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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN ASTRONOMICAL OBSERVATORY BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Hon Kim Carr, Minister for Innovation,  
Industry, Science and Research)

## AUSTRALIAN ASTRONOMICAL OBSERVATORY BILL 2009

### OUTLINE

The Australian Astronomical Observatory Bill 2009 (the Bill) is part of a package of Bills that provide for the Anglo-Australian Telescope Board (the Board), which operates the Anglo-Australian Observatory (the Observatory), to be dissolved and for the Observatory to be re-established as the Australian Astronomical Observatory (the AAO) within the Department of Innovation, Industry, Science and Research (the Department).

In 1969, the Government of the Commonwealth of Australia (Australian Government) and the Government of the United Kingdom of Great Britain and Northern Ireland (UK Government) entered into a treaty that provided for a bi-national authority to be established to operate a large optical telescope in Australia with financial assistance from both the Australian and UK Governments (the Agreement). As a result, the Board was established by the *Anglo-Australian Telescope Agreement Act 1970*.

Today, the Board operates astronomical facilities known as the Anglo-Australian Observatory, which consists principally of a national observatory located at Siding Spring Observatory, near Coonabarabran in New South Wales and a headquarters and an instrumentation laboratory located at Epping in New South Wales.

In 2005, the UK Government decided to withdraw from its involvement in the Board with effect from 1 July 2010. Arrangements to give effect to this are contained in a treaty between the Australian Government and the UK Government dated 3 November 2005 (the Supplementary Agreement). The Supplementary Agreement provides for the Board to be dissolved and for its assets to be transferred to the Australian Government. The Bill and the Australian Astronomical Observatory (Transitional Provisions) Bill 2009 (the Transitional Bill) give effect to the Supplementary Agreement.

The Bill establishes the AAO as a business unit within the Department. The main functions of the AAO will be to operate Australia's national observatory for optical astronomy and to undertake research and development into, and manufacture of, astronomical observing instruments. The AAO will also provide a range of other support to the optical astronomy community, including Australia's participation in the next-generation of future world-leading astronomical facilities.

The AAO is to consist of the Director and Australian Public Service (APS) employees of the Department and is to be supported by the Australian Astronomical Observatory Advisory Committee (the Advisory Committee). The Bill formally confers astronomical functions on the Secretary of the Department, but provides for those functions to be delegated to the Director or an APS employee within the AAO. The intention is for the Director to be a person with appropriate expertise in both

astronomical science and the leadership and management of a world-class science facility.

The Transition Bill repeals the *Anglo-Australian Telescope Agreement Act 1970* and provides for the transfer of assets and liabilities, staff and other matters from the Board to the Commonwealth.

## FINANCIAL IMPACT STATEMENT

In addition to the governance changes contained in this Bill, the Australian Government is also providing increased funding to the AAO, partly to compensate for the withdrawal of UK Government funding. Provision for AAO funding, including the increase, is being made in the relevant budget appropriation bills. The net increase in funding over four years totals \$20.91 million. Details of the 2009-10 Budget commitments are in the table below.

<b>Anglo-Australian Telescope Board / Australian Astronomical Observatory</b>	<b>2009-10 (\$m)</b>	<b>2010-11 (\$m)</b>	<b>2011-12 (\$m)</b>	<b>2012-13 (\$m)</b>	<b>Total (\$m)</b>
Existing funding – Board (Administered)	5.037	-	-	-	<b>5.037</b>
New funding – Board (Administered)	4.000	-	-	-	<b>4.000</b>
New funding – AAO (Administered)	-	1.494	1.490	1.488	<b>4.472</b>
New funding – AAO (Departmental)	0.138	8.946	9.023	9.933	<b>28.040</b>
<b>Total operational funding</b>	<b>9.175</b>	<b>10.440</b>	<b>10.513</b>	<b>11.421</b>	<b>41.549</b>
Savings – Board (Administered)	-	5.100	5.300	5.200	<b>15.600</b>
<b>Net increase</b>	<b>4.138</b>	<b>5.340</b>	<b>5.213</b>	<b>6.221</b>	<b>20.912</b>

## **AUSTRALIAN ASTRONOMICAL OBSERVATORY BILL 2009**

### **NOTES ON CLAUSES**

#### **Part 1—Preliminary**

##### **Clause 1 - Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Australian Astronomical Observatory Act 2009*.

##### **Clause 2 - Commencement**

Clause 2 provides that the provisions of the Bill will commence on 1 July 2010. It is necessary for the AAO to be established at this date because the Agreement with the UK Government terminates on this date.

##### **Clause 3 - Simplified outline**

Clause 3 contains a simplified outline of the Bill. It provides that:

- the Bill establishes the AAO within the Department;
- there is to be a Director of the AAO;
- the Secretary has functions relating to optical astronomy, but may delegate those functions to the Director or the staff of the AAO; and
- there is to be an Advisory Committee.

##### **Clause 4 - Definitions**

Clause 4 sets out the definitions of words used in the Bill.

##### **Clause 5 - Crown to be bound**

Clause 5 specifies that the Bill binds the Crown in each of its capacities.

##### **Clause 6 - Extension to external Territories**

Clause 6 specifies that the Bill extends to every external Territory.

##### **Clause 7 - Extra-territorial application**

Clause 7 specifies that the Bill applies both within and outside Australia.

#### **Part 2 - Australian Astronomical Observatory**

##### **Clause 8 - Australian Astronomical Observatory**

Clause 8 establishes the AAO within the Department.

Following the decision of the UK Government to withdraw from the Agreement, the Government considered options for the re-establishment of the AAO as an Australian government body, taking into account policy on governance arrangements for Australian Government Bodies (*Governance Arrangements for Australian Government Bodies*, August 2005, Department of Finance and Administration).

The Government is to establish the AAO as a unit within the Department. The governance arrangements for the AAO are modelled on those for the National Measurement Institute, which was established under Part III of the *National Measurement Act 1960* as a unit within the Department.

### **Clause 9 - Director**

Clause 9 provides that there is to be a Director of the AAO, who is to be an SES employee engaged under the *Public Service Act 1999*. The intention is for the Director to be a person with appropriate expertise in both astronomical science and the leadership and management of a world-class science facility.

### **Clause 10 - Acting Director**

Subclause 10(1) provides for the Secretary to appoint an APS employee to act as the Director during a vacancy in the position of Director or during any period when the Director is absent from duty, is absent from Australia or is unable to perform the duties of the position.

Subclause 10(2) provides that anything done by or in relation to a person purporting to act under such an appointment is not invalid in certain circumstances, including where the occasion for the appointment had not arisen.

## **Part 3 - Astronomical functions**

### **Clause 11 - Astronomical functions**

Clause 11 provides that the Secretary has functions relating to optical astronomy. These functions include, but are not limited to, the functions described in subclause 11(2). One of these functions is to operate, construct, develop and maintain national optical astronomy facilities (paragraph (a)).

It is intended that the AAO will operate Australia's national observatory for optical astronomy at Siding Spring Observatory in New South Wales and the instrumentation laboratory at Epping in Sydney. The national observatory, whose primary telescope is the 3.9 metre Anglo-Australian Telescope, provides world-class optical astronomy observatory facilities to the national and international astronomy communities with observing time allocated primarily on the basis of scientific merit. Under paragraph (k), the AAO will also implement Australia's international obligations in relation to optical astronomy, which currently include supporting Australian access to the Gemini and Magellan telescopes. The AAO will also

continue to operate a state-of-the-art instrumentation capability that will develop new instruments for the AAO and observatories around the world.

Subclause 11(3) makes it clear that subsection (2) does not limit subclause (1).

The functions relating to optical astronomy are conferred on the Secretary, rather than the Director. However, the Bill provides for those functions to be delegated to the Director or staff of the AAO, and it is expected that the functions conferred on the Secretary will ordinarily be exercised within the AAO.

#### **Clause 12 - Fees**

Clause 12 provides that the Commonwealth may charge fees for things done in the performance of the functions conferred on the Secretary by clause 11. This will enable the AAO to recover costs in relation to the development and construction of instruments for external clients or the provision of access to the AAO's facilities under certain circumstances, amongst other things. It is intended that most merit based observing time will be provided free of charge.

### **Part 4 - Australian Astronomical Observatory Advisory Committee**

#### **Clause 13 - Australian Astronomical Observatory Advisory Committee**

Clause 13 establishes the Australian Astronomical Observatory Advisory Committee (the Advisory Committee). The Advisory Committee will provide a source of advice and expertise external to the Department providing, amongst other things, a conduit for the AAO's user community to influence its direction and management.

#### **Clause 14 - Function of Advisory Committee**

Clause 14 provides that the Advisory Committee's function is to advise the Secretary about how the functions conferred on the Secretary by clause 11 are performed. It is intended that the Advisory Committee will provide independent expert advice to the Secretary (and, where the Secretary has delegated his or her powers to the Director) about the performance of the functions under clause 11.

#### **Clause 15 - Appointment of Advisory Committee members etc.**

Clause 15 provides for the appointment of persons as members of the Advisory Committee.

Subclause 15(1) provides that the Secretary is to appoint each member by written instrument.

Subclause 15(2) provides that an Advisory Committee member shall hold office for the period, not exceeding 3 years, specified in the instrument of appointment.

Subclause 15(3) provides that an Advisory Committee member holds office on a part-time basis.

Subclause 15(4) provides that the Secretary may terminate the appointment of an Advisory Committee member.

### **Clause 16 - Procedure of Advisory Committee**

Clause 16 sets out the procedures of the Advisory Committee.

Subclause 16(1) provides that the Secretary may give the Advisory Committee written directions about the way in which the Advisory Committee is to carry out its function and the procedures to be followed in relation to meetings.

Subclause 16(2) provides that a direction given under subclause (1) is not a legislative instrument, as it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. Subitem 16(2) confirms this and is included to assist readers.

### **Clause 17 - Remuneration and allowances**

Clause 17 provides for the remuneration of, and allowances to be paid to, Advisory Committee members.

Subclause 17(1) provides that an Advisory Committee member's remuneration is to be determined by the Remuneration Tribunal. Where there is no determination in operation, the member is to be paid the remuneration that is prescribed by the regulations.

Subclause 17(2) provides that an Advisory Committee member is to be paid the allowances that are prescribed by the regulations.

Subclause 17(3) provides that this provision is subject to the *Remuneration Tribunal Act 1973*.

### **Clause 18 - Leave of absence**

Clause 18 provides that the Secretary may grant leave of absence to an Advisory Committee member on the terms and conditions that the Secretary determines.

### **Clause 19 - Resignation**

Clause 19 provides that an Advisory Committee member may resign his or her appointment by giving the Secretary written notice of his or her resignation. The resignation takes effect on the day it is received by the Secretary, or if a later day is specified in the resignation, on that later day.

### **Clause 20 - Disclosure of interests to the Secretary**

Clause 20 provides that an Advisory Committee member is to disclose in writing to the Secretary all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

This clause and clause 21 are aimed at ensuring that the interests of Advisory Committee members do not conflict with the proper performance of their duties.

### **Clause 21 - Disclosure of interests to the Advisory Committee**

Subclause 21(1) provides that an Advisory Committee member who has an interest (pecuniary or otherwise) in a matter being considered or about to be considered by the Committee must disclose the nature of that interest to a meeting of the Advisory Committee.

Subclause 21(2) provides that the disclosure must be made as soon as possible after the relevant facts have come to the member's attention.

Subclause 21(3) provides that the minutes must record the disclosure.

Subclause 21 (4) provides that unless the Advisory Committee determines otherwise, the member must not be present during any deliberation by the Committee on the matter and must not take part in any decision of the Committee with respect to the matter.

Subclause 21(5) provides that the member must not be present during any deliberation of the Advisory Committee for the purpose of the Committee making a deliberation under subclause (4), and must not take part in making the determination.

Subclause 21(6) provides that a determination under subclause (4) must be recorded in the minutes of the meeting of the Advisory Committee.

Subclause 21(7) provides that the Secretary may terminate the appointment of an Advisory Committee member if the member fails, without reasonable excuse, to comply with this section.

Subclause 21(8) provides that subsection (7) does not limit subsection 15(4). This provision makes it clear that the Secretary has a power, independently from subclause 21(7), to terminate the appointment of an Advisory Committee member under subsection 15(4).

### **Clause 22 - Other terms and conditions**

Clause 22 provides that an Advisory Committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Secretary.

## **Part 5 - Miscellaneous**

### **Clause 23 - Delegation by the Secretary**

This clause provides that that the Secretary may delegate, in writing, all or any of his or her functions or powers under the Act to the Director or an APS employee within the AAO who has the expertise appropriate to the function or power delegated.



#### **Clause 24 - Executive power of the Commonwealth**

Clause 24 provides that the bill does not limit the executive power of the Commonwealth. It is intended that functions relating to optical astronomy may continue to be performed outside the Act (eg by someone other than the Secretary or a delegate under executive power). The purpose of this clause is to make this clear.

#### **Clause 25 – Concurrent operation of State and Territory Laws**

Clause 25 provides that the bill is not intended to exclude or limit the operation of any State or Territory law.

#### **Clause 26 - Regulations**

Clause 26 provides that the Governor-General may make regulations prescribing matters that are required or permitted to be prescribed by the Bill or necessary or convenient to be prescribed for carrying out or giving effect to the Bill.