in accordance with the liability or obligation would have been guaranteed by the Commonwealth under section 35.
- (2) By force of this subsection, the Commonwealth guarantees the due payment by the transferee of all money that is, or may at any time become, payable by the transferee to any person other than the Commonwealth in accordance with the liability or obligation, so long as the liability or obligation is not varied.

## **Division 6—Proceeds of asset transfers to be paid to the Commonwealth**

### **33U Proceeds of asset transfers to be paid to the Commonwealth**

- (1) The Minister for Finance may, by written notice given to an AIDC body, direct that, if the body receives any consideration in respect of:

- (a) the sale or transfer by the body of a specified asset in accordance with a direction under section 33J; or
- (b) the transfer of a specified asset of the body under section 33K; or
- (c) the transfer, under section 33L, of the body's rights and obligations under a specified contract;

the body must pay to the Commonwealth an amount equal to the consideration.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (2) The body must comply with the direction.
- (3) This section does not, by implication, limit section 24A.

## **Division 7—Adjustment of dividend franking account balances**

### **33V Effect of Division**

This Division has effect for the purposes of Part IIIAA of the *Income Tax Assessment Act 1936*.

### **33W Adjustment of class C franking account balances**

- (1) If a company ceases to be a wholly-owned subsidiary of the Corporation, there arises, on the day of the cessation, a class C franking debit of the company.
- (2) The amount of the franking debit is equal to the class C franking surplus of the company immediately before the cessation.
- (3) In this section:  
*class C franking surplus*, in relation to a company, has the same meaning as in Part IIIAA of the *Income Tax Assessment Act 1936*.

## Division 8—Exemption from stamp duty

### 33X Exemption from stamp duty

(1) In this section:

*designated matter* means:

- (a) a transfer under section 33E; or
- (b) an agreement relating to a transfer covered by paragraph (a);  
or
- (c) the receipt of money by a person in respect of a transfer covered by paragraph (a); or
- (d) the sale or transfer by an AIDC body of an asset in accordance with a direction under section 33J; or
- (e) an agreement relating to a sale or transfer covered by paragraph (d); or
- (f) the receipt of money by an AIDC body, or by a person acting on behalf of an AIDC body, in respect of a sale or transfer covered by paragraph (d); or
- (g) a transfer under section 33K, 33L or 33M; or
- (h) an agreement relating to a transfer covered by paragraph (g);  
or
- (i) the receipt of money by an AIDC body, or by a person acting on behalf of an AIDC body, in respect of a transfer covered by paragraph (g); or
- (j) a transfer under section 33P, 33Q or 33R; or
- (k) an agreement relating to a transfer covered by paragraph (j);  
or
- (l) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a transfer covered by paragraph (j); or
- (m) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 33K; or
- (n) an agreement relating to a sale or transfer covered by paragraph (m); or
- (o) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a sale or transfer covered by paragraph (m).

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- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
- (a) a designated matter; or
  - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a designated matter.

## **Division 9—Commonwealth takeover of obligations**

### **33Y Commonwealth takeover of certain obligations of AIDC bodies**

- (1) This section applies to an obligation (whether contingent or otherwise) of an AIDC body.
- (2) The Treasurer may, on the Commonwealth's behalf, enter into an agreement to take over an obligation.

### **33Z Authorisation of payments—Commonwealth takeover of obligations**

If the Treasurer enters into an agreement under subsection 33Y(2), the Treasurer may authorise the payment of money to discharge the Commonwealth's obligations under the agreement, whether by terminating those obligations or otherwise.

### **34 Appropriation—Commonwealth takeover of obligations**

A payment under section 33Z is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

### **34A Application of the *Loans Securities Act 1919***

Sections 5A, 5B, 5C and 5D (other than paragraphs (1)(c) and (2)(c)) of the *Loans Securities Act 1919* apply in relation to an obligation that is taken over by the Commonwealth under section 33Y as if that obligation were a borrowing of money outside Australia:

- (a) that the Treasurer was authorised to make on behalf of the Commonwealth; and
- (b) that the Treasurer made accordingly.

## **Division 10—Sale scheme body to assist the Commonwealth and the Corporation**

### **34B Implementation of this Part**

- (1) A reference in this Division to the *implementation of this Part* includes a reference to:
  - (a) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 33K; and
  - (b) the formulation of the policies and approaches to be adopted by the Minister for Finance in connection with:
    - (i) the implementation of this Part; and
    - (ii) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 33K.
- (2) For the purposes of this Division, *this Part* does not include Division 13, 14 or 15.

### **34C Assistance given by a sale scheme body or director in connection with the implementation of this Part**

- (1) A sale scheme body may, on the body's own initiative, assist the Commonwealth or the Corporation in connection with the implementation of this Part.
- (2) A director of a sale scheme body may, on the director's own initiative, assist the Commonwealth or the Corporation in connection with the implementation of this Part.
- (3) A sale scheme body must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth or the Corporation in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.
- (4) A director of a sale scheme body must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth or the Corporation in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.

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- (5) The Minister for Finance may, by written notice given to a sale scheme body, give directions to the body about the exercise of the body's powers under subsection (1). The body must comply with the direction.
- (6) The Minister may, by written notice given to a director of a sale scheme body, give directions to the director about the exercise of the director's powers under subsection (2). The director must comply with the direction.
- (7) To avoid doubt, the giving of assistance as mentioned in subsection (1), (2), (3) or (4), the making of a request under subsection (3) or (4), or the giving of a direction under subsection (5) or (6), does not result in a contravention of, or give rise to a liability or remedy under:
  - (a) a provision of the Corporations Law; or
  - (b) a rule of common law or equity (other than a rule of administrative law).

Note: The expression *sale scheme body* includes the Corporation—see section 33B.

**34D Giving of assistance—ancillary provisions**

- (1) The assistance mentioned in subsection 34C(1), (2), (3) or (4) may take the form of:
  - (a) the giving of information; or
  - (b) the giving of financial assistance (within the meaning of section 205 of the Corporations Law); or
  - (c) the giving of a financial benefit to a related party (within the meaning of Part 3.2A of the Corporations Law); or
  - (d) the provision, by the directors or employees of a sale scheme body, of facilities, information and other assistance in connection with the conduct of:
    - (i) a due diligence procedure or a similar process; or
    - (ii) a market briefing or a similar process; or
  - (e) the entering into of an agreement with the Commonwealth or the Corporation.
- (2) For the purposes of paragraph (1)(b), if section 205 of the Corporations Law is repealed and replaced by another provision of the Corporations Law that deals with the giving of financial



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assistance by companies, the reference in that paragraph to section 205 is to be read as a reference to the replacement provision.

- (3) For the purposes of paragraph (1)(c), if Part 3.2A of the Corporations Law is repealed and replaced by another provision of the Corporations Law that deals with the giving of financial benefits to related parties, the reference in that paragraph to Part 3.2A is to be read as a reference to the replacement provision.
- (4) Subsection (1) does not, by implication, limit the forms in which assistance may be given.
- (5) Section 34C does not, by implication, limit any rights that are conferred on shareholders by other laws.
- (6) Section 34C does not, by implication, limit:
  - (a) the executive power of the Commonwealth to enter into an agreement; or
  - (b) the power of the Corporation to enter into an agreement; or
  - (c) the capacity of a sale scheme body, or a director of a sale scheme body, to enter into an agreement with the Commonwealth or the Corporation.
- (7) Section 34C extends to the giving of assistance outside Australia, whether or not in a foreign country.

**34E Use of information by the Commonwealth or the Corporation**

- (1) This section applies to information obtained under section 34C.
- (2) The Commonwealth, the Corporation, or an associated person, may use the information for a purpose in connection with the implementation of this Part.
- (3) The Commonwealth, the Corporation, or an associated person, may disclose the information for a purpose in connection with the implementation of this Part.
- (4) The Commonwealth, the Corporation, or an associated person, may use or disclose the information for a purpose in connection with:
  - (a) the Commonwealth's capacity as a shareholder in a sale scheme body; or
  - (b) the Corporation's capacity as a shareholder in a sale scheme body;

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so long as the use or disclosure does not involve giving the information to a person who is not an associated person.

- (5) To avoid doubt, the use or disclosure of information as mentioned in subsection (2), (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the Corporations Law; or
  - (b) a rule of common law or equity (other than a rule of administrative law).

- (6) In this section:

***associated person*** means:

- (a) a Minister; or
- (b) an individual who holds an office under, or is employed by, the Commonwealth; or
- (c) an officer or employee within the meaning of the *Public Service Act 1922*; or
- (d) a person who performs services for or on behalf of the Commonwealth in connection with:
  - (i) the implementation of this Part; or
  - (ii) the Commonwealth's capacity as a shareholder in a sale scheme body; or
- (e) a Director of the Corporation; or
- (f) an officer or employee of the Corporation; or
- (g) a person who performs services for or on behalf of the Corporation in connection with:
  - (i) the implementation of this Part; or
  - (ii) the Corporation's capacity as a shareholder in a sale scheme body.

**34F Agreements relating to the protection of information**

- (1) The Minister for Finance may, on behalf of the Commonwealth, enter into an agreement with a person relating to the protection of information:
- (a) that is obtained under section 34C; and
  - (b) the publication of which might be expected to prejudice substantially a sale scheme body's commercial interests.
- (2) An agreement under subsection (1) may be enforced as if it were a contract.

- (3) Subsection (1) does not, by implication, limit the executive power of the Commonwealth to enter into agreements.
- (4) The Corporation may enter into an agreement with a person relating to the protection of information:
  - (a) that is obtained under section 34C; and
  - (b) the publication of which might be expected to prejudice substantially a sale scheme body's commercial interests.
- (5) An agreement under subsection (4) may be enforced as if it were a contract.
- (6) Subsection (4) does not, by implication, limit the power of the Corporation to enter into agreements.

### **34G Sale scheme body's obligations to disclose information**

- (1) To avoid doubt, the mere fact that particular information was requested, required or given under section 34C is not a ground on which a sale scheme body can be required to disclose or notify that, or any other, information under:
  - (a) a provision of the Corporations Law; or
  - (b) a provision of the listing rules of a securities exchange.
- (2) In this section:
  - listing rules* has the same meaning as in section 1001A of the Corporations Law.
  - securities exchange* has the same meaning as in section 1001A of the Corporations Law.
- (3) For the purposes of subsection (2), if section 1001A of the Corporations Law is repealed and replaced by another provision of the Corporations Law that deals with continuous disclosure by listed companies, a reference in that subsection to section 1001A is to be read as a reference to the replacement provision.

## Division 11—Injunctions

### 34H Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Part, the Federal Court may, on the application of the Minister for Finance, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Part;the Federal Court may, on the application of the Minister for Finance, grant an injunction requiring the person to do that act or thing.

### 34J Interim injunctions

#### *Grant of interim injunction*

- (1) If an application is made to the court for an injunction under section 34H, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under section 34H, as a condition of granting an interim injunction, to give any undertakings as to damages.

### 34K Discharge etc. of injunctions

The court may discharge or vary an injunction granted under this Division.

### **34L Certain limits on granting injunctions not to apply**

#### *Restraining injunctions*

- (1) The power of the court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

#### *Performance injunctions*

- (2) The power of the court under this Division to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

### **34M Other powers of the court unaffected**

The powers conferred on the court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

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**Division 12—Miscellaneous**

**34N Transfers of land may be registered**

- (1) This section applies if:
  - (a) any right, title or interest in particular land vests in a person under section 33K or 33P; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister for Finance; and
    - (ii) identifies the land; and
    - (iii) states that the right, title or interest has become vested in the person under section 33K or 33P, as the case requires.
- (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 document that appears to be a certificate under subsection (1) is to be taken to be such a certificate, and to have been properly given, unless the contrary is established.

**34P Charges may be registered**

- (1) This section applies if:
  - (a) a person becomes, under this Part, the holder of a charge; and
  - (b) there is lodged with the Australian Securities Commission a certificate that:
    - (i) is signed by the Minister for Finance; and
    - (ii) identifies the charge; and
    - (iii) states that the person has, under this Part, become the holder of the charge.
- (2) The Australian Securities Commission may, subject to the payment of any applicable fee:
  - (a) register the matter in a way that is the same is, or similar to, the way in which assignments of charges are registered; and
  - (b) deal with, and give effect to, the certificate;

as if the certificate were a notice of assignment of the charge that had been properly lodged with the Commission.

(3) In this section:

**charge** means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

**holder**, in relation to a charge, includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement.

**34Q This Part does not modify registers kept by land registration officials**

This Part, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

**34R Lands Acquisition Act does not apply to this Part**

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

**34S Legislative Instruments Act does not apply to this Part**

To avoid doubt, an instrument made under this Part is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

**34T Transfer of pending proceedings**

- (1) This section applies if, as a result of a declaration made by the Minister for Finance under this Part, a person (the **successor**) becomes the successor in law of another person (the **original person**) at a particular time in relation to a particular asset, liability, right, benefit or obligation.
- (2) If any proceedings to which the original person was a party:
  - (a) were pending in any court or tribunal immediately before that time; and
  - (b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;

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then, unless the Minister for Finance otherwise determines in writing in relation to the proceedings, the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

**34U Operation of this Part does not place a person in breach of contract etc.**

To avoid doubt, the operation of this Part is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating:
  - (i) the assignment or transfer of any asset, liability, right or obligation; or
  - (ii) the disclosure of any information; or
- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under this Part.

**34V Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (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 for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:
  - 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.



**34W Designated time**

- (1) The Minister for Finance may, by writing, determine that a specified time is the *designated time* for the purposes of this Act. The time must be after the commencement of this section.
- (2) A determination under subsection (1) has effect accordingly.
- (3) A copy of a determination under subsection (1) is to be published in the *Gazette* within 14 days after the making of the determination.

**34X Delegation**

- (1) The Minister for Finance may, by writing, delegate to:
  - (a) the Secretary to the Department of Finance; or
  - (b) the Chief Executive of the Office of Asset Sales; or
  - (c) a person holding or performing the duties of a Senior Executive Service office (whether or not in the Department of Finance);all or any of the functions and powers conferred on the Minister for Finance by this Part.
- (2) In this section:  
*Senior Executive Service office* has the same meaning as in the *Public Service Act 1922*.

**34Y Commonwealth records**

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983*.

**34Z This Part does not authorise the imposition of taxation**

This Part does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

## **Division 13—Transitional: long service leave**

### **Subdivision A—Preliminary**

#### **34ZA Definitions**

- (1) Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same meanings as in that Act.
- (2) In this Division:
  - combined service period***, in relation to an employee of AIDC Ltd, means the total of:
    - (a) the period that was, immediately before AIDC Ltd's sale day, the employee's period of service for the purposes of the Long Service Leave Act; and
    - (b) the period starting on AIDC Ltd's sale day during which the employee continues to be an employee of AIDC Ltd.

***law*** means:

- (a) a law of the Commonwealth, a State or a Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

***post-sale long service leave rights***, in relation to an employee of AIDC Ltd, means any long service leave rights that the employee acquires under an award, determination, industrial agreement or law (other than this Part) on or after AIDC Ltd's sale day.

#### **34ZB References to Long Service Leave Act**

For the purposes of the application of this Part to a particular employee of AIDC Ltd, a reference in this Division to the ***Long Service Leave Act*** is a reference to the *Long Service Leave (Commonwealth Employees) Act 1976* as in force immediately before AIDC Ltd's sale day.

#### **34ZC Division not to affect an employee's post-sale long service leave rights**

To avoid doubt, it is declared that this Division does not affect an employee's post-sale long service leave rights.

## **Subdivision B—Long service leave for employees who attain at least 10 years service**

### **34ZD Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision is about the long service leave that may be granted to an employee of AIDC Ltd who attains at least 10 years service. It also deals with employees who reach minimum retiring age or are retrenched.

### **34ZE Employees who attain 10 years service**

- (1) AIDC Ltd may grant an employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 34ZP(1) if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd until his or her combined service period was at least 10 years.
- (2) AIDC Ltd may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the period that could have been granted to the employee on full salary.

### **34ZF Employees reaching minimum retiring age or being retrenched**

- (1) AIDC Ltd may grant an employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 34ZP(1) if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and

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- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
  - (d) the employee stopped being an employee of AIDC Ltd, on or after reaching the minimum retiring age, or because of retrenchment; and
  - (e) the employee's combined service period at the time when he or she stopped being an employee of AIDC Ltd was at least one year.
- (2) Long service leave granted under this section is to be taken so as to end immediately before the employee stopped being an employee.
- (3) AIDC Ltd may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the period that could have been granted to the employee on full salary.

### **34ZG Rate of salary**

For the purposes of sections 34ZE and 34ZF, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression "section 16 or 17" in that section there were substituted the expression "section 34ZE or 34ZF of the *Australian Industry Development Corporation Act 1970*".

## **Subdivision C—Payments in lieu of long service leave**

### **34ZH Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision is about payments in respect of long service leave to an employee of AIDC Ltd who has not used all of his or her long service leave credit by taking long service leave under Subdivision B.

**34ZI Employees who attain 10 years service**

Subject to section 34ZL, AIDC Ltd must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 34ZP(2) if:

- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
- (d) the employee stopped being an employee of AIDC Ltd on or after the day on which his or her combined service period reached 10 years.

**34ZJ Employees reaching minimum retiring age or being retrenched**

Subject to section 34ZL, AIDC Ltd must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 34ZP(2) if:

- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
- (d) the employee stopped being an employee of AIDC Ltd, on or after reaching the minimum retiring age, or because of retrenchment; and
- (e) the employee's combined service period at the time when he or she stopped being an employee of AIDC Ltd was at least one year.

**34ZK Employee stops employment because of ill-health**

Subject to section 34ZL, AIDC Ltd must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 34ZP(2) if:

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- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
- (d) the employee stopped being an employee of AIDC Ltd because of ill-health; and
- (e) AIDC Ltd was satisfied that the employee left AIDC Ltd because of ill-health that justified his or her so leaving; and
- (f) when the employee left, his or her combined service period was at least one year.

### **34ZL Employee may request non-payment or reduced payment**

- (1) An employee may, by written notice given to AIDC Ltd before the employee stops being an employee of AIDC Ltd:
  - (a) request AIDC Ltd not to make a payment to the employee under section 34ZI, 34ZJ or 34ZK; or
  - (b) request AIDC Ltd to make a payment under that section of a specified amount that is less than the amount that would otherwise be payable under that section.
- (2) AIDC Ltd must comply with the request.

### **34ZM Rate of salary**

For the purposes of this Subdivision, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression "sections 16 and 17" in that section there were substituted the expression "sections 34ZI, 34ZJ and 34ZK of the *Australian Industry Development Corporation Act 1970*".

## **Subdivision D—Payments on the death of an employee**

### **34ZN Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision is about payments in respect of long service leave to the dependants or the legal personal representative of an employee of AIDC Ltd who has died.

### **34ZO Payments on death of an employee**

- (1) AIDC Ltd must make a payment to a dependant or to 2 or more dependants of an employee if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
  - (d) on or after AIDC Ltd's sale day, the employee died and immediately before his or her death:
    - (i) the employee was an employee of AIDC Ltd; and
    - (ii) the employee's combined service period was at least one year; and
    - (iii) the employee had one or more dependants.
- (2) AIDC Ltd must make a payment to the legal personal representative of an employee if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
  - (d) on or after AIDC Ltd's sale day, the employee died and immediately before his or her death:
    - (i) the employee was an employee of AIDC Ltd; and

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- (ii) the employee's combined service period was at least one year; and
  - (iii) the employee did not have any dependants.
- (3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 34ZJ if, on the day of his or her death, the employee had stopped being an employee of AIDC Ltd on or after reaching the minimum retiring age.
- (4) If subsection (1) or (2) applies, section 23 of the Long Service Leave Act has effect as if:
  - (a) that section applied to the employee; and
  - (b) a reference in that section to the approving authority were a reference to AIDC Ltd; and
  - (c) for the expression "this Act" in that section there were substituted the expression "section 34ZO of the *Australian Industry Development Corporation Act 1970*"; and
  - (d) for the expression "subsection 16(7) or 17(5)" in that section there were substituted the expression "section 34ZO of the *Australian Industry Development Corporation Act 1970*".

**Subdivision E—Long service leave credit**

**34ZP Employee's long service leave credit for the purposes of Subdivisions B and C**

- (1) For the purposes of sections 34ZE and 34ZF, the long service leave credit of an employee is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:
  - (a) starting when the employee started his or her period of service; and
  - (b) ending on AIDC Ltd's sale day;if the employee had been retrenched on that sale day.
- (2) For the purposes of sections 34ZI, 34ZJ and 34ZK, an employee's long service leave credit is the employee's long service leave credit worked out under subsection (1), reduced by any long service leave credit used under section 34ZE or 34ZF.



## **Subdivision F—Saving: Long Service Leave Act**

### **34ZQ Saving—Accrued rights under the Long Service Leave Act**

- (1) Even though an employee of AIDC Ltd ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee's accrued rights under that Act continue while the employee continues to be employed by AIDC Ltd if:

- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was at least 10 years.

However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.

- (2) If the employee continues to be employed by AIDC Ltd, the Long Service Leave Act has effect after AIDC Ltd's sale day as if AIDC Ltd were an approving authority for the purposes of that Act.

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**Division 14—Transitional: Safety, Rehabilitation and Compensation Act 1988**

**34ZR Definitions**

Unless the contrary intention appears, expressions used in this Division that are also used in the *Safety, Rehabilitation and Compensation Act 1988* have the same meanings as in that Act.

**34ZS Continued application of the *Safety, Rehabilitation and Compensation Act 1988***

If AIDC Ltd ceases to be a Commonwealth authority for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*, that Act continues to apply in relation to AIDC Ltd to the extent, and in the manner, set out in this Division.

**34ZT Continued application to certain employees**

- (1) The *Safety, Rehabilitation and Compensation Act 1988* continues to apply, on and after AIDC Ltd's sale day, in relation to:
  - (a) injuries suffered by an employee of AIDC Ltd before its sale day; and
  - (b) loss of, or damage to, property incurred by the employee before AIDC Ltd's sale day;if the employee was an employee of AIDC Ltd immediately before its sale day.
- (2) For the purposes of subsection (1), the *Safety, Rehabilitation and Compensation Act 1988* continues to apply as if:
  - (a) AIDC Ltd continued to be a Commonwealth authority; and
  - (b) the Chief Executive Officer of AIDC Ltd (however described) continued to be the Principal Officer of a Commonwealth authority.

**34ZU Transitional provisions relating to Division 4A of Part VII**

- (1) On and after the sale day of AIDC Ltd, Division 4A of Part VII of the *Safety, Rehabilitation and Compensation Act 1988* applies to AIDC Ltd as if:
  - (a) AIDC Ltd continues to be a Commonwealth authority; and

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- (b) AIDC Ltd is not required to pay a premium under that Division in respect of the part of a financial year that occurs after AIDC Ltd's sale day; and
- (c) the following word and paragraph were added at the end of subsection 96H(1):
  - ; or (f) in the case of an authority—the authority is not required to pay a premium under this Division in respect of part of a financial year.
- (2) If, 60 days after AIDC Ltd's sale day, an amount of premium payable by AIDC Ltd to Comcare in respect of the period before the sale day remains unpaid, the amount is a debt due to the Commonwealth by AIDC Ltd and payable to Comcare.

**34ZV Relevant employer and co-operation with the Commonwealth**

- (1) On and after the sale day of AIDC Ltd, AIDC Ltd is taken to be the relevant employer of the employee for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*.
- (2) On and after the sale day of AIDC Ltd, AIDC Ltd must provide such reasonable co-operation and assistance as the Commonwealth requires to enable the Commonwealth to fulfil its obligations under sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988*.

**34ZW Notification of amount of salary paid to employees of AIDC Ltd**

- (1) The Chief Executive Officer (however described) of AIDC Ltd must notify Comcare, within 28 days after AIDC Ltd's sale day, of the amount of salary, wages or pay paid to employees of AIDC Ltd in the pre-sale day period.
- (2) In this section:  
*pre-sale day period* means the period starting on 1 July in the financial year in which AIDC Ltd's sale day occurs and ending on the day before that sale day.

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**Division 15—Transitional: Occupational Health and Safety  
(Commonwealth Employment) Act 1991**

**34ZX Refund of contribution paid under the *Occupational Health and Safety (Commonwealth Employment) Act 1991***

- (1) AIDC Ltd is entitled to be paid the amount worked out using the formula set out below if AIDC Ltd has paid a contribution to the cost of the administration of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* under section 67H of that Act in respect of the financial year in which AIDC Ltd's sale day occurs:

$$\text{Contribution} \times \frac{\text{No. of refund days}}{365}$$

**contribution** means the contribution paid by AIDC Ltd in respect of that financial year.

**no. of refund days** means the total number of days in the period beginning on that sale day and ending on the last day of the financial year in which that sale day occurs.

- (2) An amount to which AIDC Ltd is entitled under subsection (1) must be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

**Part VII—Miscellaneous****35 Guarantee by Commonwealth**

- (1) By force of this subsection, but subject to subsection (2), the Commonwealth guarantees the due payment by the Corporation of all moneys that are, or may at any time become, payable by the Corporation to any person other than the Commonwealth under an agreement or arrangement entered into by the Corporation before the declared date in relation to the agreement or arrangement.
- (2) Subsection (1) does not apply in relation to moneys payable by the Corporation in respect of a borrowing of money, or a raising of money otherwise than by borrowing, undertaken by the Corporation unless, at or before the time when the borrowing or raising is undertaken, the Chief Executive determines, in writing, that that subsection applies in respect of the borrowing or raising.
- (3) A determination may be made pursuant to subsection (2) in relation to a particular transaction or in relation to transactions included in a class of transactions.
- (4) For the purposes of this section, a borrowing of money, or raising of money otherwise than by borrowing, includes a borrowing of money, or raising of money otherwise than by borrowing, as the case may be:
  - (a) by dealing with securities; or
  - (b) made in whole or in part in a currency other than Australian currency.
- (5) In this section, *securities* includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.
- (6) A reference in this section to dealing with securities includes a reference to:
  - (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
  - (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and

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- (c) entering into agreements or other arrangements relating to securities.
- (7) For the purposes of this section, the taking of deposits of money by the Corporation shall, to the extent of the amount of those deposits, be deemed to be a borrowing by the Corporation.
- (8) If, under an agreement entered into by the Corporation before the declared date in relation to the agreement, money is taken on deposit by the Corporation on or after that date, subsection (1) does not apply to money payable by the Corporation under the agreement so far as the agreement relates to rights and liabilities arising out of the taking of money on deposit on or after the declared date in relation to the agreement.
- (9) For the purpose of subsection (8), the leaving of money on deposit with the Corporation at the end of the term of a deposit is to be regarded as a fresh taking of the money on deposit by the Corporation at the end of that term.
- (9A) For the purposes of subsection (9), the leaving of money on deposit with the Corporation on an “on call” basis is to be regarded as the leaving of money on deposit for a term of 24 hours.
- (10) Where:
  - (a) under an agreement entered into by the Corporation before the declared date in relation to the agreement, money is taken on deposit by the Corporation before the declared date in relation to the agreement for a term ending on or after that date; and
  - (b) the agreement provides that at the end of that term the money may be left on deposit with the Corporation;nothing in subsection (8) or (9) affects the operation of subsection (1) in relation to money payable under the agreement in respect of the deposit taken before the declared date in relation to the agreement.
- (11) The Minister for Finance may, by writing, determine that a specified date is the *declared date* in relation to a specified agreement or a specified arrangement for the purposes of this section. The date must be after the date of commencement of this subsection and before 1 July 1998.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (12) A determination under subsection (11) has effect accordingly.
- (13) A copy of a determination under subsection (11) is to be published in the *Gazette* within 14 days after the making of the determination.
- (14) To avoid doubt, an instrument made under subsection (11) is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.
- (15) If no determination is in force under subsection (11) in relation to an agreement or arrangement, then, for the purposes of this section, the ***declared date*** in relation to the agreement or arrangement is 1 July 1998.

### **36 Offices of the Corporation**

The Corporation shall have a head office, which shall be in Australia, and may have such other offices as the Board determines.

#### **36A Ministers not taken to be directors of bodies corporate**

A Minister is not taken to be a director of a body corporate for the purposes of the Corporations Law because of the powers that are conferred on the Minister concerned by this Act.

### **37 Report and financial statements**

- (1) The Board shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Corporation during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.
- (1A) The financial statements referred to in subsection (1) shall not include matters in respect of which the Board is required to prepare and furnish financial statements in accordance with subsection 8A(10).
- (2) The financial statements of the Corporation shall comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation.
- (2A) For the purposes of subsection (2):

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- (a) the Corporation shall be taken to be a listed corporation; and
  - (b) the Chief Executive shall be taken to be an executive officer of the Corporation.
- (2B) Expressions used in subsections (2) and (2A) and in the *Companies Act 1981* have the same respective meanings as they have in that Act.
- (2C) The report of the Corporation's operations for a financial year shall:
  - (a) include the objectives of the Corporation and its eligible subsidiaries under the corporate plan;
  - (b) include an outline of the overall strategies and policies of the Corporation and its eligible subsidiaries under the corporate plan;
  - (c) include an assessment of the extent to which the operations of the Corporation and its eligible subsidiaries during the year have achieved those objectives;
  - (d) specify the financial target applicable to the year under the corporate plan;
  - (e) include an assessment of the Corporation's progress in achieving the financial target under the corporate plan; and
  - (f) specify the total of the amounts that became payable to the Commonwealth during the year under section 24A.
- (3) The financial statements shall be accompanied by a report, in respect of matters to which those statements relate, by the Auditor-General stating:
  - (a) whether the statements are based on proper accounts and records;
  - (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and the state of the affairs of the Corporation;
  - (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Corporation during the year have been in accordance with this Act; and
  - (d) any other matters arising out of the statements that the Auditor-General considers should be reported.
- (4) For the purpose of making a report under subsection (3), the Auditor-General is not required to consider whether the Corporation has complied with its obligations under section 8.



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- (5) The Minister shall cause the report and financial statements, together with the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

**37A Delegation by Minister**

- (1) The Minister may, by writing, delegate to:
- (a) the Secretary to the Department; or
  - (b) the Chief Executive of the Office of Asset Sales; or
  - (c) a person holding or performing the duties of a Senior Executive Service office (whether or not in the Department);
- all or any of the functions and powers conferred on the Minister by this Act.
- (2) In this section:
- Senior Executive Service office* has the same meaning as in the *Public Service Act 1922*.

**38 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## NOTES

1. The *Australian Industry Development Corporation Act 1970* as shown in this reprint comprises Act No. 15, 1970 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 5 June 1997 is not included in this reprint. For subsequent information see Table A.

## Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Industry Development Corporation Act 1970</i>	15, 1970	10 June 1970	1 Oct 1970 (see <i>Gazette</i> 1970, p. 6709)	
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Australian Industry Development Corporation Act 1975</i>	4, 1975	7 Mar 1975	7 Mar 1975	S. 8(2)
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	S. 3: (a)	S. 4
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Australian Industry Development Corporation Amendment Act 1980</i>	121, 1980	13 Sept 1980	13 Sept 1980	—
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 115: Royal Assent (b)	—
<i>Companies (Miscellaneous Amendments) Act 1981</i>	92, 1981	18 June 1981	Ss. 1 and 2: Royal Assent S. 36: 1 July 1981 (see s. 2(2) and <i>Gazette</i> 1981, No. S118) Remainder: 1 July 1982 (see s. 2(3) and <i>Gazette</i> 1982, No. S124)	—
<i>Conciliation and Arbitration Amendment Act (No. 2) 1983</i>	115, 1983	16 Dec 1983	S. 41: 1 June 1984 (see <i>Gazette</i> 1984, No. S201) (c)	—

## NOTES

### Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Conciliation and Arbitration Amendment Act 1984</i>	162, 1984	25 Oct 1984	S. 13: 1 June 1984 (see s. 2(2) and <i>Gazette</i> 1984, No. S201) S. 14: 16 Dec 1983 Remainder: Royal Assent	—
<i>Australian Industry Development Corporation Amendment Act 1983</i>	122, 1983	21 Dec 1983	21 Dec 1983	Ss. 8(2), 18(2) and 20(2)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (d)	—
<i>Australian Industry Development Corporation Amendment Act 1987</i>	11, 1987	1 Apr 1987	1 Apr 1987	S. 3(2) and (3)
<i>Australian Industry Development Corporation Amendment Act 1988</i>	125, 1988	14 Dec 1988	14 Dec 1988	S. 7(2)
<i>Industry, Technology and Commerce Legislation Amendment Act 1989</i>	91, 1989	27 June 1989	S. 15: 14 Dec 1988 Part 4 (ss. 20-25): 30 Nov 1989 (see <i>Gazette</i> 1989, No. S371) Part 5 (ss. 26, 27): 1 Aug 1989 (see <i>Gazette</i> 1989, No. S262) Remainder: Royal Assent	Ss. 5(2), 12(2)-(5) and 17 S. 16(2) (am. by 66, 1991, s. 26)
<b>as amended by</b>				
<i>Industry, Technology and Commerce Legislation Amendment Act 1991</i>	66, 1991	15 June 1991	S. 26: Royal Assent (e)	—
<i>Industry, Technology and Commerce Legislation Amendment Act (No. 2) 1989</i>	10, 1990	17 Jan 1990	Ss. 3-10: 1 July 1989 (f) S. 11: 14 Feb 1990 (f)	—
<i>Australian Industry Development Corporation Amendment Act 1992</i>	169, 1992	11 Dec 1992	8 Jan 1993	S. 3(2)
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 27): Royal Assent (g)	—

## NOTES

### Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax (Consequential Amendments) Act 1997</i>	39, 1997	17 Apr 1997	Schedule 3 (items 4-11): [see (h) and Note 2]	—
<i>AIDC Sale Act 1997</i>	67, 1997	5 June 1997	Schedule 1: Royal Assent (i) Schedule 2 (items 2-4): [see (j), Note 3 and Table A]	Sch. 1 (items 48- 51) and Sch. 2 (items 3, 4) [see Table A]

## NOTES

### Act Note

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- (a) The *Australian Industry Development Corporation Act 1970* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(7) of which provides as follows:
- “(7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975.”
- (b) The *Australian Industry Development Corporation Act 1970* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:
- “(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.”
- (c) The *Australian Industry Development Corporation Act 1970* was amended by section 41 only of the *Conciliation and Arbitration Amendment Act (No. 2) 1983*, subsection 2(2) of which provides as follows:
- “(2) Sections 3, 6, 7, 8, 9, 10, 12, 14 and 16, subsection 22(3) and sections 27, 39, 40, 41 and 43 shall come into operation on a date, or respective dates, to be fixed by proclamation.”
- (d) The *Australian Industry Development Corporation Act 1970* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- “(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.”
- (e) The *Industry, Technology and Commerce Legislation Amendment Act 1989* was amended by section 26 only of the *Industry, Technology and Commerce Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- “(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.”
- (f) The *Australian Industry Development Corporation Act 1970* was amended by sections 3-11 only of the *Industry, Technology and Commerce Legislation Amendment Act (No. 2) 1989*, subsections 2(2) and (7) of which provide as follows:
- “(2) Sections 3, 4, 5, 6, 7, 8, 9 and 10, and Part 3, are to be taken to have commenced on 1 July 1989.
- “(7) The remaining provisions of this Act commence 28 days after this Act receives the Royal Assent.”
- (g) The *Australian Industry Development Corporation Act 1970* was amended by Schedule 4 (item 27) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- “(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.”
- (h) The *Australian Industry Development Corporation Act 1970* was amended by Schedule 3 (items 4-11) only of the *Income Tax (Consequential Amendments) Act 1997*, section 2 of which provides as follows:
- “2. This Act commences on 1 July 1997.” [see Note 2]
- (i) The *Australian Industry Development Corporation Act 1970* was amended by Schedule 1 and Schedule 2 (items 2-4) only of the *AIDC Sale Act 1997*, subsections 2(1) and (2) of which provide as follows:
- “(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- “(2) Schedule 2 commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister is satisfied that the Australian Industry Development Corporation has no assets and no liabilities.” [see Note 3 and Table A]







## NOTES

### Table of Amendments

#### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 3.....	rep. No. 216, 1973
S. 4.....	am. No. 216, 1973; No. 4, 1975; No. 92, 1981; No. 122, 1983; No. 125, 1988; No. 91, 1989; No. 67, 1997
Ss. 4A, 4B .....	ad. No. 125, 1988
S. 4C .....	ad. No. 67, 1997
S. 5.....	am. No. 122, 1983
S. 6.....	am. No. 4, 1975; No. 122, 1983; No. 125, 1988; No. 67, 1997
S. 7.....	am. No. 4, 1975; No. 121, 1980; No. 122, 1983; No. 125, 1988; No. 169, 1992; No. 67, 1997
S. 8.....	rs. No. 4, 1975 am. No. 121, 1980; No. 61, 1981; No. 122, 1983; No. 125, 1988; No. 67, 1997
S. 8A .....	ad. No. 4, 1975 am. No. 91, 1976; No. 36, 1978; No. 121, 1980; No. 122, 1983; No. 125, 1988; No. 67, 1997
S. 9.....	rs. No. 4, 1975 am. No. 121, 1980 rs. No. 67, 1997
S. 10.....	am. No. 4, 1975 rs. No. 122, 1983 am. No. 125, 1988
S. 10A .....	ad. No. 122, 1983 rep. No. 91, 1989
S. 11.....	rs. No. 4, 1975 am. No. 91, 1976; No. 36, 1978 rs. No. 122, 1983 am. No. 65, 1985; No. 125, 1988; No. 91, 1989; No. 169, 1992 rs. No. 67, 1997
S. 12.....	am. No. 122, 1983; No. 125, 1988; No. 91, 1989; No. 169, 1992 rep. No. 67, 1997
S. 13.....	am. No. 4, 1975 rep. No. 122, 1983 ad. No. 125, 1988 am. No. 169, 1992; No. 67, 1997
S. 14.....	am. No. 121, 1980 rep. No. 122, 1983 ad. No. 125, 1988
S. 14A .....	ad. No. 67, 1997
S. 15.....	am. No. 4, 1975; No. 121, 1980 rs. No. 122, 1983; No. 125, 1988
S. 15A .....	ad. No. 125, 1988

## NOTES

### Table of Amendments

ad. = added or inserted      am. = amended      rep. = repealed      rs. = repealed and substituted

Provision affected	How affected
S. 16.....	rs. No. 4, 1975 am. No. 91, 1976; No. 36, 1978 rs. No. 122, 1983 am. No. 125, 1988; No. 169, 1992; No. 43, 1996 rs. No. 67, 1997
S. 17.....	am. No. 4, 1975 rs. No. 122, 1983 am. No. 169, 1992 rep. No. 67, 1997
S. 18.....	am. No. 4, 1975 rs. No. 122, 1983 am. No. 125, 1988; No. 91, 1989; No. 169, 1992 rs. No. 67, 1997
S. 19.....	am. No. 4, 1975; No. 91, 1976; No. 36, 1978; No. 121, 1980 rs. No. 122, 1983 am. No. 125, 1988; No. 91, 1989; No. 169, 1992 rep. No. 67, 1997
S. 20.....	am. No. 4, 1975 rs. No. 122, 1983 am. No. 125, 1988; No. 67, 1997
S. 20A.....	ad. No. 122, 1983 am. No. 125, 1988; No. 169, 1992; No. 67, 1997
S. 20B.....	ad. No. 122, 1983 am. No. 125, 1988
S. 21.....	am. No. 4, 1975; No. 122, 1983; No. 125, 1988; No. 91, 1989; No. 169, 1992
S. 21A.....	ad. No. 4, 1975 am. No. 91, 1976; No. 36, 1978; No. 122, 1983; No. 65, 1985 rep. No. 125, 1988
S. 22.....	am. No. 4, 1975; No. 121, 1980; No. 125, 1988
S. 23.....	am. No. 4, 1975; No. 122, 1983; No. 125, 1988; No. 10, 1990; No. 67, 1997
S. 23A.....	ad. No. 122, 1983 am. No. 125, 1988; No. 10, 1990; No. 67, 1997
Part IIIA..... (ss. 23B-23H)	ad. No. 91, 1989
Ss. 23B-23H.....	ad. No. 91, 1989
S. 24.....	am. No. 4, 1975; No. 36, 1978; No. 121, 1980; No. 122, 1983 rs. No. 125, 1988
S. 24A.....	ad. No. 122, 1983 rs. No. 125, 1988; No. 67, 1997
S. 25.....	am. No. 125, 1988
S. 26.....	am. No. 122, 1983; No. 125, 1988
S. 26A.....	ad. No. 4, 1975 am. No. 36, 1978 rep. No. 61, 1981
S. 27.....	am. No. 4, 1975; No. 121, 1980; No. 122, 1983; No. 91, 1989; No. 67, 1997
S. 27A.....	ad. No. 4, 1975 am. No. 121, 1980

## NOTES

### Table of Amendments

ad. = added or inserted      am. = amended      rep. = repealed      rs. = repealed and substituted

Provision affected	How affected
S. 29.....	rs. No. 122, 1983 am. No. 125, 1988; No. 91, 1989
Part IVA ..... (ss. 29A-29Z, 29ZA-29ZK)	ad. No. 125, 1988
S. 29A .....	ad. No. 125, 1988 am. No. 91, 1989; No. 10, 1990
Ss. 29B-29L .....	ad. No. 125, 1988
S. 29LA .....	ad. No. 10, 1990
Ss. 29M-29V .....	ad. No. 125, 1988
S. 29W .....	ad. No. 125, 1988 am. No. 67, 1997
Ss. 29X, 29Y .....	ad. No. 125, 1988
S. 29Z.....	ad. No. 125, 1988 am. No. 10, 1990
S. 29ZA .....	ad. No. 125, 1988
S. 29ZB .....	ad. No. 125, 1988 am. No. 10, 1990
S. 29ZC .....	ad. No. 125, 1988
S. 29ZD .....	ad. No. 125, 1988 am. No. 91, 1989; No. 10, 1990
Ss. 29ZE-29ZK.....	ad. No. 125, 1988
Heading to Part V.....	rs. No. 67, 1997
S. 30.....	am. No. 4, 1975; No. 122, 1983; No. 67, 1997
S. 31.....	am. No. 122, 1983 rep. No. 115, 1983
S. 32.....	am. No. 122, 1983; No. 115, 1983 (as am. by No. 162, 1984)
S. 33.....	am. No. 4, 1975 rs. No. 122, 1983 am. No. 125, 1988; No. 169, 1992; No. 67, 1997
<b>Part VI</b>	
<b>Division 1</b>	
Div. 1 of Part VI ..... (ss. 33A-33D)	ad. No. 67, 1997
Ss. 33A-33D.....	ad. No. 67, 1997
<b>Division 2</b>	
Div. 2 of Part VI ..... (ss. 33E-33H)	ad. No. 67, 1997
Ss. 33E-33H.....	ad. No. 67, 1997
<b>Division 3</b>	
Div. 3 of Part VI ..... (ss. 33J, 33K, 33KA, 33L-33N)	ad. No. 67, 1997
Ss. 33J, 33K, 33KA, 33L-33N ...	ad. No. 67, 1997
<b>Division 4</b>	
Div. 4 of Part VI ..... (ss. 33P-33S)	ad. No. 67, 1997
Ss. 33P-33S.....	ad. No. 67, 1997

## NOTES

### Table of Amendments

ad. = added or inserted      am. = amended      rep. = repealed      rs. = repealed and substituted

Provision affected	How affected
<b>Division 5</b>	
Div. 5 of Part VI ..... (s. 33T)	ad. No. 67, 1997
S. 33T.....	ad. No. 67, 1997
<b>Division 6</b>	
Div. 6 of Part VI ..... (s. 33U)	ad. No. 67, 1997
S. 33U .....	ad. No. 67, 1997
<b>Division 7</b>	
Div. 7 of Part VI ..... (ss. 33V, 33W)	ad. No. 67, 1997
Ss. 33V, 33W .....	ad. No. 67, 1997
<b>Division 8</b>	
Div. 8 of Part VI ..... (s. 33X)	ad. No. 67, 1997
S. 33X .....	ad. No. 67, 1997
<b>Division 9</b>	
Div. 9 of Part VI ..... (ss. 33Y, 33Z, 34, 34A)	ad. No. 67, 1997
Ss. 33Y, 33Z .....	ad. No. 67, 1997
S. 34.....	rep. No. 122, 1983 ad. No. 67, 1997
S. 34A .....	ad. No. 67, 1997
<b>Division 10</b>	
Div. 10 of Part VI ..... (ss. 34B-34G)	ad. No. 67, 1997
Ss. 34B-34G.....	ad. No. 67, 1997
<b>Division 11</b>	
Div. 11 of Part VI ..... (ss. 34H-34M)	ad. No. 67, 1997
Ss. 34H-34M .....	ad. No. 67, 1997
<b>Division 12</b>	
Div. 12 of Part VI ..... (ss. 34N-34Z)	ad. No. 67, 1997
Ss. 34N-34Z.....	ad. No. 67, 1997
<b>Division 13</b>	
<b>Subdivision A</b>	
Subdiv. A of Div. 13 of Part VI ..... (ss. 34ZA-34ZC)	ad. No. 67, 1997
Ss. 34ZA-34ZC .....	ad. No. 67, 1997
<b>Subdivision B</b>	
Subdiv. B of Div. 13 of Part VI ..... (ss. 34ZD-34ZG)	ad. No. 67, 1997
Ss. 34ZD-34ZG .....	ad. No. 67, 1997
<b>Subdivision C</b>	

## NOTES

### Table of Amendments

ad. = added or inserted      am. = amended      rep. = repealed      rs. = repealed and substituted

Provision affected	How affected
Subdiv. C of Div. 13 of Part VI (ss. 34ZH-34ZM)	ad. No. 67, 1997
Ss. 34ZH-34ZM .....	ad. No. 67, 1997
<b>Subdivision D</b>	
Subdiv. D of Div. 13 of Part VI (ss. 34ZN, 34ZO)	ad. No. 67, 1997
Ss. 34ZN, 34ZO .....	ad. No. 67, 1997
<b>Subdivision E</b>	
Subdiv. E of Div. 13 of Part VI (s. 34ZP)	ad. No. 67, 1997
S. 34ZP .....	ad. No. 67, 1997
<b>Subdivision F</b>	
Subdiv. F of Div. 13 of Part VI (s. 34ZQ)	ad. No. 67, 1997
S. 34ZQ .....	ad. No. 67, 1997
<b>Division 14</b>	
Div. 14 of Part VI (ss. 34ZR-34ZW)	ad. No. 67, 1997
Ss. 34ZR-34ZW .....	ad. No. 67, 1997
<b>Division 15</b>	
Div. 15 of Part VI (s. 34ZX)	ad. No. 67, 1997
S. 34ZX .....	ad. No. 67, 1997
Heading to Part VII .....	ad. No. 67, 1997
S. 35 .....	am. No. 216, 1973; No. 4, 1975 rs. No. 122, 1983 am. No. 11, 1987; No. 10, 1990; No. 169, 1992; No. 67, 1997
S. 36 .....	rs. No. 122, 1983 am. No. 125, 1988
S. 36A .....	ad. No. 4, 1975 am. No. 61, 1981 rep. No. 122, 1983 ad. No. 67, 1997
S. 37 .....	am. No. 216, 1973; No. 4, 1975; No. 36, 1978; No. 121, 1980; No. 61, 1981; No. 122, 1983; No. 125, 1988; No. 91, 1989; No. 67, 1997
S. 37A .....	ad. No. 67, 1997
S. 38 .....	ad. No. 4, 1975

## NOTES

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2. The *Australian Industry Development Corporation Act 1970* was amended by Schedule 3 (items 4-11) only of the *Income Tax (Consequential Amendments) Act 1997*. The applicable provisions provide as follows:

### **Schedule 3**

#### **4 Section 29A (definition of *income tax*)**

After "*Income Tax Assessment Act 1936*", insert "or the *Income Tax Assessment Act 1997*".

#### **5 Paragraph 29Z(3)(d)**

After "*Income Tax Assessment Act 1936*", insert "and the *Income Tax Assessment Act 1997*".

#### **6 Section 29ZA**

After "that Act)", insert "and the *Income Tax Assessment Act 1997*".

#### **7 Subsection 29ZB(1)**

After "*Income Tax Assessment Act 1936*", insert "or the *Income Tax Assessment Act 1997* (as appropriate)".

#### **8 Subsection 29ZB(1)**

Omit "that Act", substitute "either of those Acts".

#### **9 Subsection 29ZB(2)**

After "*Income Tax Assessment Act 1936*", insert "or the *Income Tax Assessment Act 1997*".

#### **10 Subsection 29ZB(2)**

Omit "that Act", substitute "either of those Acts".

#### **11 Subsection 29ZB(3)**

After "*Income Tax Assessment Act 1936*", insert "or the *Income Tax Assessment Act 1997* (as appropriate)".

Section 2 of the *Income Tax (Consequential Amendments) Act 1997* provides as follows:

"2. This Act commences on 1 July 1997."

As at 26 June 1997 the amendments are not incorporated in this reprint.

3. The *Australian Industry Development Corporation Act 1970* was amended by Schedule 2 (item 2) of the *AIDC Sale Act 1997*. The applicable provisions provide as follows:

### **Schedule 2**

#### **2 The whole of the Act**

Repeal the Act.

Subsection 2(2) of the *AIDC Sale Act 1997* provides as follows:

"(2) Schedule 2 commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister is satisfied that the Australian Industry Development Corporation has no assets and no liabilities."

As at 26 June 1997 no date had been fixed and the amendment is not incorporated in this reprint.

TABLE A

Application, Saving or Transitional Provisions

*AIDC Sale Act 1997* (No. 67, 1997)

**Schedule 1**

**48 Transitional—appointment of Chairman**

- (1) This item applies to the person who was the Chairman immediately before the commencement of this item.
- (2) The *Australian Industry Development Corporation Act 1970* has effect as if the Minister had, by instrument under section 11 of that Act, appointed the person as the Chairman with effect from the commencement of this item.

**49 Transitional—appointment of Chief Executive**

- (1) This item applies to the person who was the Chief Executive immediately before the commencement of this item.
- (2) The *Australian Industry Development Corporation Act 1970* has effect as if the Board had, by instrument under section 13 of that Act, appointed the person as the Chief Executive with effect from the commencement of this item.

**50 Transitional—appointment of ordinary Directors**

- (1) This item applies to a person (other than the Chairman or the Chief Executive) who was a Director immediately before the commencement of this item.
- (2) The *Australian Industry Development Corporation Act 1970* has effect as if the Minister had, by instrument under section 11 of that Act, appointed the person as an ordinary Director with effect from the commencement of this item.

**51 Transitional—section 9 and paragraph 19(3)(b) of the *Australian Industry Development Corporation Act 1970***

If Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* does not commence before the day on which this Act receives the Royal Assent, the amendments of section 9 and paragraph 19(3)(b) of the *Australian Industry Development Corporation Act 1970* made by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* are taken never to have commenced.

**Schedule 2—Abolition of the Australian Industry Development Corporation**

**3 Transitional—taxation matters**

Despite the repeal of sections 29Z, 29ZA, 29ZB and 29ZC of the *Australian Industry Development Corporation Act 1970* by this Schedule, those sections continue to apply, in relation to AIDC Ltd, as if those repeals had not happened.

**4 Transitional—references in instruments**

Despite the repeal of sections 29J, 33E, 33K, 33L, 33M, 33P, 33Q and 33R of the *Australian Industry Corporation Act 1970* by this Schedule, those sections continue to apply, in relation to references in instruments, as if those repeals had not happened.

