Australian Film Commission Amendment Act 2003

Act No. 59 of 2003 as amended

This compilation was prepared on 18 July 2005

[This Act was amended by Act No. 100 of 2005]

Amendment from Act No. 100 of 2005

[Schedule 2 (item 8) amended item 12 of Schedule 1
[Schedule 2 (item 8) commenced immediately after 1 July 2003]

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Contents

1 Short title....1
2 Commencement....1
3 Schedule(s)....1

Schedule 1—Amendment of the Australian Film Commission Act 1975 1

Part 1—Amendments 1

Part 2—Transitional provisions 10

An Act to amend the *Australian Film Commission Act 1975*, and for related purposes

[*Assented to 30 June 2003*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Film Commission Amendment Act 2003*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	30 June 2003
2. Schedule 1	1 July 2003	1 July 2003

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

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Australian Film Commission Act 1975

Part 1—Amendments

1 Subsection 3(1)

Insert:

> ***CEO*** or ***Chief Executive Officer*** means the CEO of the Commission appointed by the Minister under section 28B.

2 Subsection 3(1) (definition of *Deputy Chair*)

Omit "the Deputy Chair", substitute "a Deputy Chair".

3 Subsection 3(1)

Insert:

> ***First Deputy Chair*** means the person who, under section 19, is the First Deputy Chair of the Commission.

4 Subsection 3(1)

Insert:

> ***national collection*** means:
>
> (a) the programs that are owned by, or are in the possession of, the Commission from time to time; and
>
> (b) all material associated with programs that is owned by, or is in the possession of, the Commission from time to time.

5 Subsection 3(1)

Insert:

> ***Second Deputy Chair*** means the person who, under section 19, is the Second Deputy Chair of the Commission.

6 At the end of paragraph 5(1)(a)

Add "and".

7 At the end of paragraph 5(1)(b)

Add "and".

8 At the end of subsection 5(1)

Add:

; and (e) to develop, maintain and preserve a national collection; and

(f) to exhibit, or to make available for exhibition by others, items in the national collection; and

(g) to make items in the national collection available to such persons and institutions, and in such manner and subject to such conditions, as the Commission determines.

9 After subsection 5(1A)

Insert:

(1B) The Commission must use every endeavour to make the most advantageous use of the national collection in the national interest.

10 After subsection 6(1)

Insert:

(1A) Without limiting subsection (1), the Commission also has the following powers in relation to the national collection:

(a) to purchase programs or material associated with programs, to take programs or material associated with programs on hire and to accept programs or material associated with programs on deposit or loan or as a gift; and

(b) to make programs or material associated with programs available by hire, loan, sale or otherwise.

(1B) Without limiting subsection (1), the Commission may make available services in relation to programs or material associated with programs. The Commission may charge fees for the services, but such fees must be approved in writing by the Minister.

Note: Under subsection 33(3A) of the *Acts Interpretation Act 1901*, services may be specified by reference to a particular class or classes of service.

11 At the end of section 6

Add:

(5) The annual report on the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997*, in respect of a financial year, must include particulars of all disposals of items in the national collection during that financial year that the Commission considers were significant items in the national collection.

(6) The annual report of the Commission under section 9 of the C*ommonwealth Authorities and Companies Act 1997*, in respect of a financial year, must include a report of the operations relating to the national collection.

12 Subsection 14(1)

Omit "or to a member of the staff of the Commission", substitute ", to the CEO or to a member of the staff of the Commission".

13 Subsection 19(1)

Omit "the Deputy Chair", substitute "a Deputy Chair".

14 After subsection 19(1)

Insert:

(1A) The Governor-General may appoint a maximum of 2 Deputy Chairs.

(1B) Subsections (1C), (1D) and (1E) set out the rules as to seniority of Deputy Chairs.

(1C) If there is only one Deputy Chair at a particular time, that person is the First Deputy Chair of the Commission.

(1D) Subject to any determination made by the Minister under subsection (1E), if there are 2 Deputy Chairs at a particular time:

(a) the Deputy Chair appointed earliest in time is the First Deputy Chair of the Commission; and

(b) the other Deputy Chair is the Second Deputy Chair of the Commission.

(1E) If there are 2 Deputy Chairs at a particular time, the Minister may determine which of the 2 Deputy Chairs is to be the First Deputy Chair of the Commission. The Deputy Chair who is the subject of the determination is the First Deputy Chair of the Commission and

the other Deputy Chair is the Second Deputy Chair of the Commission.

Note: The heading to section 19 is altered by omitting "**Chairman**" and substituting "**Chair**".

15 Subsection 19(2)

Omit "Deputy Chair", substitute "a Deputy Chair".

16 Subsection 19(3)

Repeal the subsection, substitute:

(3) If:

(a) a person ceases to be a Deputy Chair because the period of his or her appointment as a member has expired; and

(b) the person is re-appointed as a member;

then he or she is eligible for re-appointment as a Deputy Chair.

17 Subsection 19(4)

Omit "The Deputy", substitute "A Deputy".

18 Paragraph 20(3)(a)

Omit "Deputy Chair shall act", substitute "First Deputy Chair must act".

19 Paragraph 20(3)(b)

Repeal the paragraph, substitute:

(b) if the First Deputy Chair is not available to act in the place of the Chair, the Second Deputy Chair (if any) must act during the absence or inability of the First Deputy Chair; or

(c) if:

(i) there is no Deputy Chair; or

(ii) a Deputy Chair is not available to act in the place of the Chair;

the Minister may appoint a member to act in the place of the Chair during the absence or inability of the Chair. Any such appointment ceases to have effect if a person is appointed in the place of a Deputy Chair or a Deputy Chair becomes available to act in the place of the Chair.

20 Section 26

Repeal the section.

21 Subsection 28(5)

Omit "Deputy Chair", substitute "most senior Deputy Chair present (see section 19 for the rules as to seniority of Deputy Chairs)".

22 Subsection 28(6)

Omit "and the Deputy Chair", substitute ", the First Deputy Chair of the Commission and the Second Deputy Chair of the Commission".

23 Before section 29

Insert:

Division 1—CEO

28A CEO to manage Commission

The CEO is responsible for managing the affairs of the Commission. Except in relation to the CEO's powers under the *Public Service Act 1999*, the CEO is to act in accordance with any written direction given by the Commission to him or her.

28B Appointment of CEO

(1) The CEO is to be appointed by the Minister by written instrument.

(2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(3) The CEO is to be appointed on a full-time basis.

(4) The CEO is eligible for reappointment.

28C Remuneration and allowances of CEO

(1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.

(2) The CEO is to be paid the allowances that are prescribed by the regulations.

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

28D Leave of absence

(1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions, as to remuneration or otherwise, that the Minister determines in writing.

(3) The Chair may grant the CEO leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chair determines, if the period of leave of absence is less than 5 working days.

28E Resignation

The CEO may resign his or her appointment by giving the Minister a written resignation.

28F Disclosure of interests

The CEO must give written notice to the Minister, and to the Commission, of all interests, pecuniary or otherwise, that the CEO has or acquires and that could conflict with the proper performance of the CEO's duties.

28G Outside employment

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

28H Termination of appointment

Misbehaviour or incapacity

(1) The Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.

Bankruptcy etc.

(2) The Minister must terminate the appointment of the CEO if:
  (a) the CEO:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  (b) the CEO is absent, except on leave of absence granted under section 28D, for 14 consecutive days, or for 28 days in any 12 months; or
  (c) the CEO fails, without reasonable excuse, to comply with section 28F; or
  (d) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

Invalidity

(3) In spite of anything contained in this section, if the CEO:
  (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  (b) has not reached his or her maximum retiring age within the meaning of that Act;

then he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

(4) In spite of anything contained in this section, if the CEO:
  (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;

then he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

28J Other terms and conditions

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

28K Acting CEO

(1) The Minister may appoint a person to act as the CEO:

(a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the CEO is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(2) Anything done by a person purporting to act under an appointment under subsection (1) is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

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

Division 2—Staff of Commission

24 At the end of section 29

Add:

(3) The Commission's staff may also include persons engaged under the *Public Service Act 1999*.

(4) For the purposes of the *Public Service Act 1999*:

(a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and

(b) the CEO is the Head of the Statutory Agency.

Part 2—Transitional provisions

25 Definitions

In this Part:

commencement day means the day on which this Schedule commences.

Commonwealth program means an administrative program conducted by or on behalf of the Commonwealth.

ScreenSound Australia means the Commonwealth program administered by the Commonwealth Department of Communications, Information Technology and the Arts immediately before the commencement day that was generally known as "ScreenSound Australia" or "ScreenSound Australia—The National Screen and Sound Archive".

26 Appointment of CEO

The person who, immediately before the commencement day:

(a) was a member of the staff of the Commission; and

(b) was holding the position that was then known as the "Chief Executive Officer of the Commission";

is taken to be appointed under subsection 28B(1) of the *Australian Film Commission Act 1975* as amended by this Act, as the CEO of the Commission. Subject to the *Australian Film Commission Act 1975* as amended by this Act, the appointment has effect on and from the commencement day until 31 December 2005.

27 Transfer of assets from Commonwealth to the Commission

(1) The Minister may, in writing, make any or all of the following declarations in relation to an asset of the Commonwealth that relates to ScreenSound Australia:

(a) a declaration that the asset vests in the Commission at a specified time without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the asset continues to have effect after a specified time as if a

reference in the instrument to the Commonwealth were a reference to the Commission;

(c) a declaration that the Commission becomes the Commonwealth's successor in law in relation to the asset immediately after a specified time.

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

(2) The declaration has effect accordingly.

(3) A copy of a declaration under this item is to be published in the *Gazette* within 14 days after the making of the declaration.

(4) In this item:

asset includes a right that the Commonwealth has in relation to intellectual property (e.g. a licence).

28 Transfer of liabilities from Commonwealth to the Commission

(1) The Minister may, in writing, make any or all of the following declarations in relation to a liability of the Commonwealth that relates to ScreenSound Australia:

(a) a declaration that the liability vests in the Commission at a specified time without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the liability continues to have effect after a specified time as if a reference in the instrument to the Commonwealth were a reference to the Commission;

(c) a declaration that the Commission becomes the Commonwealth's successor in law in relation to the liability immediately after a specified time.

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

(2) The declaration has effect accordingly.

(3) A copy of a declaration under this item is to be published in the *Gazette* within 14 days after the making of the declaration.

29 Transfer of contractual rights and obligations from Commonwealth to the Commission

(1) The Minister may, in writing, declare that the Commonwealth's rights and obligations under a specified ScreenSound contract:

(a) cease to be rights and obligations of the Commonwealth at a specified time; and

(b) become rights and obligations of the Commission at that time.

(2) The Minister may, in writing, declare that a specified ScreenSound contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to the Commission.

(3) The Minister may, in writing, declare that a specified instrument relating to a specified ScreenSound contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of the Commission, as if a reference in the instrument to the Commonwealth were a reference to the Commission.

(4) The Minister may, in writing, declare that the Commission becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified ScreenSound contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the Commission.

(5) A declaration under this item has effect accordingly.

(6) A copy of a declaration under this item is to be published in the *Gazette* within 14 days after the making of the declaration.

(7) In this item:

ScreenSound contract means a contract (other than a contract of employment):

(a) to which the Commonwealth is a party; and

(b) that relates to ScreenSound Australia.

Note: Section 72 of the *Public Service Act 1999* allows the Public Service Commissioner to move APS employees from the Department of Communications, Information Technology and the Arts to the Commission. The employees remain APS employees.

30 Arrangement or transfer under items 27, 28 and 29 valid

For the avoidance of doubt, if a thing that is the subject of a transfer or arrangement under item 27, 28 or 29 could also have been the subject of a transfer or arrangement under another item, the transfer or arrangement is valid even though the thing is not also the subject of a transfer or arrangement under that other item.

31 Exemption from stamp duty etc.

(1) No stamp duty or other tax is payable under a law of a State or Territory in respect of an exempt matter, or anything connected with an exempt matter.

(2) The Minister may certify in writing:

(a) that a specified matter is an exempt matter; or

(b) that a specified thing was done in connection with a specified exempt matter.

(3) In all courts, and for all purposes, a certificate under subitem (2) is evidence of the matter stated in the certificate.

(4) In this item:

exempt matter means a transfer or an arrangement under item 27, 28 or 29.

32 Transfer of records

(1) The Secretary of the Department may transfer to the Commission records that relate to ScreenSound Australia.

(2) This item does not authorise a Commonwealth record to be transferred, or otherwise dealt with, except in accordance with the *Archives Act 1983*.

(3) In this item:

Commonwealth record and ***record*** have the same meanings as in the *Archives Act 1983*.