Tourism Australia (Repeal and Transitional Provisions) Act 2004

Act No. 75 of 2004 as amended

This compilation was prepared on 27 March 2006 taking into account amendments up to SLI 2006 No. 50

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing, Attorney-General’s Department, Canberra
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Tourism Australia (Repeal and Transitional Provisions) Act 2004
An Act to repeal the *Australian Tourist Commission Act 1987*, to deal with transitional matters arising from the repeal of that Act and the enactment of the *Tourism Australia Act 2004*, and for related purposes

**Part 1—Preliminary**

1 **Short title** [see Note 1]

   This Act may be cited as the *Tourism Australia (Repeal and Transitional Provisions) Act 2004*.

2 **Commencement** [see Note 1]

   (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.

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*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.

*Tourism Australia (Repeal and Transitional Provisions) Act 2004* 1
Part 1  Preliminary

Section 3

(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 Extended geographical application of this Act

(1) This Act extends to every external Territory.

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

4 Definitions

(1) In this Act:

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.

assets official means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.


Australia, when used in a geographical sense, includes the external Territories.

contract includes:
(a) a deed; and
(b) a deed poll.

instrument includes a document.

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.
Maternity Leave Act means the Maternity Leave (Commonwealth Employees) Act 1973, as in force immediately before the proclamation day.

proclamation day means the day on which sections 3 to 64 of the Tourism Australia Act 2004 commence.

Tourism Australia means the body corporate established by section 5 of the Tourism Australia Act 2004.

transferred employee means a person whose employment is transferred under section 12.

(2) Expressions used in this Act that are defined in the Tourism Australia Act 2004 have the same meanings as they have in that Act.
Part 2—Repeal of the Australian Tourist Commission Act 1987

5 Repeal of the *Australian Tourist Commission Act 1987*

The *Australian Tourist Commission Act 1987* is repealed.
Part 3—Transitional provisions relating to the repeal of the Australian Tourist Commission Act 1987

6 Transfer of assets and liabilities

(1) This section applies to:
   (a) the assets of the ATC; and
   (b) the liabilities of the ATC.

(2) On the proclamation day:
   (a) the assets and liabilities cease to be assets and liabilities of the ATC and become assets and liabilities of Tourism Australia without any conveyance, transfer or assignment; and
   (b) Tourism Australia becomes the ATC’s successor in law in relation to the assets and liabilities immediately after they become assets and liabilities of Tourism Australia.

7 Registration of land transfers

(1) This section applies if:
   (a) any right, title or interest in particular land vests in Tourism Australia under this Part; and
   (b) there is lodged with a land registration official a certificate that:
       (i) is signed by the Secretary; and
       (ii) identifies the land, whether by reference to a map or otherwise; and
       (iii) states that the right, title or interest has become vested in Tourism Australia 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.
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8 Certificates in relation to assets other than land

(1) This section applies if:
   (a) an asset other than land vests in Tourism Australia under this Part; and
   (b) there is lodged with an assets official a certificate that:
       (i) is signed by the Secretary; and
       (ii) identifies the asset; and
       (iii) states that the asset has become vested in Tourism Australia 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.

9 Transfer of pending proceedings

(1) This section applies if, as a result of a transfer made under this Part, Tourism Australia becomes the successor in law of the ATC at a particular time in relation to a particular asset or liability.

(2) If any proceedings to which the ATC was a party:
   (a) were pending in any court or tribunal immediately before that time; and
   (b) related, in whole or in part, to the asset or liability;
then Tourism Australia is, by force of this subsection, substituted for the ATC as a party to the proceedings to the extent to which the proceedings relate to the asset or liability.

10 References in certain instruments

(1) An instrument to which subsection (2) applies continues to have effect on and after the proclamation day as if a reference in the instrument to the ATC were a reference to Tourism Australia.

(2) This subsection applies to an instrument if it is:
   (a) in operation immediately before the proclamation day; and
   (b) an instrument:

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Tourism Australia (Repeal and Transitional Provisions) Act 2004
Transitional provisions relating to the repeal of the Australian Tourist Commission Act 1987 Part 3

Section 11

(i) to which the ATC is a party; or
(ii) which was given to, or in favour of, the ATC; or
(iii) in which a reference is made to the ATC; or
(iv) under which any right or liability accrues or may accrue to the ATC.

(3) In this section:

*instrument* does not include regulations or any other instrument made under the *Superannuation Act 1922*, the *Superannuation Act 1976* or the *Superannuation Act 1990*.

11 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) 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 (other than for the purposes of criminal proceedings), a certificate under subsection (2) is prima facie evidence of the matters stated in the certificate.

(4) In this section:

*exempt matter* means any of the following:
   (a) the transfer of an asset under section 6;
   (b) the transfer of a liability under section 6;
   (c) the operation of this Part in any other respect.

12 Transfer of staff

Each person employed under section 42 of the *Australian Tourist Commission Act 1987* immediately before the proclamation day ceases to be employed by the ATC on the proclamation day and is taken to have been engaged as an employee of Tourism Australia under section 55 of the *Tourism Australia Act 2004* on that day.
Part 3  Transitional provisions relating to the repeal of the Australian Tourist Commission Act 1987

Section 13

13 Terms and conditions of transferred employees

(1) A transferred employee is taken:
   (a) to have been engaged by Tourism Australia on the same terms and conditions as those that applied to the person, immediately before the proclamation day, as an employee of the ATC; and
   (b) to have accrued an entitlement to benefits, in connection with that engagement by Tourism Australia, that is equivalent to the entitlement that the person had accrued, as an employee of the ATC, immediately before the proclamation day.

(2) The service of a transferred employee as an employee of Tourism Australia is taken, for all purposes, to have been continuous with the service, immediately before the proclamation day, of the employee as an employee of the ATC.

(3) A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the ATC as a result of this Part.

(4) This section:
   (a) has effect subject to this Part; and
   (b) is not to be taken to be a law of the Commonwealth for the purposes of paragraph 170XA(2)(b) of the Workplace Relations Act 1996, as in force immediately before the reform commencement within the meaning given by that Act.

14 Variation of terms and conditions of employment

(1) This Part does not prevent the terms and conditions of a transferred employee’s employment on and after the proclamation day from being varied:
   (a) in accordance with those terms and conditions; or
   (b) by or under a law, award, determination or agreement.

(2) In this section:

   vary, in relation to terms and conditions, includes:
   (a) omitting any of those terms and conditions; or
   (b) adding to those terms and conditions; or
Section 15

Transitional provisions relating to the repeal of the Australian Tourist Commission Act 1987 Part 3

(c) substituting new terms or conditions for any of those terms and conditions.

15 Maternity leave starting before proclamation day

(1) This section applies in relation to a female transferred employee if:
   (a) immediately before the proclamation day, she was on leave granted under the Maternity Leave Act; and
   (b) she would have been entitled to have remained on that leave on and after the proclamation day if she had continued to be an employee of the ATC.

(2) On and after the proclamation day, the Maternity Leave Act continues to apply to her in relation to the confinement in respect of which the leave was granted as if Tourism Australia were a prescribed authority for the purposes of that Act.

16 Maternity leave starting after proclamation day

(1) This section applies in relation to a female transferred employee if, within 9 months after the proclamation day, she would have been entitled to start leave granted under the Maternity Leave Act if she had continued to be an employee of the ATC.

(2) On and after the proclamation day, the Maternity Leave Act continues to apply to her in relation to the confinement in respect of which she would have been entitled to leave as if Tourism Australia were a prescribed authority for the purposes of that Act.

17 Final annual report

(1) For each transitional reporting period, the government member of the Board of Tourism Australia must, in relation to the ATC, prepare the report referred to in section 9 of the Commonwealth Authorities and Companies Act 1997. The report must include the matters mentioned in section 28 of the Australian Tourist Commission Act 1987.

(2) If the proclamation day is 1 July 2004, the 2003-04 financial year is a transitional reporting period.

(3) If the proclamation day is after 1 July 2004 but is, or is before, 1 October 2004, the period that:
Part 3  Transitional provisions relating to the repeal of the Australian Tourist Commission Act 1987

Section 17

(a) starts at the beginning of 1 July 2003; and
(b) ends immediately before the proclamation day;

is a transitional reporting period.

(4) If the proclamation day is after 1 October 2004:

(a) the 2003-04 financial year is a transitional reporting period; and

(b) the period that:

(i) starts at the beginning of 1 July 2004; and
(ii) ends immediately before the proclamation day;

is a transitional reporting period.

(5) For the purposes of this section, a transitional reporting period mentioned in subsection (3) or paragraph (4)(b) is to be treated as a financial year.

(6) The expenses of preparation of the report are to be paid or discharged by Tourism Australia.

(7) Tourism Australia must provide the government member with any assistance that the government member reasonably requires to meet his or her obligation under subsection (1).

(8) The obligation under section 9 of the Commonwealth Authorities and Companies Act 1997 imposed on the final directors of the ATC to prepare an annual report is satisfied if the report is prepared by the government member of the Board of Tourism Australia.

(9) In this section:

director has the same meaning as in the Commonwealth Authorities and Companies Act 1997.

final director means a person who was a director immediately before the proclamation day.

10  Tourism Australia (Repeal and Transitional Provisions) Act 2004
Part 4—Transitional provisions: Bureau of Tourism Research

18 Definition

In this Part:

Bureau of Tourism Research means the intergovernmental program administered within the Commonwealth Department of Industry, Tourism and Resources that, before the proclamation day, was generally known as the “Bureau of Tourism Research”.

19 Transfer of assets from Commonwealth to Tourism Australia

(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 the Bureau of Tourism Research:

(a) a declaration that the asset vests in Tourism Australia on the proclamation day without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the asset continues to have effect on and after the proclamation day as if a reference in the instrument to the Commonwealth or the Bureau of Tourism Research were a reference to Tourism Australia;

(c) a declaration that Tourism Australia becomes the Commonwealth’s successor in law in relation to the asset on the proclamation day.

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.

20 Transfer of liabilities from Commonwealth to Tourism Australia

(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 the Bureau of Tourism Research:
Section 21

(a) a declaration that the liability vests in Tourism Australia on the proclamation day without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the liability continues to have effect on and after the proclamation day as if a reference in the instrument to the Commonwealth or the Bureau of Tourism Research were a reference to Tourism Australia;

(c) a declaration that Tourism Australia becomes the Commonwealth’s successor in law in relation to the liability on the proclamation day.

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.

21 Transfer of contractual rights and liabilities from Commonwealth to Tourism Australia

(1) The Minister may, in writing, declare that the Commonwealth’s rights and liabilities under a specified BTR contract:

(a) cease to be rights and liabilities of the Commonwealth on the proclamation day; and

(b) become rights and liabilities of Tourism Australia on that day.

(2) The Minister may, in writing, declare that a specified BTR contract continues to have effect on and after the proclamation day as if a reference in the contract to the Commonwealth or the Bureau of Tourism Research were a reference to Tourism Australia.

(3) The Minister may, in writing, declare that a specified instrument relating to a specified BTR contract continues to have effect, after the Commonwealth’s rights and liabilities under the contract become rights and liabilities of Tourism Australia, as if a reference in the instrument to the Commonwealth or the Bureau of Tourism Research were a reference to Tourism Australia.

(4) The Minister may, in writing, declare that Tourism Australia becomes the Commonwealth’s successor in law, in relation to the Commonwealth’s rights and liabilities under a specified BTR contract.

12 Tourism Australia (Repeal and Transitional Provisions) Act 2004
Section 22

contract, when the Commonwealth’s rights and liabilities under the contract become rights and liabilities of Tourism Australia.

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

(6) This section does not, by implication, limit section 19 or 20.

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

(7) In this section:

*BTR contract* means a contract (other than a contract of employment):

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

(b) that relates to the Bureau of Tourism Research.

22 Certificates in relation to assets other than land

(1) This section applies if:

(a) an asset other than land vests in Tourism Australia under this Part; and

(b) there is lodged with an assets official a certificate that:

(i) is signed by the Secretary; and

(ii) identifies the asset; and

(iii) states that the asset has become vested in Tourism Australia 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.

23 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) The Minister may certify in writing:

(a) that a specified matter is an exempt matter; or
Part 4  Transitional provisions: Bureau of Tourism Research

Section 24

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

(3) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subsection (2) is prima facie evidence of the matters stated in the certificate.

(4) In this section:

exempt matter means any of the following:

(a) the transfer of an asset under section 19;
(b) the transfer of a liability under section 20;
(c) the transfer of a right or liability under section 21;
(d) the operation of this Part in any other respect.

24 Transfer of pending proceedings

(1) This section applies if, as a result of a declaration made under this Part, Tourism Australia becomes the successor in law of the Commonwealth at a particular time in relation to a particular asset or liability.

(2) If any proceedings to which the Commonwealth was a party:

(a) were pending in any court or tribunal immediately before that time; and
(b) related, in whole or in part, to the asset or liability;

then Tourism Australia is, by force of this subsection, substituted for the Commonwealth as a party to the proceedings to the extent to which the proceedings relate to the asset or liability.

25 Maternity leave starting before proclamation day

(1) This section applies in relation to a person if:

(a) immediately before the proclamation day, the person was a female APS employee involved in administering the Bureau of Tourism Research; and
(b) on and after the proclamation day, she is covered by a determination under subsection 72(1) of the Public Service Act 1999; and
(c) by that determination, she becomes an employee of Tourism Australia; and
(d) immediately before the proclamation day, she was on leave granted under the Maternity Leave Act; and
(e) she would have been entitled to have remained on that leave on and after the proclamation day if she had continued to be an APS employee involved in administering the Bureau of Tourism Research.

(2) On and after the proclamation day, the Maternity Leave Act continues to apply to her in relation to the confinement in respect of which the leave was granted as if Tourism Australia were a prescribed authority for the purposes of that Act.

26 Maternity leave starting after proclamation day

(1) This section applies in relation to a person if:
   (a) immediately before the proclamation day, the person was a female APS employee involved in administering the Bureau of Tourism Research; and
   (b) on and after the proclamation day, she is covered by a determination under subsection 72(1) of the Public Service Act 1999; and
   (c) by that determination, she becomes an employee of Tourism Australia; and
   (d) within 9 months after the proclamation day, she would have been entitled to start leave granted under the Maternity Leave Act if she had continued to be an APS employee involved in administering the Bureau of Tourism Research.

(2) On and after the proclamation day, the Maternity Leave Act continues to apply to her in relation to the confinement in respect of which she would have been entitled to leave as if Tourism Australia were a prescribed authority for the purposes of that Act.
Part 5—Transitional provisions: Tourism Forecasting Council

27 Definition

In this Part:

Tourism Forecasting Council means the Council that, before the proclamation day, was generally known as the “Tourism Forecasting Council”.

28 Transfer of assets from Commonwealth to Tourism Australia

(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 the Tourism Forecasting Council:

(a) a declaration that the asset vests in Tourism Australia on the proclamation day without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the asset continues to have effect on and after the proclamation day as if a reference in the instrument to the Commonwealth or the Tourism Forecasting Council were a reference to Tourism Australia;

(c) a declaration that Tourism Australia becomes the Commonwealth’s successor in law in relation to the asset on the proclamation day.

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.

29 Transfer of liabilities from Commonwealth to Tourism Australia

(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 the Tourism Forecasting Council:
(a) a declaration that the liability vests in Tourism Australia on the proclamation day without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the liability continues to have effect on and after the proclamation day as if a reference in the instrument to the Commonwealth or the Tourism Forecasting Council were a reference to Tourism Australia;

(c) a declaration that Tourism Australia becomes the Commonwealth’s successor in law in relation to the liability on the proclamation day.

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.

30 Transfer of contractual rights and liabilities from Commonwealth to Tourism Australia

(1) The Minister may, in writing, declare that the Commonwealth’s rights and liabilities under a specified TFC contract:

(a) cease to be rights and liabilities of the Commonwealth on the proclamation day; and

(b) become rights and liabilities of Tourism Australia on that day.

(2) The Minister may, in writing, declare that a specified TFC contract continues to have effect on and after the proclamation day as if a reference in the contract to the Commonwealth or the Tourism Forecasting Council were a reference to Tourism Australia.

(3) The Minister may, in writing, declare that a specified instrument relating to a specified TFC contract continues to have effect, after the Commonwealth’s rights and liabilities under the contract become rights and liabilities of Tourism Australia, as if a reference in the instrument to the Commonwealth or the Tourism Forecasting Council were a reference to Tourism Australia.

(4) The Minister may, in writing, declare that Tourism Australia becomes the Commonwealth’s successor in law, in relation to the Commonwealth’s rights and liabilities under a specified TFC contract.
Part 5  Transitional provisions: Tourism Forecasting Council

Section 31

contract, when the Commonwealth’s rights and liabilities under the contract become rights and liabilities of Tourism Australia.

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

(6) This section does not, by implication, limit section 28 or 29.

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

(7) In this section:

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

(a) to which the Commonwealth is a party; and
(b) that relates to the Tourism Forecasting Council.

31 Certificates in relation to assets other than land

(1) This section applies if:

(a) an asset other than land vests in Tourism Australia under this Part; and
(b) there is lodged with an assets official a certificate that:
   (i) is signed by the Secretary; and
   (ii) identifies the asset; and
   (iii) states that the asset has become vested in Tourism Australia 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.

32 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) 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 (other than for the purposes of criminal proceedings), a certificate under subsection (2) is prima facie evidence of the matters stated in the certificate.

(4) In this section:

*exempt matter* means any of the following:

(a) the transfer of an asset under section 28;
(b) the transfer of a liability under section 29;
(c) the transfer of a right or liability under section 30;
(d) the operation of this Part in any other respect.

### Section 33 Transfer of pending proceedings

(1) This section applies if, as a result of a declaration made under this Part, Tourism Australia becomes the successor in law of the Commonwealth at a particular time in relation to a particular asset or liability.

(2) If any proceedings to which the Commonwealth was a party:

(a) were pending in any court or tribunal immediately before that time; and

(b) related, in whole or in part, to the asset or liability;

then Tourism Australia is, by force of this subsection, substituted for the Commonwealth as a party to the proceedings to the extent to which the proceedings relate to the asset or liability.

### Section 34 Maternity leave starting before proclamation day

(1) This section applies in relation to a person if:

(a) immediately before the proclamation day, the person was a female APS employee involved in administering the Tourism Forecasting Council; and

(b) on and after the proclamation day, she is covered by a determination under subsection 72(1) of the *Public Service Act 1999*; and

(c) by that determination, she becomes an employee of Tourism Australia; and

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Section 35

(d) immediately before the proclamation day, she was on leave granted under the Maternity Leave Act; and
(e) she would have been entitled to have remained on that leave on and after the proclamation day if she had continued to be an APS employee involved in administering the Tourism Forecasting Council.

(2) On and after the proclamation day, the Maternity Leave Act continues to apply to her in relation to the confinement in respect of which the leave was granted as if Tourism Australia were a prescribed authority for the purposes of that Act.

35 Maternity leave starting after proclamation day

(1) This section applies in relation to a person if:
(a) immediately before the proclamation day, the person was a female APS employee involved in administering the Tourism Forecasting Council; and
(b) on and after the proclamation day, she is covered by a determination under subsection 72(1) of the Public Service Act 1999; and
(c) by that determination, she becomes an employee of Tourism Australia; and
(d) within 9 months after the proclamation day, she would have been entitled to start leave granted under the Maternity Leave Act if she had continued to be an APS employee involved in administering the Tourism Forecasting Council.

(2) On and after the proclamation day, the Maternity Leave Act continues to apply to her in relation to the confinement in respect of which she would have been entitled to leave as if Tourism Australia were a prescribed authority for the purposes of that Act.
Part 6—Transitional provisions: other Commonwealth assets and liabilities

36 Definition

In this Part:

*tourism trade mark* means a trade mark of which the Commonwealth is the registered owner and that was, at any time before the proclamation day, licensed for use by See Australia Limited ACN 47 087 917 468.

37 Transfer of assets from Commonwealth to Tourism Australia

(1) The Minister may, in writing, make any or all of the following declarations in relation to an asset of the Commonwealth that is, or relates to, a tourism trade mark:

(a) a declaration that the asset vests in Tourism Australia on the proclamation day without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the asset continues to have effect on and after the proclamation day as if a reference in the instrument to the Commonwealth were a reference to Tourism Australia;

(c) a declaration that Tourism Australia becomes the Commonwealth’s successor in law in relation to the asset on the proclamation day.

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.

38 Transfer of liabilities from Commonwealth to Tourism Australia

(1) The Minister may, in writing, make any or all of the following declarations in relation to a liability of the Commonwealth that is, or relates to, a tourism trade mark:
Section 39

(a) a declaration that the liability vests in Tourism Australia on the proclamation day without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument relating to the liability continues to have effect on and after the proclamation day as if a reference in the instrument to the Commonwealth were a reference to Tourism Australia;

(c) a declaration that Tourism Australia becomes the Commonwealth’s successor in law in relation to the liability on the proclamation day.

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.

39 Transfer of contractual rights and liabilities from Commonwealth to Tourism Australia

(1) The Minister may, in writing, declare that the Commonwealth’s rights and liabilities under a specified tourism trade mark contract:

(a) cease to be rights and liabilities of the Commonwealth on the proclamation day; and

(b) become rights and liabilities of Tourism Australia on that day.

(2) The Minister may, in writing, declare that a specified tourism trade mark contract continues to have effect on and after the proclamation day as if a reference in the contract to the Commonwealth were a reference to Tourism Australia.

(3) The Minister may, in writing, declare that a specified instrument relating to a specified tourism trade mark contract continues to have effect, after the Commonwealth’s rights and liabilities under the contract become rights and liabilities of Tourism Australia, as if a reference in the instrument to the Commonwealth were a reference to Tourism Australia.

(4) The Minister may, in writing, declare that Tourism Australia becomes the Commonwealth’s successor in law, in relation to the Commonwealth’s rights and liabilities under a specified tourism trade mark contract, when the Commonwealth’s rights and liabilities under the contract cease to be the rights and liabilities of the Commonwealth.
liabilities under the contract become rights and liabilities of Tourism Australia.

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

(6) This section does not, by implication, limit section 37 or 38.

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

(7) In this section:

*tourism trade mark contract* means a contract:

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

(b) that relates to a tourism trade mark.

### 40 Certificates in relation to assets other than land

(1) This section applies if:

(a) an asset other than land vests in Tourism Australia under this Part; and

(b) there is lodged with an assets official a certificate that:

(i) is signed by the Secretary; and

(ii) identifies the asset; and

(iii) states that the asset has become vested in Tourism Australia 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.

### 41 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) The Minister may certify in writing:

(a) that a specified matter is an exempt matter; or
Part 6 Transitional provisions: other Commonwealth assets and liabilities

Section 42

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

(3) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subsection (2) is prima facie evidence of the matters stated in the certificate.

(4) In this section:

exempt matter means any of the following:
(a) the transfer of an asset under section 37;
(b) the transfer of a liability under section 38;
(c) the transfer of a right or liability under section 39;
(d) the operation of this Part in any other respect.

42 Transfer of pending proceedings

(1) This section applies if, as a result of a declaration made under this Part, Tourism Australia becomes the successor in law of the Commonwealth at a particular time in relation to a particular asset or liability.

(2) If any proceedings to which the Commonwealth was a party:
(a) were pending in any court or tribunal immediately before that time; and
(b) related, in whole or in part, to the asset or liability;
then Tourism Australia is, by force of this subsection, substituted for the Commonwealth as a party to the proceedings to the extent to which the proceedings relate to the asset or liability.
Part 7—Other matters

43 Certificates taken to be authentic etc.

A document that appears to be a certificate, declaration or other document made or issued under this Act or the regulations:

(a) is taken to be such a certificate, declaration or other document; and
(b) is taken to have been properly given;

unless the contrary is established.

44 Operation of Archives Act

(1) This Act does not authorise a Commonwealth record (within the meaning of the Archives Act 1983) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.

(2) A Commonwealth record (within the meaning of the Archives Act 1983) must not be transferred to a person under this Part unless the National Archives of Australia has given permission under paragraph 24(2)(b) of the Archives Act 1983.

45 Publication of declarations

(1) A copy of a declaration under this Act or the regulations is to be published in the Gazette within 14 days after the making of the declaration or the proclamation day, whichever is later.

(2) Failure to comply with this section does not affect the validity of a declaration.

46 Delegation by Minister

(1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Act or the regulations to:

(a) the Secretary of the Department; or
(b) an SES employee, or acting SES employee, in the Department.
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(2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

47 Delegation by Secretary

(1) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Act to an SES employee, or acting SES employee, in the Department.

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

48 Constitutional safety net

(1) If:
   (a) a provision of this Act would result in an acquisition of property; and
   (b) the provision would not be valid, apart from this section, because a particular person has not been compensated;
   the Commonwealth must pay that person:
   (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
   (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

(3) In this section:

   acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

49 Interim Board of Tourism Australia—calling a meeting

(1) During the interim period, the Tourism Australia Act 2004 has effect as if paragraph 22(3)(b) had been repealed and the following paragraph had been substituted:
(b) must convene a meeting if requested in writing by one or more other members.

(2) In this section:

interim period means the period that commences on the proclamation day and ends on the earlier of the following:

(a) the first day on which there are in effect 5 or more appointments to the Board of Tourism Australia under section 13 of the *Tourism Australia Act 2004*;

(b) the end of the period of 6 months commencing on the proclamation day.

50 Interim Board of Tourism Australia—quorum

(1) During the interim period, the *Tourism Australia Act 2004* has effect as if subsection 24(1) had been repealed and the following subsection had been substituted:

(1) At a meeting of the Board a quorum is constituted by a majority of the members then holding office.

(2) In this section:

interim period means the period that commences on the proclamation day and ends on the earlier of the following:

(a) the first day on which there are in effect 5 or more appointments to the Board of Tourism Australia under section 13 of the *Tourism Australia Act 2004*;

(b) the end of the period of 6 months commencing on the proclamation day.

51 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made dealing with other transitional matters arising out of the repeal of the *Australian Tourist Commission Act 1987* and the enactment of this Act and the *Tourism Australia Act 2004*. 

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(3) The regulations may empower the Minister to make declarations dealing with matters arising out of the repeal of the Australian Tourist Commission Act 1987 and the enactment of this Act and the Tourism Australia Act 2004.
Notes to the Tourism Australia (Repeal and Transitional Provisions) Act 2004

Note 1

The Tourism Australia (Repeal and Transitional Provisions) Act 2004 as shown in this compilation comprises Act No. 75, 2004 amended as indicated in the Tables below.

The Tourism Australia (Repeal and Transitional Provisions) Act 2004 was amended by the Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI 2006 No. 50). The amendment is incorporated in this compilation.

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