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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN TRADE COMMISSION LEGISLATION AMENDMENT BILL  
2006**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Trade,  
the Honourable Mark Vaile MP)

## AUSTRALIAN TRADE COMMISSION LEGISLATION AMENDMENT BILL 2006

### OUTLINE

The Australian Trade Commission Amendment Bill 2006 (referred to in this Explanatory Memorandum as the “**Bill**”) implements the executive management corporate governance model as per Mr John Uhrig’s Review of *Corporate Governance of Statutory Authorities and Office Holders*.

The *Australian Trade Commission Act 1985* establishes the Australian Trade Commission and defines the organisation structure and operational framework. This Bill is required to enact revised governance arrangements in the enabling legislation.

The effect of the Bill will be to transition the Australian Trade Commission from a statutory authority under the *Commonwealth Authorities and Companies Act 1997* to a statutory agency which will be part of the Commonwealth and subject to the *Public Service Act 1999* and a prescribed agency under the *Financial Management and Accountability Act 1997*.

These changes do not amend the functions or objectives of the Australian Trade Commission, or service delivery to Australian business or the community. The Bill includes transitional arrangements that will ensure these governance changes do not disrupt service delivery.

These amendments are part of the Government’s response to the *Review of the Corporate Governance of Statutory Authorities and Office Holders*, which examined and reported on improving the structures and the governance practices of such entities. The Government assessed the Australian Trade Commission’s governance arrangements against the principles and recommendations of the report, identifying that an executive management structure and operation under the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999* would be consistent with Mr Uhrig’s findings.

The changes will improve governance and accountability in the Australian Trade Commission.

### FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.

## ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

Act, unless the context indicates otherwise, means the *Australian Trade Commission Act 1985*;

CEO means Chief Executive Officer;

Commission means the Australian Trade Commission as set out in section 7(2) of the Act;

EMDG Legislation Amendment Bill means the Export Market Development Grants Legislation Amendment Bill 2006;

Old Commission means the Australian Trade Commission as established by the Act in its form immediately prior to the commencement of this Bill;

Uhrig Review means the *Review of Corporate Governance of Statutory Authorities and Office Holders* as released by Mr John Uhrig AC.

## NOTES ON CLAUSES

### Clause 1 – Short title

Clause 1 is a formal provision specifying the short title.

### Clause 2 – Commencement

Clause 2(1) of the Bill provides that each provision of the Bill 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 is taken to have effect according to its terms.

The table provides that Schedules of the Bill have varying and dependent commencement times. The reason for this requirement is the significant cross-referencing between the *Australian Trade Commission Act 1985* and the *Export Market Development Grants Act 1997*. Amendments are proposed to both Acts through the Export Market Development Grants Legislation Amendment Bill and this Bill. Both Bills are likely to be under consideration by the Parliament at the same time and there is a consequential relationship between the order and timing of required amendments. Given that the consideration of these Bills is subject to Parliamentary process, the Schedules are drafted and timed to ensure that regardless of which Bill commences first, the resulting amendments in both Acts will accurately enact the intentions of both Bills, as, and if, they commence.

Item 1 of the table provides that section 1 to 3 and anything in the Act not elsewhere mentioned in the table commence on the day on which the Act receives Royal Assent.

Item 2 of the table provides that Schedule 1, Part 1 of the Bill commence on a single day to be fixed by Proclamation (the reference to a “single day” means that all of the provisions must be Proclaimed to commence at the same time). The amendments in this Part relate to the governance amendments required to the Act.

Item 3 of the table provides that Schedule 1, Part 2 will commence at the same time as those items in Schedule 1, Part 1, unless the EMDG Legislation Amendment Bill 2006 commences before that time. In the event that the Export Market Development Grants Legislation Amendment Bill commences before this Bill, the amendments in this part will not be required.

Item 4 of the table provides that Schedule 2, Part 1 of the Bill will commence at the same time as Schedule 1, Part 1. This part of the Bill relates to the consequential amendments required in the *Export Market Development Grants Act 1997* that are not impacted by any amendments proposed in the EMDG Legislation Amendment Bill so should commence at the same time as Schedule 1, Part 1.

Item 5 of the table provides that Schedule 2, Part 2, Division 1 will commence as soon as possible after the EMDG Legislation Amendment Bill 2006 commences and, after Schedule 1, Part 1 of this Bill commences. These amendments, like those in Item 4, are consequential in nature, but amend sections of the legislation that will themselves

be amended by the EMDG Legislation Amendment Bill 2006 so are dependent upon the commencement of that Bill.

Item 6 of the table provides that Schedule 2, Part 2, Division 2, will commence at the same time as Schedule 1, Part 1, unless the EMDG Legislation Amendment Bill 2006 has already commenced, in which case, these amendments will not commence at all.

Item 7 of the table provides that Schedules 3 and 4, relating to consequential amendments in Acts other than the *Export Market Development Grants Act 1997*, and the provisions required to enact a smooth transition to the new arrangements, will commence at the same time as Schedule 1, Part 1.

### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1, Part 1 relates to amendments to the Act that are required to enact the changes in the Australian Trade Commission's governance arrangements and legislative framework, regardless of the sequence of amendments enacted through the EMDG Legislation Amendment Bill 2006.

Schedule 1, Part 2 outlines amendments to the Act required if the Bill commences before the EMDG Legislation Amendment Bill. Schedule 2, Part 1 contains consequential amendments to the *Export Market Development Grants Act 1997* that are enacted regardless of the timing of the EMDG Legislation Amendment Bill 2006. Part 2 of Schedule 2 outlines amendments to the *Export Market Development Grants Act 1997* that will be required once the EMDG Legislation Amendment Bill 2006 come into effect. Schedule 2, Part 2, Division 2 details amendments that do not commence if the EMDG Legislation Amendment Bill 2006 commences before this Bill.

Schedule 3 of the Bill includes the consequential amendments required in Acts other than the *Export Market Development Grants Act 1997*, whilst Schedule 4 contains transitional provisions to ensure that governance changes do not disrupt the Australian Trade Commission's service delivery operations and to cover other transitional issues such as satisfying reporting obligations.

## **Schedule 1 – Amendment of the Australian Trade Commission Act 1985**

### **Part 1 – Main Amendments**

#### **Item 1 – Part 1 (heading)**

This item amends the numbering of the title of the part from Roman numerals to Arabic numerals consistent with current drafting practice.

#### **Item 2 – Subsection 3(1)**

This item is required to ensure that the terms defined for the purposes of the Act reflect the revised Governance arrangements enacted by the Bill.

This item repeals definitions that relate to terms used in sections of the Act that are being repealed. This includes definitions of the Board and Board members, the Managing Director and Deputy Managing Director, and terms referred to in conferring powers or financial functions on the Commission that will no longer be required under the *Financial Management and Accountability Act 1997*.

This item repeals the definition of ‘appoint’ on the basis that this definition is suitably provided for in the *Acts Interpretation Act 1901*.

This item creates a definition for the new position of the Chief Executive Officer (CEO) reflecting the transition to an executive management structure.

#### **Item 3 – Subsection 3(2)**

This item repeals provisions that relate to activities or powers that were conferred on the Australian Trade Commission as a body corporate under the *Commonwealth Authorities and Companies Act 1997*. As a statutory agency that is part of the Commonwealth, the Commission will not deal with securities, not be involved in legally binding partnerships, consortiums or business associations except on behalf of the Commonwealth, and these subsections are no longer required.

The remaining subsection is consistent with former provisions of the Act (3(2)(d)).

#### **Item 4 – Subsection 3(3)**

This item repeals provisions that confirm actions undertaken in administering the *Export Market Development Grants Act 1997*, or activities associated with functions conferred by any other Act, are to be considered as done by the Australian Trade Commission. This provision is no longer necessary as the inclusion of administering the *Export Market Development Grants Act 1997* as a function of the CEO of the Commission is a clear connection that acts undertaken in administering that Act are considered actions of the Commission.

#### **Item 5 – At the end of section 3**

This item intends to remove any ambiguity to references in other Acts to employees of the Australian Trade Commission. For the purposes of such Acts, that include the *Consular Fees Act 1955*, the *Bankruptcy Act 1966*, the *Marriage Act 1961*, the *Evidence Act 1995*, the *Federal Court of Australia Act 1976*, and the *Federal*

*Magistrates Act 1999*, the effect of this item is to clarify that such references relate only to employees of the Australian Trade Commission engaged under section 74 of the *Public Service Act 1999*. All other staff of the Commission employed under sections 22 or 72 of the *Public Service Act 1999* are deemed to be covered in these Acts by provisions that relate to ‘employees of the Commonwealth’.

#### **Item 6 –Part II (heading)**

This item amends the numbering of the title of the part from Roman numerals to Arabic numerals consistent with current drafting practice.

This item also amends the title to accurately reflect that the ‘Australian Trade Commission’ has one function, rather than many, and that is to assist the CEO in delivering his or her functions.

#### **Item 7 – Subsections 7(2), (3), and (4)**

This item repeals the Australian Trade Commission’s body corporate status. The Commission is not a body corporate and has no legal personality separate from the Commonwealth. The Australian Trade Commission consists of the CEO and all staff engaged under section 60 of the Act.

#### **Item 8 – After section 7**

This item establishes a new Part 3 of the Act, “Establishment and functions of the CEO”, which contains provisions relating to the statutory office of the CEO. Under this section, functions and relevant powers of the old Commission are vested in the CEO.

7A in this item establishes that the Commission (as defined in Item 7) has a sole function of assisting the CEO in the performance of his or her functions. The amendment is necessary because other provisions of the Bill vest the statutory functions held by the old Commission in the CEO.

#### **Item 9 – Before Section 8**

This item establishes the office of the CEO of the Commission. This amendment is required so as to establish the head of the agency in the executive management governance structure after the repealing of the provisions that establish the former governing Board.

#### **Item 10 – Section 8**

This item confers the functions of the old Commission on the CEO. There is no intent in this amendment to amend any of the functions of the Australian Trade Commission.

**Item 11 to Item 12**

This item confers the duties of the old Commission on the CEO. This reflects the transfer of functions from the Commission to the CEO, whereby the associated duties with these functions are also conferred upon the CEO.

**Item 13 – Subparagraph 9(2)(a)**

This item is an editorial amendment to reflect that the duties are no longer conferred upon the body corporate of the old Commission (it) but on the CEO.

**Item 14 – Subparagraph 9(2)(b)(i)**

This item reflects that the CEO is responsible for the functions of the Commission and that the Commission assists the CEO in delivering these functions.

**Item 15 – Subparagraph 9(2)(b)(ii)**

This item is an editorial amendment to reflect that the duties are no longer conferred upon the body corporate of the old Commission (it), but on the CEO.

**Item 16 – After section 9**

The CEO will exercise the executive power of the Commonwealth in performing his or her functions.

Item 9A clarifies that the CEO may exercise his or her powers overseas. This is consistent with the former section 28(c) of the Act.

Item 9B provides the legal basis for the CEO to charge fees associated with the delivery of his or her functions. This item is consistent with the former section 28(c) of the Act.

**Item 17 – Subsection 10(1)**

This item reflects the conferring of functions and powers under the Act on the CEO. Consistent with existing provisions (section 10(1)) of the Act, the Minister retains the power to issue direction in writing with respect to the performance of the CEO's functions and the exercise of their powers.

**Item 18 – Subsection 10(1)**

This item is an editorial amendment to reflect that this section relates to an individual, the CEO, rather than the body corporate of the old Commission (it).



**Item 19 – At the end of subsection 10(1)**

This item is consistent with provisions of the Act applying to the old Commission requiring the public disclosure of directions given by the Minister under section 10 (subsection 92(2) of the Act).

**Item 20 – Subsection 10(2)**

This item repeals provisions of the Act that restricted the Minister's ability to give directions relating to particular contracts or other agreements. The *Financial Management and Accountability Act* framework will govern the Commissions management of such affairs and recognising that the Minister retains the broad power of direction under section 10, and that directions provided under section 10 must be publicly disclosed in the annual report, this separate provision on limiting the power of direction from the Minister is no longer necessary.

**Item 21 – Subsection 10(3)**

This item is an editorial amendment to reflect that this section relates to the CEO, rather than the body corporate of the old Commission (it).

Nothing in this amendment should be seen to amend the limitation imposed by the Act on the Minister's power to issue directions that determine the manner in which a particular person, or a particular claim or application for a grant or other benefit under the Export Market Development Grants scheme, is to be treated.

**Item 22 – Subsection 10(3)**

This item omits a reference to a power conferred upon the old Commission by a section of the Act that is being repealed (section 30). As part of the Commonwealth, the CEO will exercise the executive power of the Commonwealth and does not require the prescription of powers.

**Item 23 – Subsection 10(5)**

This item is an editorial amendment to reflect that this section relates to the CEO, rather than the body corporate of the old Commission (it).

**Item 24 – At the end of section 10**

10(6) confirms that this type of Ministerial instrument is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

**Item 25 – Parts III and IV**

This item repeals Part III of the Act that established the governing Board of the Commission. The removal of the governing Board is required to enable the establishment of a statutory agency that does not have a governing Board.

This item repeals Part IV that outlined the specific powers of the old Commission in delivering its functions. As part of the Commonwealth, the CEO will exercise the executive power of the Commonwealth in delivering these functions and does not require prescribed powers. For purposes of reducing ambiguity, additional powers are specifically conferred upon the CEO by item 16, that are required for the effective, ongoing operations of the Commission.

### **Item 26 – Part VI**

This item sets the terms surrounding the appointment of the CEO, as established in item 9.

The amendments reflect the abolition of the Board and provide for the direct appointment of the CEO by the Minister. The CEO holds office for the period specified in the instrument of appointment, with a limit that the term of appointment is not to exceed five years. This is not intended to limit the application of the *Acts Interpretation Act 1901* that identifies “appoint”, allows the ability to re-appoint.

Provisions for the terms and conditions of the CEO (and their appointment) are consistent with those formerly prescribed for the Managing Director (including sections 54, 55, 57 and 58 of the old Act).

Section 59 does modify the terms of appointment for the CEO from those terms of appointment that applied to the Managing Director of the old Commission. The former ‘appointment at pleasure’ clause has been amended to define circumstances in which the Minister may terminate the appointment of the CEO.

This item repeals provisions of the Act for a Deputy Managing Director position with a statutory basis. Nothing in this amendment should be construed as suggesting that such a position cannot be created. Under an executive management structure this position will be created under the Public Service Senior Executive Service framework, as and when required.

The item provides for an Acting CEO to be appointed, consistent with the provisions of the Act that formerly enabled an Acting Managing Director to be appointed. The sections of the Act that have been omitted from the Acting arrangements for the CEO are done so on the basis that Section 33A of the *Acts Interpretation Act 1901* has provisions relating to acting appointments that adequately cover the Commission’s requirements.

Part IV, Division 2, section 60 brings staff under the coverage of the *Public Service Act*, consistent with the recommendations of the Uhrig Review.

Part IV, Division 2, section 61 has been included to avoid doubt and reflect the unique role of the Commission in managing overseas posts. The distinctive nature of Austrade’s overseas engaged workforce in size and skill set is noteworthy. Overseas engaged employees comprise over half of the Commission's staff. There should be no ambiguity that such persons engaged under section 74 of the *Public Service Act 1999*, are part of the staff of the Commission.

**Item 27 – Part VII (heading)**

This item amends the numbering of the title of the part from Roman numerals to Arabic numerals consistent with current drafting practice.

This item also amends the title to reflect that Division 2 of Part VII ‘Annual operational plans’ has been repealed and that this part of the Act will only relate to Corporate plans.

**Item 28 – Division 1 of Part VII (heading)**

This item is required because there is only one Division under Part 7, since Division 2 is being repealed.

**Item 29 – Subsection 64(1)**

This item defines the need for, and purpose of the Corporate Plan.

**Item 30 – Subsection 64(2)**

This item is required to reflect that there is only one Division under Part 7, since Division 2 is being repealed.

**Item 31 – Subsection 64(3)**

This item aims to ensure that corporate planning references in the Act are sufficiently broad so as not to create competing or conflicting requirements on the CEO should the Government introduce a general policy relating to planning activities. The Act formerly prescribed timing of the corporate planning cycle. Under the *Financial Management and Accountability Act 1997*, the Commission will be subject to general policies of government and as such, will need to meet any government policies. The duration of time that the corporate plan should cover will be at the discretion of the CEO in utilising resources of the Commission in the most effective and efficient manner, in the context of any general government policies relating to planning requirements.

**Item 32 – Subsection 65(1)**

This item, similar to item 31, aims to ensure that corporate planning references in the Act are sufficiently broad to enable the CEO to direct resources in the most effective and efficient manner. Nothing in this item should be construed to indicate intent of the CEO to limit the time available to the Minister for consideration of the Corporate plan, however the current prescription in time often competes with outcomes of the Federal Budget that can require subsequent revision to plans submitted to the Minister’s office. In the event that the Minister requires the submission of the Corporate plan within a specified timeframe, the Minister still retains the power to enforce this through the broad based powers of direction in section 10 of the Act.

**Item 33 – Section 66**

This item reflects that as with functions, duties and powers, the Corporate plan requirement is conferred upon the CEO.

**Item 34 – Division 2 of Part VII**

This item repeals the need for an operational plan. The operational plan under the Act was a management tool of the Board. Under Executive management this management tool will be exercised at the discretion of the CEO and does not warrant a statutory basis.

**Item 35 – Part VIII**

This item repeals the part of the Act that established the Financial powers of the Commission. The CEO (and the Commission) will be subject to the *Financial Management and Accountability Act 1997* and specific provisions as were previously required in this part will be unnecessary.

**Item 36 – Part IX (heading)**

This item amends the numbering of the title of the part from Roman numerals to Arabic numerals consistent with current drafting practice.

**Item 37 – Sections 90 to 92**

This item establishes section 90 ‘Delegations by Minister and CEO’ and section 92 ‘Annual reports’.

Section 90 provides that the Minister may delegate, in writing, all or any of his/her functions or powers under the *Australian Trade Commission Act 1985* and the *Export Market Development Grants Act 1997* to the CEO. This does not include the Minister’s power to approve the Corporate Plan.

Section 90 also provides that the CEO may delegate in writing, all or any of his or her functions and powers under the *Australian Trade Commission Act* or the *Export Market Development Grants Act 1997* to staff of the Commission.

Owing to the relatively small number of staff, geographical dispersal of the Commission’s offices and the frequent instances where overseas offices do not have Senior Executive Service Officers present, nor in some instances, do they have a Public Servant presence (a number of posts comprise a single Overseas Engaged Employee assisting exporters), there is a need for the efficient functioning of the organisation that appropriate delegations, as and when required, can be conferred on any staff member. These delegations will operate in the context of other controls on behaviour such as the Commission’s Fraud Control policy.

This provision of delegation will ensure that Commission employees are also able to exercise powers in a manner that will enable the efficient delivery of programs, such as the Export Market Development Grants scheme.

Section 92 provides that the CEO must prepare and provide to the Minister a report on the Commission's operations each year. These provisions are consistent with those existing in the Act (sections 92(1) and 92(2)) but are amended to reflect that the Commission will be subject to guidelines for *Financial Management and Accountability Act 1997* agencies on Annual Reports. Section 92(3) of the Act prescribed specific elements of the contents of Annual Reports and as a consequence has been repealed. Contents of the Annual Report (other than that required in 92(1) and 92(2) of the Act) will be determined by government guidelines in effect in that year.

**Item 38 – Subsection 94(1)**

This item revises the people to which the Secrecy provisions of the Act apply. The revision does not intend to alter the interpretation of any other part of this section.

It is required to ensure that the definition of staff to which the section applies is accurate and reflective of other amendments in the Act.

**Item 39 – Subsection 94(4)**

This item is required to reflect the revised definition of who the Secrecy provision applies to as outlined in item 38, rather than the Act's former application to the Commission.

**Item 40 – Paragraph 94(4)(b)**

This item is required to reflect that the functions and powers of the *Export Market Development Grants Act 1997* will now be conferred upon the CEO, and as such, information relating to those payments would be authorised by the CEO rather than the Commission.

**Item 41 - Sections 95 and 96**

This item repeals both section 95 "Offences" and 96 "Validity of contracts, guarantees and agreements".

Section 96 is being repealed. As the Commission will be part of the Commonwealth and will issue guarantees and indemnities in accordance with guidelines under the *Financial Management and Accountability Act 1997*, it is no longer necessary to have a provision such as this.

Section 95 relates only to offences connected with activity undertaken under section 96. As a result of section 96 being repealed there is no need for this provision.

**Item 42 – Subsection 64(4)**

This item is required to omit references to a subsection of the Act that is being repealed (Item 4 of Schedule 1 refers). In the event that the EMDG Legislation Amendment Bill commences first, this amendment will not be required.

## **Schedule 2 – Consequential amendment of the Export Market Development Grants Act 1997.**

### **Part 1 – Main amendments**

#### **Items 1 to 4**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

#### **Item 5 – List of terms defined in Part 9**

This item is required to define the CEO of Austrade. This reflects the amendments to the *Australian Trade Commission Act 1985*, which confers the function of administering the *Export Market Development Grants Act 1997* on the CEO.

#### **Items 6 to 9**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

#### **Items 10 and 11**

These items are required to amend references to the ‘opinion of Austrade’ in the *Export Market Development Grants Act 1997* to reflect that the amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO. As such, these opinions are now those of the ‘CEO of Austrade’ or ‘the CEO’.

#### **Items 12 and 13**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

#### **Item 14 – Subsection 7(2) (note)**

This item is required because there is no reference to Austrade in the relevant subsection to which the note occurs and as such can be removed.

**Item 15 – Paragraph 7(4)(aa)**

These items are required to amend references to the ‘opinion of Austrade’ in the *Export Market Development Grants Act 1997* to reflect that the amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO. As such, these opinions are now those of the ‘CEO of Austrade’ or ‘the CEO’.

**Items 16 to 32**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

The headings to the relevant sections are also similarly altered.

**Item 33 – Subsection 25(4)**

This item is an editorial amendment to reflect that this decision relates to an individual, the CEO, rather than the body corporate of the old Commission (it).

**Item 34 – Paragraph 25A(1)(c)**

These items are required to amend references to the ‘opinion of Austrade’ in the *Export Market Development Grants Act 1997* to reflect that the amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO. As such, these opinions are now those of the ‘CEO of Austrade’ or ‘the CEO’.

**Item 35 – subsection 25A(1) (note 2)**

This item is required given that the subsection 25A has been amended to refer to the opinion of the CEO, and as a consequence the note referring to Austrade’s decisions, more accurately is reflected as ‘Decisions’.

**Item 36 – subsection 25A(2)**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Item 37 – subsection 25A(2)**

This item is an editorial amendment to reflect that this decision relates to an individual, the CEO, rather than the body corporate of the old Commission (it).

**Items 38 to 40**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

The headings to the relevant sections are also similarly altered.

**Item 41 – subsection 33(2) (table)**

These items are required to amend references to the ‘opinion of Austrade’ in the *Export Market Development Grants Act 1997* to reflect that the amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO. As such, these opinions are now those of the ‘CEO of Austrade’ or ‘the CEO’.

**Item 42 - subsection 33(2) (note 2)**

This item is required given that the subsection 33(2) (table) has been amended to refer to the opinion of the CEO, and as a consequence the note referring to Austrade’s decisions, more accurately is reflected as ‘Decisions’.

**Items 43 to 45**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Item 46 – subsection 52(1)**

These items are required to amend references to the ‘opinion of Austrade’ in the *Export Market Development Grants Act 1997* to reflect that the amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO. As such, these opinions are now those of the ‘CEO of Austrade’ or ‘the CEO’.

**Item 47 – subsection 52(1) (note)**

This item is required given that the subsection 25A has been amended to refer to the opinion of the CEO, and as a consequence the note referring to Austrade’s decisions, more accurately is reflected as ‘Decisions’.



**Items 48 to 56**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

The headings to the relevant sections are also similarly altered.

**Item 57 – Subsection 72(1)**

This item is an editorial amendment to reflect that this decision relates to an individual, the CEO, rather than the body corporate of the old Commission (it).

**Items 58 to 73**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

The headings to the relevant sections are also similarly altered.

**Item 74 – subsection 81(1)**

This item is required to amend references to determinations undertaken by ‘Austrade’ under the *Export Market Development Grants Act*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence this reference should now read ‘If a determination by the CEO of Austrade’.

**Item 75 to 105**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

The headings to the relevant sections are also similarly altered.

**Item 106 – paragraph 101(1)(b) to (c)**

This item is an editorial amendment to reflect that this decision relates to an individual, the CEO, rather than the body corporate of the old Commission (it).

**Items 107 to 109**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Item 110 – subsection 101(2)**

This item is an editorial amendment to reflect that this decision relates to an individual, the CEO, rather than the body corporate of the old Commission (it).

**Item 111 – subsection 101(3)**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Item 112 – subsection 101(3)**

This item is an editorial amendment to reflect that this decision relates to an individual, the CEO, rather than the body corporate of the old Commission (it).

**Items 113 to 115**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Item 116 – subsection 103(3)**

This item is required to amend references to debts due to ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* incorporate ‘Austrade’ as part of the Commonwealth. As a consequence this reference should now read ‘the Commonwealth’.

**Items 117 to 118**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Item 119 – subsection 104(3)**

This item is required to amend references to debts due to ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* incorporate ‘Austrade’ as part of the Commonwealth. As a consequence this reference should now read ‘the Commonwealth’.

**Items 120 to 122**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’, ‘the CEO’, or ‘a person acting as the CEO of Austrade’.

**Item 123 – section 107**

This item is required to define the “CEO of Austrade”. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO.

**Items 124 to 125**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’ or ‘the CEO’.

**Part 2 – Amendments contingent on the Export Market Development Grants  
Legislation Amendment Act 2006**

**Division 1 – Amendments that commence after the EMDG legislation**

***Export Market Development Grants Act 1997***

**Item 126 – paragraph 24(b)**

These items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Item 127 - section 24 (note)**

Subject to commencement of the *EMDG Legislation Amendment Bill* this item will be required to be amended from a reference to ‘Austrade’s decision’, to ‘Decisions’, which more accurately reflects the revised governance arrangements enacted by the Bill.

**Item 128 – subsection 33(2) (note 3)**

Subject to commencement of the *EMDG Legislation Amendment Bill* this item is required to amend references to adjustments undertaken by ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence this reference should now read ‘the CEO of Austrade can make certain adjustments if he or she’.

**Item 129 – subsection 37(1) (note 2)**

Subject to commencement of the *EMDG Legislation Amendment Bill* this item will be required to be amended from a reference to ‘Austrade’s decision’, to ‘Decisions’, which more accurately reflects the revised governance arrangements enacted by the Bill.

**Items 130 to 132**

Subject to commencement of the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Item 133 – subsection 94(1) (note)**

Subject to commencement of the *EMDG Legislation Amendment Bill* this item will be required to be amended from a reference to ‘Austrade’s decision’, to ‘Decisions’, which more accurately reflects the revised governance arrangements enacted by the Bill.

**Items 134 to 138**

Subject to commencement of the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

The headings to the relevant sections are also similarly altered.

**Item 139 – paragraph 96(2)(a)**

Subject to commencement of the *EMDG Legislation Amendment Bill* these items are required to amend references to opinions of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO is of that opinion and of the CEO’s’.

**Items 140 to 142**

Subject to commencement of the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Item 143 – paragraph 96(3)(a)**

Subject to commencement of the *EMDG Legislation Amendment Bill* this item is an editorial amendment required to reflect that this decision is undertaken by an individual, the CEO, on the basis of the information available to them, rather than the body corporate of the old Commission (it).

**Items 144 to 145**

Subject to commencement of the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Division 2 – Amendments that do not commence if the EMDG legislation commences first*****Export Market Development Grants Act 1997*****Item 146 – reader’s guide (diagram 3)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* this item is required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the functions of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence this reference should now read ‘the CEO of Austrade’.

**Item 147 – subsection 10(1) (table item 3)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to opinions of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO is of that opinion and of the CEO’s’.

**Items 148 to 150**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Items 151 – subsection 24(3)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* this item is an editorial amendment required to reflect that this action is undertaken by an individual, the CEO, rather than the body corporate of the old Commission (it).

**Item 152 – subsection 24(4)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* this item is required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence this reference should now read ‘the CEO of Austrade’.

**Item 153 – subsection 24(4)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* this item is an editorial amendment required to reflect that this action is undertaken by an individual, the CEO, rather than the body corporate of the old Commission (it).

**Item 154 – subsection 33(2) (table item 1B)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to opinions of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO is of that opinion and of the CEO’s’.

**Items 155 to 157**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Item 158 – paragraph 35(2)(a)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to opinions of ‘Austrade’ under the *Export Market Development Grants Act*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO is of that opinion and of the CEO’s’.

**Items 159 to 160**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

**Item 161 – paragraph 35(3)(a)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* this item is an editorial amendment required to reflect that this action is undertaken by an individual, the CEO, rather than the body corporate of the old Commission (it).

**Items 162 to 172**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.

The headings to the relevant sections are also similarly altered.

**Item 173 – Paragraph 96(c)**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* this item is an editorial amendment required to reflect that this action is undertaken by an individual, the CEO, rather than the body corporate of the old Commission (it).

**Items 174 to 177**

Subject to commencement of the Bill prior to the *EMDG Legislation Amendment Bill* these items are required to amend references to actions undertaken by, or responsibilities of ‘Austrade’ under the *Export Market Development Grants Act 1997*. The amendments to the *Australian Trade Commission Act 1985* confer the function of administering the *Export Market Development Grants Act 1997* on the CEO, and as a consequence these references should now read ‘the CEO of Austrade’.



**Schedule 3 – Other consequential amendments**

The Bill will make a number of consequential amendments to other Acts as follows:

**Item 1 – Commonwealth Borrowing Levy Act 1987**

This Act imposes a duty on borrowings undertaken from sources outside of the Commonwealth by bodies specified in the Schedule to the Act. This item is required because as a statutory agency that is part of the Commonwealth, the Commission will not have the requisite authority to undertake such borrowings from outside of the Commonwealth and the provision is no longer necessary.

**Items 2 to 5 – Export Finance and Insurance Corporate Act 1991**

These items are required to amend references to the ‘Managing Director’ of the Commission, to refer to the ‘CEO’, consistent with the revised governance provisions of the Commission established by the Act.

**Item 6 – Public Service Act 1999**

This item is required to remove redundant references to employees of the Australian Trade Commission from the *Public Service Act 1999*. There is currently a provision that limits the appointment of Heads of Mission to persons that are APS employees, or employed under the *Australian Trade Commission Act 1985*. Staff of the Commission that may be eligible to be Head of Mission will be APS employees under the revised governance arrangements and as such, this separate provision is no longer necessary.

## **Schedule 4 – Transitional provisions**

### **Part 1 – Preliminary**

#### **Item 1 - Definitions**

This item defines certain terms which are used in the Part. 1(2) provides that unless a contrary intention is expressed in 1(1), an expression used in this part that is also used in this Act, has the same meaning as it has in the new Act.

#### **Item 2 – Vesting of assets of old Commission**

This item provides that, at the commencement time, the assets of the old Commission will become the asset of the Commonwealth. The Commonwealth will become the old Commission’s successor in law in relation to those assets. The term “asset” is defined broadly in item 1 of Schedule 4.

#### **Item 3 – Vesting of liabilities of old Commission**

This item provides that, at the commencement time, the liabilities of the old Commission will become the liabilities of the Commonwealth. The Commonwealth will become the old Commission’s successor in law in relation to those liabilities. The term “liability” is defined broadly in item 1 of Schedule 4.

#### **Items 4 to 5**

These items are standard provisions that facilitate the registration of the transfer of assets under any law of the Commonwealth, a State or a Territory that provides for the registration or recording of interests. For example, if an interest in real property located in a State was transferred to the Commonwealth under item 2, the mechanism in item 4 would facilitate the recording of this transfer in the relevant State’s land titles register.

#### **Item 6 – Substitution of Commonwealth as a party to pending proceedings**

Item 6 is intended to facilitate the smooth running of court and tribunal proceedings by substituting the CEO as the appropriate party in any proceedings on foot at the commencement time in which the old Commission was a party.

#### **Item 7 – Transfer of custody of old Commission records**

At the commencement time, any record or documents that are in the custody of the old Commission, including those relating to the Board, will be transferred into the custody of the CEO at the commencement time.

### **Item 8 – Access by Board members to records**

This item allows for Board members, after the commencement time, to continue to have access to certain records on the same terms as is currently allowed by section 27L(4) of the *Commonwealth Authorities and Companies Act 1997*.

### **Item 9 – References in instruments**

This item provides for instruments made before the commencement time that refer to the old Commission (including a reference to the Board, the Managing Director, or Deputy Managing Director) to continue to have effect after the commencement time, with a reference that reflects the revised structure of the Commission.

This is required given that other provisions of this Bill repeal the Board and positions of Managing Director and Deputy Managing Director and vest what were the statutory functions of the Commission in the CEO.

9(1) provides that where required, and appropriate, the substitute reference for the old Commission may be the CEO.

9(2) provides that where required, and appropriate, the substitute reference may be to the Commonwealth rather than the CEO.

9(3) provides for instruments made before the commencement time that refer to staff of the old Commission to continue to have effect after the commencement time as if such references were a reference to a person of the Commission, as set out in section 7(2) of the Act.

The item is intended to avoid the need for instruments to be amended or replaced.

After the commencement time, it will normally be appropriate for instruments to be taken to refer to the CEO, as the CEO will have the statutory functions that the old Commission had before the commencement time. However, it is possible that in some cases 9(1) will lead to an inappropriate result. To cover this possibility, 9(4) empowers the Minister to make an instrument providing that:

- 9(1), 9(2) or 9(3) do not apply in a particular case; or a variant combination may apply, including that:
- 9(1) applies as if the reference to the CEO in that item was a reference to the Commonwealth;
- 9(2) applies as if the reference to the Commonwealth were a reference to the CEO; or
- 9(3) applies as if the reference to a member of staff of the old Commission in that item was a reference to the CEO.

In instances where none of the above combinations is appropriate and the Minister makes an instrument determining that 9(1), 9(2) or 9(3) do not apply, 9(5) provides that regulations may determine what the most appropriate substitute reference in the instrument is to be.

9(6) confirms that an instrument issued by the Minister pursuant to section 9(4) is not a legislative instrument. The determination that a reference in an instrument to the Commonwealth, the CEO or a member of the staff of the Commission is a reference to another person or body has been declared not to be a legislative instrument. In the

majority of cases a determination of this kind would not be legislative within the meaning of section 5 of the *Legislative Instruments Act 2003*. If any determination of this kind is arguably legislative within the meaning of that section (for example, because it changes such a reference in a legislative instrument), the determination has been declared not to be legislative as it is transitional and will only be required for a limited period of time.

### **Item 10 – Operation of laws**

This item provides that, if anything was done by or in relation to the old Commission (including the Board, the Managing Director or the Deputy Managing Director), before the commencement time for the purposes of any law, after the commencement time it is taken to have been done by, or in relation to, the CEO.

This item is intended to avoid the need for things to be done again. If, for example, the Managing Director did something under a law before the commencement time, after the commencement time the CEO will be taken to have done that thing.

After the commencement time, it will normally be appropriate for things to be taken to have been done by the CEO, as the CEO will have the statutory functions that the old Commission had before the commencement time. However, it is possible that in some cases item 10(1) will lead to an inappropriate result. To cover this possibility, item 10(3) empowers the Minister to make an instrument providing that item 10(1) does not apply in a particular case, or it applies as if the reference to the CEO in that item was a reference to the Commonwealth or to a person of the Commission as defined in section 7(2) of the Act.

If the Minister makes an instrument under item 10(3) in relation to a specified thing, 10(4) permits that regulations can be made in relation to that thing providing that after the commencement time the thing is taken to have been done by or in relation to, a specified person or body other than the Commonwealth or the CEO.

10(6) confirms that an instrument issued pursuant to 10(3) is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

### **Item 11 – Continued effect of certain instruments made under the old law**

This item ensures that instruments that were in effect immediately prior to commencement of the amended Act remain valid after the commencement time. This avoids the need to reissue instruments that were in force prior to commencement and are required to remain valid, or intended to continue, after commencement.

### **Item 12 – Financial statements and other reporting requirements**

This item is required to enable the efficient and effective discharge of reporting obligations of the old and new Commission.

12(1) provides for the CEO to provide any reports (including financial statements or otherwise) relating to the old Commission required under law for a period where the reporting period ends after the commencement period. For example, where the old Commission was required to produce an annual report, and the end of that reporting

period occurs after commencement, the CEO is obliged to satisfy the reporting requirements of the old Commission.

12(2) provides that in circumstances under 12(1) where the CEO is obliged to provide a report relating to a specified period in which the CEO must report for both the old Commission and the new Commission, for instance where commencement occurs during the reporting period, the CEO may discharge this reporting requirement through a single report covering both the old and new Commission.

12(3) provides for the CEO to provide any reports (including financial statements or otherwise) relating to the old Commission required under law for a period where the reporting period ends before the commencement period, and where the report has not been provided by the commencement time, the CEO must provide the report. For example, where the old Commission was required to produce an annual report covering the period 1 July 2005 to 30 June 2006 and the Act commences on 1 July 2006, the CEO will be required and enabled to, provide that report relating to the old Commission.

### **Item 13 – Continuation of secrecy obligations**

This item ensures that the secrecy provisions of the Act that applied to persons immediately prior to commencement continue to apply to those persons after commencement. Item 39 under Schedule 1 amends the definition of who the Secrecy provisions apply to as a reflection of the revised governance arrangements and composition of the Commission. This amendment is not intended to absolve persons to whom the secrecy provision formerly applied of their secrecy obligations and this item ensure the legal continuance of this obligation.

### **Item 14 – CEO**

The office of Managing Director will cease to exist upon the commencement of Schedule 1 to the Bill. This item allows for the person holding office as the Managing Director immediately before the commencement time to become the CEO after the commencement time, on the same terms and conditions as applied immediately before the commencement time, without the need for a new appointment by the Minister. This will not have the effect of extending the term of the person appointed as Managing Director. This statutory appointment will not prevent the termination provisions in the Act from applying to the CEO in the normal manner.

### **Item 15 – Transfer of staff**

Item 15 deals with the transfer of staff from the old Commission to new Commission. At the commencement time, staff employed in Australia will be engaged under the *Public Service Act 1999* (using mechanisms in that Act) and will become staff of the new Commission.

This item allows regulations to be made to facilitate the smooth transition of staff from the old Commission to the new Commission, and the smooth transition to coverage under the *Public Service Act 1999*.

15(2) gives examples of the matters that regulations made under item 15(1) may cover. This is not limit intended to limit 15(1). It is expected that regulations will cover the procedures to apply when processes such as recruitment, performance management, redundancy and discipline have commenced but not concluded by the commencement time, and where an incident occurs before the commencement time (for example, a breach of a code of conduct by a member of the old Commission's staff) but action is only commenced in relation to the incident after the commencement time.

The expression "staffing procedures" is defined in item 15(4) to include a large number of human resource management procedures and policies. The definition is intended to be very broad.

15(3) allows the regulations made under item 15(1) to have effect despite the *Public Service Act 1999*. This will mean that such regulations will apply even if they are inconsistent with a provision of the *Public Service Act 1999*. This is necessary because in some cases the regulations will need to provide for the continuation of certain processes (such as discipline processes) after the commencement time under the old Commission's procedures, and these procedures may in some respects be inconsistent with the *Public Service Act 1999*. Item 15(2) only authorises the making of regulations of a transitional nature.

#### **Item 16 – Appropriation of money**

This item clarifies that for the purposes of an Appropriation Act, references to the old Commission are taken to be read as the new Commission after commencement. This is to ensure that the Commission has ongoing access to appropriated funds.

16(2) relates to circumstances where, at the commencement time, money (cash and cash equivalents) of the old Commission is transferred to the Consolidated Revenue Fund as part of item 2 in this Schedule. In such instances, this item provides the required appropriation for the Commission to be able to re-access of such money after the commencement time.

#### **Item 17 - Exemption from stamp duty and other State or Territory taxes**

This item ensures that the operation of the transitional provisions in Schedule 4, including the transfer of assets and liabilities effected by items 2 and 3, do not result in a liability on any person to pay State or Territory stamp duty or tax.

#### **Item 18 – Constitutional safety net – acquisition of property**

It is not expected that any provisions in this Schedule of the Bill will result in an acquisition of property within the meaning of that expression in the Constitution. However, if it does, item 18 sets out the standard Constitutional safety net provision.

**Item 19 – Certificates taken to be authentic**

To avoid ambiguity, certificates, including those relating to matters covered in items 4 and 5 of this Schedule, which may be made by the Minister, are to be taken as authentic.

**Item 20 – Delegation by Minister**

This item allows the Minister to delegate his or her powers and functions under this Schedule to the CEO. 19(2) provides that, in exercising powers or functions so delegated, the delegate must comply with any directions of the Minister.

**Item 21 – Regulations**

This item permits the Governor-General to make regulations prescribing matters required or permitted by Schedule 4 of this Bill or necessary or convenient to be prescribed for carrying out or giving effect to the Schedule. 20(2) clarifies that, in particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 4.