



Australian Astronomical Observatory (Transitional Provisions) Act 2010

No. 12, 2010

**An Act to deal with transitional matters in
connection with the enactment of the *Australian
Astronomical Observatory Act 2010*, and for other
purposes**

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

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**An Act to deal with transitional matters in
connection with the enactment of the *Australian
Astronomical Observatory Act 2010*, and for other
purposes**

[Assented to 11 March 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Astronomical Observatory
(Transitional Provisions) Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 March 2010
2. Schedules 1 and 2	At the same time as the <i>Australian Astronomical Observatory Act 2010</i> commences.	1 July 2010

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

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

3 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Repeal of the Anglo-Australian Telescope Agreement Act 1970

Anglo-Australian Telescope Agreement Act 1970

1 The whole of the Act

Repeal the Act.

Schedule 2—Transitional provisions

Part 1—Introduction

1 Definitions

In this Schedule:

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;

but does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

assets official, in relation to an asset other than land, means the person or authority who, under:

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

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

Board means the Anglo-Australian Telescope Board that was established by the *Anglo-Australian Telescope Agreement Act 1970*.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

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, but does not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act.

responsible financial officer means a person appointed under item 15.

Secretary means the Secretary of the Department.

transition time means the commencement of this Schedule.

Part 2—Transfer of assets and liabilities

2 Vesting of assets of Board

- (1) This item applies to the assets of the Board immediately before the transition time.
- (2) At the transition time, the assets cease to be assets of the Board and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

3 Vesting of liabilities of Board

- (1) This item applies to the liabilities of the Board immediately before the transition time.
- (2) At the transition time, the liabilities cease to be liabilities of the Board and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liabilities.

4 Transfers of land may be registered

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Part; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Part.
 - (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 certificate under paragraph (1)(b) is not a legislative instrument.
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5 Certificates relating to vesting of assets other than land

- (1) This item applies if:
 - (a) any asset other than land vests in the Commonwealth under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Part.
- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

Part 3—Transfer of other matters

6 Transitional—acts of the Board to be attributed to the Commonwealth

- (1) This item applies to anything done by, or in relation to, the Board before the transition time.
- (2) After the transition time, the thing has effect as if it had been done by, or in relation to, the Commonwealth.

7 Substitution of Commonwealth as a party to certain pending proceedings

- (1) This item applies if any proceedings to which the Board was a party were pending in any court or tribunal immediately before the transition time.
- (2) The Commonwealth is substituted for the Board, from the transition time, as a party to the proceedings.

8 Transitional—transfer of records to the Department

- (1) This item applies to any records or documents that were in possession of the Board immediately before the transition time.
- (2) The records and documents are to be transferred to the Department after the transition time.

9 Transitional—transfer of Ombudsman investigations

If:

- (a) before the transition time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to an action taken by the Board; and
- (b) immediately before transition time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the transition time as if that action had been taken by the Department.

10 References in certain instruments to the Board

- (1) If:
- (a) an instrument was in force immediately before the transition time; and
 - (b) the instrument is an instrument covered by one or more of the following subparagraphs:
 - (i) an instrument that was made by the Board;
 - (ii) an instrument to which the Board was a party;
 - (iii) an instrument that was given to, or in favour of, the Board;
 - (iv) an instrument under which any right or liability accrues or may accrue to the Board;
 - (v) any other instrument in which a reference is made to the Board;

the reference has effect after the transition time as if it were a reference to the Commonwealth.

- (2) In this item:

instrument:

- (a) includes:
 - (i) a contract, deed, undertaking or agreement; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or under regulations; but
- (b) does not include an exempt instrument.

exempt instrument means:

- (a) an Act; or
- (b) an instrument made under this Act; or
- (c) the *Long Service Leave (Commonwealth Employees) Regulations 1957*; or
- (d) the *Freedom of Information (Miscellaneous Provisions) Regulations 1982*; or
- (e) the *Superannuation Benefit (Interim Arrangement) (Qualified Employees) Regulations*; or
- (f) the *Superannuation (CSS) Approved Authority Declaration 1995*; or

(g) the *Superannuation (CSS) Transfer Arrangements Regulations*.

11 Transfer of appropriated money

- (1) For the purposes of the operation of an Appropriation Act after the transition time, references to the Board are to be read as references to the Department.
- (2) In this item:
Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

Part 4—Finance and annual report

12 Audit

- (1) Despite the repeal of section 14 of the *Anglo-Australian Telescope Agreement Act 1970*, that section continues to apply, in relation to an inspection and audit carried out in respect of a financial year that began on or before 1 July 2009, as if that section had not been repealed.
- (2) Subitem (1) has effect subject to the following subitems.
- (3) A reference in that section to records of the Board includes a reference to records transferred to the Department under item 8 of this Schedule.
- (4) A reference in that section to an employee of the Board includes a reference to an APS employee in the Department.

13 Final financial statements

- (1) Despite the repeal of section 19 of the *Anglo-Australian Telescope Agreement Act 1970*, that section continues to apply, in relation to financial statements for the financial year that began on 1 July 2009, as if that section had not been repealed.
- (2) However, the obligation to prepare and provide those financial statements is imposed on the responsible financial officer instead of the Board.

14 Final annual report

- (1) The responsible financial officer must, as soon as practicable after the end of the financial year that began on 1 July 2009, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Board during that year.
- (2) The report under subitem (1) is taken to be a periodic report for the purposes of section 34C of the *Acts Interpretation Act 1901*.

15 Responsible financial officer

- (1) The Secretary may, by writing, appoint a person as the responsible financial officer for the purposes of this Schedule.
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- (2) The Secretary must not appoint a person under subsection (1) unless the person:
- (a) is an SES employee or acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position.

Note: *SES employee* is defined in section 17AA of the *Acts Interpretation Act 1901*.

Part 5—Employees of the Board

16 Terms and conditions of employment

Transferring employees

- (1) For the purposes of this item, a person is a *transferring employee* if:
- (a) the person was employed by the Board immediately before the transition time; and
 - (b) the person is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become an APS employee (other than an SES employee) in the Department.
- (2) If:
- (a) a person is a transferring employee; and
 - (b) immediately before the transition time, the person's employment by the Board was covered by a designated agreement;
- then:
- (c) the designated agreement covers the Commonwealth and the transferring employee in relation to AAO work; and
 - (d) while the designated agreement covers the Commonwealth and the transferring employee in relation to AAO work, no other enterprise agreement, modern award or award-based transitional instrument covers the transferring employee in relation to AAO work; and
 - (e) the designated agreement has effect after the transition time, in relation to the transferring employee's AAO work, as if it had been made with the Secretary on behalf of the Commonwealth; and
 - (f) if the transferring employee becomes an SES employee after the transition time—paragraphs (c), (d) and (e) cease to apply in relation to the transferring employee.

New employees

- (3) For the purposes of this item, a person is a **new employee** if:
- (a) the person is an APS employee (other than an SES employee) in the Department; and
 - (b) the person performs AAO work; and
 - (c) the person is not a transferring employee.
- (4) If:
- (a) a designated agreement covers the Commonwealth because of subitem (2); and
 - (b) after the transition time, a person becomes a new employee;
- then:
- (c) the designated agreement covers the Commonwealth and the new employee in relation to AAO work; and
 - (d) while the designated agreement covers the Commonwealth and the new employee in relation to AAO work, no other enterprise agreement, modern award or award-based transitional instrument covers the new employee in relation to AAO work.

Definitions

- (5) In this item:
- AAO work**, in relation to an employee, means work performed after the transition time by the employee within the Australian Astronomical Observatory.
- award-based transitional instrument** has the same meaning as in Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
- designated agreement** means:
- (a) the *AATB Enterprise Agreement 2007-2010*; or
 - (b) an enterprise agreement.
- enterprise agreement** has the same meaning as in the *Fair Work Act 2009*.
- modern award** has the same meaning as in the *Fair Work Act 2009*.

17 Accrued entitlements

- (1) This item applies to a person if:
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- (a) the person was employed by the Board immediately before the transition time; and
 - (b) the person is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become an APS employee in the Department.
- (2) The person is taken to have accrued an entitlement to benefits, in connection with the person's employment as an APS employee, that is equivalent to the entitlement that the person had as an employee of the Board immediately before the transition time.
- (3) The service of the person as an employee of the Board is taken, for all purposes, to have been continuous with his or her service as an APS employee.

18 Long service leave

- (1) This item applies to a person if:
 - (a) the person was employed by the Board immediately before the transition time; and
 - (b) the person is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become an APS employee in the Department.
- (2) The *Long Service Leave (Commonwealth Employees) Act 1976* has effect, in relation to the person, as if a period during which the person was employed by the Board were a period during which the person was employed in Government Service.

19 *Safety, Rehabilitation and Compensation Act 1988*— rehabilitation provisions

- (1) This item applies if, before the transition time, an employee of the Board suffered an injury resulting in an incapacity for work or an impairment.

- (2) Sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* apply after the transition time, in relation to the injury, as if the employee were employed by the Department.

Note: The main effect of subitem (2) is that sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* apply in relation to the employee's injury as if the Secretary of the Department were the rehabilitation authority.

- (3) After the transition time, the Department is, for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*, taken to be the relevant employer of the employee.

Part 6—Miscellaneous

20 Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
 - (a) the vesting of an asset or liability under this Schedule; or
 - (b) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

21 Constitutional safety net

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:

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.

22 Certificates taken to be authentic

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

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

23 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to a person.
- (2) The delegate must be:
 - (a) the Secretary; or
 - (b) an SES employee, or acting SES employee, in the Department.

Note: *SES employee* is defined in section 17AA of the *Acts Interpretation Act 1901*.

- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

24 Transitional—regulations

The Governor-General may make regulations in relation to transitional matters arising out of the repeal of the *Anglo-Australian Telescope Agreement Act 1970*.

[*Minister's second reading speech made in—
House of Representatives on 25 November 2009
Senate on 25 February 2010*]

(235/09)

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