

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

AUSTRALIAN TRADE COMMISSION BILL 1985

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 11 October 1985

(*Minister for Trade*)

A BILL

FOR

An Act to establish an Australian Trade Commission for the purpose of facilitating and promoting trade between Australia and foreign countries, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

5 1. This Act may be cited as the *Australian Trade Commission Act 1985*.

Commencement

 2. (1) Sections 1, 2, 3 and 97 shall come into operation on the day on which this Act receives the Royal Assent.

10 (2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

 3. (1) In this Act, unless the contrary intention appears—

15 “acting Chairperson” means an acting Chairperson appointed under sub-section 16 (1);

 “acting Deputy Chairperson” means an acting Deputy Chairperson appointed under sub-section 16 (2);

- “acting Deputy Managing Director” means an acting Deputy Managing Director appointed under sub-section 56 (2);
- “acting Managing Director” means an acting Managing Director of the Commission appointed under sub-section 56 (1);
- “acting member of the Board” or “acting member” means— 5
- (a) an acting Chairperson;
 - (b) an acting Deputy Chairperson; or
 - (c) a person appointed under sub-section 17 (1);
- “annual operational plan” means a plan developed by the Managing Director in accordance with section 67 and includes such a plan as varied under section 69; 10
- “appoint” includes re-appoint;
- “appointed member of the Board” or “appointed member” means a member other than the Managing Director;
- “approved bank” means a trading bank as defined by sub-section 5 (1) of the *Banking Act 1959* or another bank for the time being approved by the Treasurer for the purposes of the provision in which the expression occurs; 15
- “Australia” includes the Territories to which this Act extends;
- “Australian authority” means an authority or body (including a body corporate and a corporation sole)— 20
- (a) established for a purpose of the Commonwealth by, or in accordance with the provisions of, a law of the Commonwealth or of the Australian Capital Territory; or
 - (b) established for a purpose of a State by, or in accordance with the provisions of, a law of the State, 25
- and includes a Department of the Australian Public Service and a Department of the Public Service of a State, but does not include the Commission;
- “Australian organisation” means— 30
- (a) an Australian private organisation; or
 - (b) an Australian authority;
- “Australian private organisation” means—
- (a) a natural person;
 - (b) a partnership, other than a partnership in the formation of which the Commission has joined, pursuant to section 29; or 35
 - (c) a company, other than a Commission company, incorporated or formed in Australia, carrying on business in Australia;
- “Board” means the Australian Trade Commission Board established by section 11; 40
- “Chairperson” means the Chairperson of the Board;

“commencing day” means the day fixed by Proclamation for the purposes of sub-section 2 (2);

“Commission” means the Australian Trade Commission established by section 7;

5 “Commission company” means a company formed by the Commission, or in the formation of which the Commission has joined, pursuant to section 29;

10 “contract of indemnity” means a contract under which an indemnity or guarantee is given by the Commission under section 37, 40 or 42 or a contract of a like nature entered into by the Commission under section 44;

“corporate plan” means a plan developed by the Commission in accordance with section 64 and includes such a plan as varied in accordance with section 66;

15 “Deputy Chairperson” means the Deputy Chairperson of the Board;

“Deputy Managing Director” means the Deputy Managing Director of the Commission;

“Department of State”, in relation to the Northern Territory, means a Department of that Territory;

20 “development project” means a project by way of—

(a) the construction of works;

(b) the provision of services;

(c) the design, supply or installation of equipment or facilities;
or

25 (d) the testing in the field of agricultural practices,

and includes any necessary preliminary studies, investigations or planning;

“export contract” means a contract—

30 (a) for the export by an Australian organisation of goods manufactured or produced wholly or partly in Australia; or

(b) for the rendering (whether inside or outside Australia) of a service to a person outside Australia by an Australian organisation;

35 “guarantee” means a guarantee (including stand-by credit or any other form of monetary commitment supporting the performance of an obligation) given by the Commission under section 38, 39, 41 or 43 or a guarantee of a like nature given by the Commission under section 44;

40 “Insurance Corporation” means the Export Finance and Insurance Corporation that was established by the *Export Finance and Insurance Corporation Act 1974*;

“Managing Director” means the Managing Director of the Commission;

“member” means a member of the Board and includes the Chairperson;

- “overseas development project” means a development project that is to be carried out in a foreign country;
- “overseas engaged employee” means—
- (a) a person who is engaged by the Commission, outside Australia, to assist in the performance, outside Australia, of the functions of the Commission; or 5
 - (b) a Trade Commissioner Office employee who is deemed, by virtue of section 10 of the Transitional Provisions Act, to have been employed by the Commission;
- “Projects Corporation” means the Australian Overseas Projects Corporation that was established under the *Australian Overseas Projects Corporation Act 1978*; 10
- “securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents; 15
- “State” includes the Northern Territory;
- “Transitional Provisions Act” means the *Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985*.
- (2) In this Act, unless the contrary intention appears—
- (a) a reference to an act or thing done by the Commission in association with an Australian organisation is a reference to an act or thing done— 20
 - (i) by the Commission; or
 - (ii) by a Commission company, as a member of a partnership, consortium or business association formed with an Australian organisation; 25
 - (b) a reference to dealing with securities includes a reference to—
 - (i) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities; 30
 - (ii) creating, selling, purchasing or re-selling rights or options in respect of securities; and
 - (iii) entering into agreements or other arrangements relating to securities;
 - (c) a reference to a loan or to the lending of money includes a reference to the provision of finance, or to the provision of a financial accommodation, in any form; and 35
 - (d) a reference to trade between Australia and foreign countries includes a reference to any transaction (including the rendering of a service) involving a consideration in money or money’s worth accruing from a person in the course of carrying on business or other activities outside Australia to a person carrying on business or other activities in Australia. 40

(3) In this Act, unless the contrary intention appears—

(a) a reference to the business or affairs of the Commission under this Act includes a reference to the business or affairs of the Commission—

5 (i) in the performance of its functions in so far as they relate to the administration of the *Export Market Development Grants Act 1974*; and

(ii) in the performance of any functions conferred on the Commission by any other Act; and

10 (b) a reference to the functions, or to the powers, of the Commission under this Act includes a reference to any functions, or any powers, as the case may be, conferred on the Commission by the *Export Market Development Grants Act 1974* or any other Act.

Extension to Territories

15 4. (1) Subject to sub-section (2), this Act extends to all the Territories.

(2) The Minister may, by notice published in the *Gazette*, declare that, on a day specified in the notice, this Act ceases to extend to an external Territory specified in the notice, and, where such a notice is published—

20 (a) this Act does not, on or after that day, extend to the Territory so specified;

(b) a reference in this Act to a Territory does not, on or after that day, include a reference to the Territory so specified; and

(c) the Territory so specified shall, on and after that day, be deemed, for the purposes of this Act, to be a foreign country.

25 Application of Act outside Australia

5. This Act applies both within and outside Australia.

Application of *Export Market Development Grants Act 1974* not affected

6. Nothing in section 4 or 5 shall be taken to affect the application of the *Export Market Development Grants Act 1974*.

30 PART II—ESTABLISHMENT AND FUNCTIONS OF AUSTRALIAN TRADE COMMISSION

Australian Trade Commission

7. (1) There is established by this Act a Commission by the name of the Australian Trade Commission.

35 (2) The Commission—

(a) is a body corporate;

(b) shall have a seal;

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued.

(3) The seal of the Commission shall be kept in such custody as the Board directs and shall not be used except as authorised by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Commission appearing on a document and shall presume that the document was duly sealed.

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Functions of Commission

8. The functions of the Commission are—

- (a) to facilitate and encourage trade between Australia and foreign countries (in this section referred to as “Australian export trade”) by—
- (i) representing the trading and commercial interests of Australia in foreign countries;
 - (ii) assisting, directly or indirectly, Australian organisations in trade negotiations;
 - (iii) promoting, or participating in or co-ordinating projects to promote, Australian export trade;
 - (iv) obtaining, and making available to Australian organisations, information relating to current or future opportunities for Australian export trade, including opportunities for involvement in overseas development projects;
 - (v) supporting and facilitating investment in foreign countries, and facilitating investment in Australia, where that investment is likely to enhance opportunities for Australian export trade;
 - (vi) carrying out, or assisting other persons to carry out, or participating with other persons in carrying out, in whole or in part, overseas development projects, in circumstances where that course of action will benefit Australian organisations;
 - (vii) providing insurance and other financial services to persons involved, either directly or indirectly, in Australian export trade;
 - (viii) administering the *Export Market Development Grants Act 1974*;
 - (ix) developing and administering schemes to provide assistance in the development of markets in foreign countries; and
 - (x) facilitating access by persons to Departments of State of the Commonwealth or of a State and to instrumentalities established by or under a law of the Commonwealth or of a State where that access is likely to enhance opportunities for Australian export trade;
- (b) to do any other act or thing required by this Act or by any other Act to be done by the Commission; and
- (c) to act, outside Australia, as agent for Departments of State of the Commonwealth or for instrumentalities established by or under a law of the Commonwealth.

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Duties

9. (1) The Commission shall perform its functions in such a manner as will best assist in the development of trade between Australia and foreign countries.

- 5 (2) In performing its functions, the Commission shall—
 - (a) comply with any directions given to it under section 10; and
 - (b) have regard to—
 - 10 (i) the desirability of improving and extending the range and accessibility of advice, assistance and financial support available (whether through the Commission or otherwise) to persons involved, or likely to be involved, either directly or indirectly, in trade between Australia and foreign countries;
 - (ii) the need to provide its services as efficiently and economically as possible; and
 - 15 (iii) Australia's obligations under international agreements.

Power of Minister to give directions

10. (1) The Minister may give to the Commission, in writing, such directions with respect to the performance of its functions, and the exercise of its powers, under this Act, as appear to the Minister to be necessary.

- 20 (2) Nothing in sub-section (1) shall be construed—
 - (a) as requiring the approval of the Minister to the entry by the Commission into a particular contract or other agreement or arrangement under this Act or to the giving by the Commission of any particular guarantee under this Act; or
 - 25 (b) as empowering the Minister to determine that the Commission shall or shall not enter into any particular contract or other agreement or arrangement or shall or shall not give any particular guarantee, but the Commission shall not enter into a particular contract or other agreement or arrangement, or give a particular guarantee, contrary to a direction by the Minister under this section.

30 (3) Nothing in sub-section (1) shall be construed as empowering the Minister to determine that the Commission should deal in a particular manner with a particular person, or with a particular claim or other application for a benefit, under the *Export Market Development Grants Act 1974* or under a scheme approved by the Minister under section 30 of this Act.

40 (4) A direction of the Minister under this section shall not operate so as to affect prejudicially a claim under the *Export Market Development Grants Act 1974* in relation to a grant year (within the meaning of that Act) that commenced before the day on which the direction was given.

(5) This section does not affect the operation of any other provision of this Act or of any other Act that confers a power upon the Minister to give directions to the Commission.

PART III—ESTABLISHMENT AND FUNCTIONS OF AUSTRALIAN TRADE COMMISSION BOARD

Establishment of Australian Trade Commission Board

11. There shall be an Australian Trade Commission Board.

Membership of Board

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12. (1) The Board shall consist of not fewer than 9 nor more than 11 members, namely—

(a) a Chairperson;

(b) a Deputy Chairperson;

(c) the Managing Director;

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(d) a government member; and

(e) such number of other members, being not fewer than 5 nor more than 7, as the Minister determines, in writing, to be appropriate.

(2) A member of the Board, other than the Managing Director, shall be appointed by the Minister with effect from such day as the Minister specifies in the instrument of appointment of that member.

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(3) Appointed members shall hold office as part-time members.

(4) An appointed member, other than the government member, holds office, subject to this Act, for such period, not exceeding 7 years, as the Minister specifies in the instrument of appointment of the member, but is eligible for re-appointment.

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(5) The government member holds office, subject to this Act, during the Minister's pleasure.

(6) A person who has attained the age of 65 years shall not be appointed as a member.

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(7) A person shall not be appointed as a member, other than the government member, for a period that extends beyond the day on which the person will attain the age of 65 years.

(8) A person holding office as the government member shall cease to hold office on the day on which the person attains the age of 65 years.

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(9) Appointed members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Minister.

(10) The exercise of a power or the performance of a function of the Board is not affected by reason of there being a vacancy or vacancies in the membership of the Board or by reason of the number of appointed members referred to in paragraph (1) (e) falling below 5 for not longer than 6 months.

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Functions of Board in relation to Commission

13. (1) Subject to section 10, the Board shall determine the policy to be followed in the conduct of the affairs of the Commission under this Act.

5 (2) Without derogating, by implication, from the responsibility of the Managing Director for the day-to-day conduct of the affairs of the Commission under this Act, those affairs shall be conducted by the Board.

10 (3) All acts and things done in the name of, or on behalf of, the Commission by, or with the authority of, the Board or the Managing Director, for the purposes of this Act, of the *Export Market Development Grants Act 1974* or of any other Act that confers functions on the Commission, shall be deemed to have been done by the Commission.

15 (4) A decision made by the Board in the exercise of its powers under this Act is not invalidated, and shall not be called in question, on the ground that the Board has limited the exercise of its discretion in a particular case by reference to any general policy determined by it in the performance of its functions.

Committees

14. (1) The Board may appoint a committee to assist the Board in relation to the performance of any of its functions.

20 (2) A committee appointed under this section shall consist of such persons, of whom at least one shall be a member, as the Board thinks fit.

(3) The Board may give such directions as it thinks fit with respect to the procedure to be followed at, and in relation to, meetings of a committee appointed under this section.

25 **Remuneration and allowances of appointed members**

15. (1) An appointed member shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) An appointed member shall be paid such allowances as are prescribed.

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

Acting Chairperson and acting Deputy Chairperson

16. (1) The Minister may appoint a person to act as Chairperson—

- 35 (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
(b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may appoint a person to act as Deputy Chairperson—

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

(b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia or is, for any other reason (including the reason that the Deputy Chairperson is Acting as Chairperson) unable to perform the functions of his or her office,

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but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

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(3) An appointment of a person under sub-section (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) The Minister may—

(a) determine the terms and conditions of appointment of a person acting as Chairperson or Deputy Chairperson, including, in the case of a person other than the Managing Director, terms and conditions relating to remuneration and allowances; and

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(b) at any time terminate such an appointment.

(5) Where a person is acting as Chairperson in accordance with paragraph (1) (b) or as Deputy Chairperson in accordance with paragraph (2) (b) and the office in which the person is acting becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

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(6) The appointment of a person to act as Chairperson or as Deputy Chairperson ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(7) While a person is acting as Chairperson, the person may exercise all the powers, and shall perform all the functions, of the Chairperson.

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(8) While a person is acting as Deputy Chairperson, the person may exercise all the powers, and shall perform all the functions, of the Deputy Chairperson.

(9) The validity of anything done by, or in relation to, a person purporting to act under sub-section (1) or (2) shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

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Acting member

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17. (1) The Minister may appoint a person to act as a member—

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

(b) during any period, or during all periods, when a member is acting as Chairperson or Deputy Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of his or her office,

5 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment to act as a member may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may—

10 (a) determine the terms and conditions of appointment of a person appointed to act as a member, including, in the case of a person other than the Deputy Managing Director, terms and conditions relating to remuneration and allowances; and

(b) terminate such an appointment at any time.

15 (4) Where a person is acting as a member in accordance with paragraph (1) (b), and the office in which the person is acting becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

20 (5) The appointment of a person to act as a member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

25 (6) While a person is acting as a member, the person may exercise all the powers, and shall perform all the functions, of the member in whose office the person is acting.

30 (7) The validity of anything done by, or in relation to, a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

(8) A reference in this section to a member does not include a reference to the Chairperson, the Deputy Chairperson or the Managing Director.

35 **Leave of absence of appointed members**

18. (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as the Minister determines.

(2) The Chairperson may grant leave of absence to any other appointed member from attendance at a meeting.

Resignation of appointed members

19. An appointed member may resign from office by writing, signed by the member, and delivered to the Minister.

Termination of appointment of appointed members

20. (1) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity. 5

(2) If—

(a) an appointed member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; 10

(b) the Chairperson is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board;

(c) an appointed member other than the Chairperson is absent, except on leave granted by the Chairperson, from 3 consecutive meetings of the Board; or 15

(d) an appointed member fails to comply with his or her obligations under section 22,

the Minister shall terminate the appointment of the appointed member concerned. 20

Meetings of Board

21. (1) The Board shall hold such meetings as are necessary for the performance of its functions.

(2) The Minister, the Chairperson, or, if the Chairperson is unable (whether on account of illness or otherwise) to perform the functions of the office of Chairperson, the Deputy Chairperson, may at any time convene a meeting of the Board. 25

(3) The Chairperson or, if the Chairperson is unable (whether on account of illness or otherwise) to perform the functions of the office of Chairperson, the Deputy Chairperson, shall convene a meeting of the Board upon receipt of a request in writing from not less than 3 members. 30

(4) The Chairperson shall preside at all meetings of the Board at which the Chairperson is present.

(5) If the Chairperson is not present at a meeting of the Board the Deputy Chairperson shall, if present at the meeting, preside at the meeting. 35

(6) If neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Board, the members present shall elect one of their number to preside at the meeting.

(7) At a meeting of the Board, a quorum shall consist of 5 members.

(8) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting. 40

(9) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Disclosure of interests

5 **22. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, being an interest that could conflict with the proper performance of the member's functions in relation to the consideration of the matter, shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

10 **(2)** A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to the matter; or
- 15 (b) take part in any decision of the Board with respect to the matter.

PART IV—GENERAL POWERS AND DUTIES OF COMMISSION

General powers of Commission

20 **23. (1)** Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions under this Act.

(2) The generality of sub-section (1) shall not be taken to be limited, by implication, by any other provision of this Act, or of any other Act, that confers a power on the Commission.

25 **(3)** To the extent that is practicable to do so, the Commission shall ensure that the exercise at any time of the powers conferred on it by this Act or by the *Export Market Development Grants Act 1974* is consistent with, and designed to give effect to, the provisions of any corporate plan, and of any annual operational plan, in force at that time.

30 **(4)** The powers of the Commission may be exercised in Australia or elsewhere.

Commission may establish offices in Australia and in foreign countries

35 **24.** The Commission may, in order to facilitate the more effective performance of its functions, establish and operate offices in such locations, whether in Australia or in foreign countries, as the Commission determines to be appropriate.

Trading powers of Commission

40 **25. (1)** Except as authorised by another provision of this Act, the Commission shall not engage, whether as principal or as agent and whether directly or indirectly—

- (a) in the acquisition, whether by purchase or otherwise, or in the sale or other disposal, of goods; or
 - (b) in the provision of services for reward.
 - (2) Nothing in sub-section (1) shall be construed as preventing—
 - (a) the acquisition by the Commission, whether by purchase or otherwise, of goods in the day-to-day operations of the Commission; or 5
 - (b) the acquisition by the Commission, whether by purchase or otherwise, of goods in the performance, in association with an Australian organisation, of any of the functions of the Commission,
- or the sale or other disposal of such goods, whether or not such goods have been used for the purpose for which they were acquired. 10
- (3) Nothing in sub-section (1) shall be construed as preventing—
 - (a) the provision for reward of services by the Commission in the day-to-day operations of the Commission; or
 - (b) the provision for reward of services by the Commission in the performance, in association with an Australian organisation, of any of the functions of the Commission. 15

Powers in relation to carrying out overseas development projects

26. (1) The Commission may do all things necessary to facilitate the involvement of an Australian organisation, either directly or indirectly, and either alone or as a member of a partnership, consortium or other business association, (whether or not that partnership, consortium or business association involves the Commission) in a contract to carry out the whole, or a part, of an overseas development project. 20

(2) Subject to section 88, the Commission may, for the purposes of sub-section (1), enter into a contract to carry out the whole, or a part, of an overseas development project, being a contract in pursuance of which the Commission arranges for an Australian organisation, acting on behalf of the Commission, to provide some or all of the services, or to carry out some or all of the work, required under that contract to be provided or carried out in relation to that project or that part of that project. 25
30

Commission may provide advice to promote trade

27. (1) The Commission may provide information or advice to any person in relation to any matter likely to assist in the development of trade between Australia and foreign countries. 35

(2) Without limiting the generality of sub-section (1), the information or advice provided by the Commission may relate to—

- (a) financial arrangements available to support trade between Australia and foreign countries; and
- (b) opportunities for investment, either in Australia or elsewhere, where such investment will assist in the development of such trade. 40

Powers in relation to provision of services and performance of work

28. The Commission may, in connection with the performance of its functions under this Act—

- (a) enter into an arrangement or agreement with a person—
 - (i) for that person to provide services to, or to perform other work for, the Commission;
 - (ii) for that person, acting on behalf of the Commission, to provide services to, or perform other work for, an Australian organisation or a company partnership, consortium or other business association in the formation of which the Commission has joined; or
 - (iii) for the Commission to provide services to that person;
- (b) advertise, in any manner that the Commission considers to be appropriate services that it is prepared to provide; or
- (c) charge such fees as the Commission considers appropriate with respect to the provision of services, or the performance of other work, by, or on behalf of, the Commission.

Commission may form, or join in the formation of, companies, partnerships, consortiums or other business associations

29. (1) Subject to this Act, the Commission may form a company, or enter into an agreement with another person to join in the formation of a company, partnership, consortium or other business association—

- (a) to carry out the whole or a part of an overseas development project; or
 - (b) for any other purpose connected with, or incidental to, the performance of its functions.
- (2) The Commission shall not exercise a power under sub-section (1)—
- (a) if the exercise of that power would not be consistent with the objectives of the Commission as set out in the corporate plan in force at the time when it is proposed to exercise that power; or
 - (b) otherwise than on terms and conditions that are approved, in writing, by the Minister.

(3) Nothing in this section shall be taken to authorise the Commission to form a company, or to join in the formation of a company, partnership, consortium or other business association, for the purpose of entering into a contract to carry out the whole or a part of an overseas development project if, were that company, partnership, consortium or other business association to be formed, the entry into that contract would cause the assessed net commercial risk of the Commission in relation to its business in respect of overseas development projects to exceed the amount specified in, or prescribed for the purposes of, sub-section 88 (2).

(4) For the purposes of sub-section (3), the assessed net commercial risk of the Commission in relation to its business in respect of overseas

development projects shall be calculated in the same manner as for the purposes of section 88.

Export market development schemes

30. (1) In the performance of its functions in so far as they relate to the development and administration of a scheme (other than the scheme provided for in the *Export Market Development Grants Act 1974*) to provide assistance in the development of markets in foreign countries, the Commission may develop, in writing, a broad proposal for such a scheme, including— 5

- (a) the types of grant or other assistance proposed to be provided under the scheme; 10
- (b) the manner in which the scheme will assist in market development;
- (c) the proposed manner of operation of the scheme; and
- (d) the estimated cost, and the proposed duration, of the scheme, 15

and submit that proposal to the Minister for the Minister's approval. 15

(2) If the Minister approves a proposal submitted under sub-section (1), the Commission shall develop, in writing, detailed guidelines for the administration of the scheme to which the proposal relates and shall submit those guidelines to the Minister for approval.

(3) Where guidelines are submitted under sub-section (2) and the Minister is of the opinion that the guidelines should be revised in some respect, the Minister may request the Commission to revise the guidelines and, where the Minister does so, the Minister shall include in that request a statement setting out the reasons for making that request. 20

(4) Upon the Commission's receiving a request under sub-section (3), the Commission shall consider the request and statement of reasons and shall make such revision of the guidelines as it considers appropriate and shall resubmit the guidelines, as so revised, to the Minister for approval. 25

(5) Where the Minister approves guidelines submitted under sub-section (2) or resubmitted under sub-section (4), the Minister shall specify a day, being the day on which the Minister gives that approval, or a later day, as the day with effect from which the guidelines take effect, and, on that day, the guidelines take effect accordingly. 30

(6) Where guidelines have been approved by the Minister under this section, the Commission shall take such steps as it considers necessary to publicise the scheme to which the guidelines relate and to implement the scheme in accordance with the guidelines. 35

(7) The Minister may, at any time, request the Commission to vary the guidelines for the administration of a scheme, whether or not the Commission has commenced to implement that scheme, and, upon receipt of such a request, the Commission shall, with the approval of the Minister, vary those guidelines accordingly. 40

(8) Where, at any time, the Commission considers that a variation to the guidelines for the administration of a scheme, whether or not it has commenced to implement that scheme, is desirable, the Commission may, with the approval of the Minister, vary those guidelines.

5 (9) Where the Minister approves a variation of guidelines under subsection (7) or (8), the Minister shall specify a day, being the day on which the Minister gives that approval or a later day, as the day with effect from which the variation takes effect.

10 (10) Where a variation of guidelines has been approved by the Minister under this section, the Commission shall take such steps as it considers necessary to publicise the variation of those guidelines.

Encouragement of financing of eligible export transactions by Australian banks, &c.

15 31. The Commission shall take such steps as it considers appropriate to encourage banks, and other financial institutions, carrying on business in Australia, to finance, or to assist in the financing of, export contracts or transactions that are, within the meaning of Part V, eligible export transactions.

20 **Commission may administer aid funds required in respect of export contracts**

25 32. Where the Commonwealth, or an instrumentality of the Commonwealth, proposes to provide funds in relation to a project that will assist in the social and economic development of a foreign country, being a project involving the entry into an export contract by a person carrying on business in Australia, the Commission may, on behalf of the Commonwealth or of that instrumentality, take such action as it considers necessary to do all or any of the following:

- 30 (a) to manage the funds required to be paid out to that person under or in accordance with that contract;
- (b) to establish whether or not the obligations of that person under that contract have been duly performed; or
- (c) to attend to the disbursements of the funds required to be paid out to that person upon the performance of the obligations of that person under that contract.

35 **PART V—INSURANCE AND FINANCE SERVICES**

Division 1—Preliminary

Interpretation

33. (1) In this Part, unless the contrary intention appears, “overseas investment transaction” means—

- (a) the acquisition of shares or stock, or of any other interest, in a corporation incorporated in a foreign country, being a corporation—
- (i) that, either alone or with other persons, carries on, or proposes to carry on, a business in that country; or
 - (ii) that has a substantial shareholding in another corporation that, either alone or with other persons, carries on, or proposes to carry on, a business in that country; 5
- (b) the acquisition of a right to share in the income or assets, or the income and assets, of a business carried on, or proposed to be carried on, in a foreign country, whether as a partnership or otherwise; 10
- (c) the lending of money to a person for use by that person in, or in connection with, a business carried on, or proposed to be carried on, by that person in a foreign country or the guaranteeing of, or the provision of other support for, the repayment of money so lent and the payment of interest or other charges that may become payable in respect of money so lent; 15
- (d) the transferring of money to, or the importing of equipment or other goods into, a foreign country for use in, or in connection with, a business carried on, or proposed to be carried on, in that country by the person transferring the money or importing the equipment or other goods; or 20
- (e) the transferring of money, or the supply of equipment or other goods, by a corporation to another corporation in which that first-mentioned corporation has a substantial shareholding, being money, equipment or goods for use in, or in connection with, a business carried on, or proposed to be carried on, by that other corporation in a foreign country. 25
- (2) For the purposes of this Part, a transaction is an eligible export transaction if, in whole or in part, it involves, is associated with or is incidental or related to— 30
- (a) the export from Australia of capital goods produced or manufactured in whole or in substantial part in Australia;
 - (b) the production or manufacture in Australia, in whole or in substantial part, of capital goods that are to be exported from Australia; 35
 - (c) the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured in whole or in substantial part in Australia and exported from Australia; or
 - (d) the rendering in a foreign country by a person carrying on business in Australia— 40
 - (i) of any services in or in connection with the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured in whole or in substantial part in Australia and exported from Australia; or 45

(ii) of any construction, technological, managerial or other services (whether in connection with such capital goods or otherwise) for a person carrying on business in a foreign country or for the government, or an agency of the government, of that country or of any political sub-division of that country.

(3) In sub-section (2), "capital goods" means—

(a) machinery; or

(b) any goods declared by the Minister, in writing, to be capital goods for the purposes of sub-section (2) or goods included in a class of goods declared by the Minister, in writing, to be a class of capital goods for the purposes of that sub-section.

Reinsurance, &c., in relation to business of Commission

34. (1) The Commission may enter into a contract of insurance or indemnity, take a guarantee or take security to cover any actual or contingent liability of the Commission in respect of contracts entered into, or guarantees given, under this Part.

(2) The Commission may enter into any other contract in order to reduce or reschedule any actual or contingent liability of the Commission in respect of contracts entered into, or guarantees given, under this Part.

Use of Export Finance and Insurance Corporation business name and seal

35. (1) The Commission may conduct its business under this Part under the name Export Finance and Insurance Corporation.

(2) Where, in relation to any matter arising in the conduct of its business under this Part, the Commission uses the name Export Finance and Insurance Corporation, it may sue or be sued in that name in respect of that matter.

(3) Where, in relation to any matter arising in the conduct of its business under this Part, the use of a seal is required, the Commission may use the Export Finance and Insurance Corporation seal.

(4) The Export Finance and Insurance Corporation seal shall be kept in such custody as the Board directs and shall not be used except as authorised by the Board.

(5) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the Export Finance and Insurance Corporation seal appearing on a document and shall presume that it was duly sealed.

(6) In this section, "Export Finance and Insurance Corporation seal" means the seal used by the Insurance Corporation before that body ceased to exist.

Division 2—Overseas Trade Insurance and Reinsurance Services

Export payments insurance contracts

36. The Commission may enter into contracts of insurance with, or for the benefit of, persons carrying on business in Australia, being contracts of insurance against risk of direct or indirect monetary loss or other detriment resulting from failure to receive payment in connection with, or otherwise arising out of, acts or transactions in the course of, or for the purposes of, trade between Australia and foreign countries. 5

Reinsurance in relation to transactions with foreign countries

37. (1) Subject to sub-section (2), the Commission may enter into a contract with an insurer under which an indemnity or a guarantee is given to the insurer in respect of the liability of the insurer under another contract (in this section called the “primary contract of indemnity”), whether entered into in Australia or elsewhere, to give an indemnity or a guarantee in respect of monetary loss or other detriment suffered in respect of a transaction involving— 10

- (a) goods exported, or to be exported, pursuant to an export contract;
- (b) goods in the production or treatment of which goods referred to in paragraph (a) have been, or are to be, used; or
- (c) services rendered, or to be rendered, pursuant to an export contract. 20

(2) A contract entered into under sub-section (1) shall relate only to such part of the liability of the insurer under the primary contract of indemnity as may reasonably be regarded as related to the goods or services referred to in sub-section (1).

Guarantees and subsidies in relation to loans to Australian suppliers 25

38. (1) Where a person (in this section referred to as “the lender”) has lent, or proposes to lend, money to another person who is carrying on business in Australia for the purposes of financing, in whole or in part, acts or transactions in the course of, or for the purposes of, trade between Australia and foreign countries, the Commission may guarantee to the lender the repayment of the whole, or any part, of the money lent, or proposed to be lent, by the lender, and the payment of the whole, or a part, of any interest or other charges that may become payable to the lender in respect of that money. 30

(2) Where the Commission has given, or proposes to give, under sub-section (1), a guarantee to the lender in respect of the loan made or proposed to be made by the lender, the Commission may enter into a contract with the lender under which, in consideration of the lender making or agreeing to make the loan, the Commission agrees to pay to the lender, in specified circumstances, an amount ascertained in accordance with the contract. 35 40

Guarantees and subsidies in relation to loans to overseas buyers, &c.

39. (1) Where a person (in this section referred to as “the lender”) has lent, or proposes to lend, money to another person for the purpose of financing, in whole or in part, the making of payments under a contract—

5 (a) that is an export contract; or

(b) that is a contract for the sale of goods, or for the performance of works or services, outside Australia, being a contract for the purpose of performing which a party to that contract has entered into an export contract,

10 the Commission may guarantee to the lender the repayment of the whole, or any part, of the money so lent, or proposed to be lent, by the lender and the payment of the whole or a part of any interest or other charges that may become payable to the lender in respect of that money.

15 (2) Where the Commission has given, or proposes to give, under subsection (1), a guarantee to the lender in respect of the loan made or proposed to be made by the lender, the Commission may enter into a contract with the lender under which, in consideration of the lender making or agreeing to make the loan, the Commission agrees to pay to the lender, in specified circumstances, an amount ascertained in accordance with the
20 contract.

Reinsurance of guarantees in relation to loans to overseas buyers, &c.

40. Where a person (in this section referred to as “the guarantor”), being a person other than the Commission, has given a guarantee to a lender in circumstances of the kind referred to in section 39, the Commission may
25 enter into a contract with the guarantor under which the Commission gives an indemnity or guarantee to the guarantor in respect of so much of the liability of the guarantor under the first-mentioned guarantee as does not exceed—

30 (a) in a case where the first-mentioned guarantee guarantees repayment of money lent, or proposed to be lent, for the purpose of financing payments under an export contract—the amount, or the total of the amounts, payable under that export contract that relates or relate to goods or services to which that export contract relates; or

35 (b) in a case where the first-mentioned guarantee guarantees repayment of money lent, or proposed to be lent, for the purpose of financing payments under a contract for the purpose of performing which a party to that contract has entered into an export contract—the amount, or the total of the amounts, payable under that export contract that relates or relate to goods or services to which that
40 export contract relates.

Tender guarantees and performance guarantees

41. The Commission may enter into a contract under which an indemnity or a guarantee is given to a person in relation to a tender or proposed tender for, or in relation to the performance of, a contract or proposed

contract that is an export contract or that, in whole or in part, involves or is associated with an eligible export transaction.

Reinsurance in relation to tender guarantees and performance guarantees

42. The Commission may enter into a contract with a guarantor under which the Commission gives an indemnity or a guarantee to the guarantor in respect of the liability, or the proposed liability, of the guarantor under an indemnity or guarantee given, or proposed to be given, by that guarantor in relation to a tender or proposed tender for, or in relation to the performance of, a contract or proposed contract that is an export contract or that, in whole or in part, involves, or is associated with, an eligible export transaction. 5
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Guarantees in relation to certain export transactions

43. Where, for the purpose of financing, in whole or in part, an eligible export transaction—

- (a) the Commission has lent, or proposes to lend, money under section 49 to any person or persons; and 15
- (b) another person (in this section referred to as the “co-lender”), by arrangement with the Commission, also has lent, or proposes to lend, money, to that person or persons, or to another person or persons, 20

the Commission may guarantee to the co-lender the repayment of the whole or any part of the money lent, or to be lent, by the co-lender and the payment of the whole or any part of any interest or other charges that may become payable to the co-lender in respect of the money lent, or to be lent, by the co-lender. 25

Certain contracts and guarantees to be provided by Commission in the national interest

44. (1) Subject to sub-section (2), the Commission may refer to the Minister, for consideration under sub-section (3), an application for the Commission to enter into a contract of insurance or indemnity or give a guarantee under this Division, whether or not the Commission is authorised to enter into the contract or give the guarantee and whether or not it would do so in the ordinary course of business. 30

(2) The Minister may give directions to the Commission with respect to the circumstances or cases in which applications are, or are not, to be referred to the Minister under sub-section (1), and the Commission shall comply with any such direction. 35

(3) Where, in relation to an application referred to the Minister under sub-section (1), the Minister is of the opinion that it is in the national interest that the Commission should enter into the contract or give the guarantee to which the application relates, the Minister may, by writing, approve the entry by the Commission into such a contract, or the giving by the Commission of such a guarantee. 40

(4) An approval under sub-section (3) may contain conditions in relation to the proposed contract or guarantee, including the amount of premium or fee to be charged in relation to the proposed contract or guarantee.

5 (5) Where the Minister is of the opinion that it is in the national interest that the Commission should do so, the Minister may, by writing, direct the Commission that it should—

10 (a) whenever application is made to it to enter into a contract of insurance or indemnity that is included within a specified class of contract of insurance or indemnity—enter into that contract (whether or not the Commission would, but for the operation of this section, be authorised to enter into that contract and whether or not the Commission would enter that contract in the ordinary course of business); or

15 (b) whenever application is made to it to give a guarantee that is included within a specified class of guarantees—give that guarantee (whether or not the Commission would, but for the operation of this section, be authorised to give that guarantee and whether or not the Commission would give that guarantee in the ordinary course of business).

20 (6) A direction under sub-section (5) may contain conditions in relation to the entry into a contract or guarantee to which the direction relates, including the amount of premium or fee to be charged in relation to the contract or guarantee.

25 (7) Where an approval is given under sub-section (3), or a direction is given under sub-section (5), the Commission is empowered to enter into a contract, or to give a guarantee, as the case requires, in accordance with that approval or direction and, unless that approval or direction is revoked, shall not decline to do so.

30 (8) The Commission may, before entering into a contract, or giving a guarantee, in accordance with an approval given under sub-section (3) or a direction given under sub-section (5), inform the Minister, in writing, that the Commission will bear such a proportion of the liability of the Commission under the contract or guarantee as is specified in the notice.

35 (9) Where a contract is entered into or a guarantee is given in accordance with an approval given under sub-section (3) or a direction given under sub-section (5), the Commission shall notify the fact in the *Gazette* (without reference to names and the parties to the transaction to which the contract or guarantee relates) together with particulars of the nature and extent of the liability of the Commonwealth under the contract or guarantee.

40 ***Division 3—Overseas Investment Insurance Services***

Declarations of approved causes of loss

45. (1) The Commission may, by writing, declare a cause of loss specified in the declaration to be, with effect from a day specified in the declaration, an approved cause of loss for the purposes of this Division.

(2) The Commission shall, as soon as practicable after making a declaration pursuant to sub-section (1) or revoking any declaration so made, cause particulars of that declaration or of the revocation of that declaration to be published in the *Gazette*.

Applications for insurance

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46. (1) Where a person carrying on business in Australia proposes, on or after the commencing day, to enter into an overseas investment transaction, the person may, by application in writing made to the Commission, request the Commission to enter into a contract of insurance insuring that person against risk of direct or indirect monetary loss or other detriment in respect of the transaction, being loss or detriment resulting from such approved cause of loss as is, or such approved causes of loss as are, specified in the application. 10

(2) Where a person carrying on business in Australia has, before, on or after the commencing day, entered into an overseas investment transaction, the person may, by application in writing made to the Commission, request the Commission to enter into a contract of insurance insuring that person against risk of direct or indirect monetary loss or other detriment in respect of earnings generated by that transaction after the date of that application, being loss or detriment resulting from such approved cause of loss as is, or such approved causes of loss as are, specified in the application. 15
20

Commission may enter into contracts of insurance in respect of overseas investment transactions

47. (1) Upon receipt of an application in accordance with sub-section 46 (1) or (2), the Commission may enter into a contract of insurance of the kind referred to in that sub-section in respect of the whole, or a part, of the overseas investment transaction to which the application relates. 25

(2) The Commission shall not, under sub-section (1), enter into a contract of insurance under which a person is insured against loss or other detriment attributable to circumstances within the control of that person. 30

Certain contracts of insurance to be entered into in the national interest

48. (1) Subject to sub-section (2), the Commission may refer to the Minister, for consideration under sub-section (3), an application made to it requesting it to enter into a contract of insurance of the kind referred to in sub-section 46 (1) or (2), whether or not the Commission is authorised to enter into the proposed contract and whether or not the Commission would do so in the ordinary course of business. 35

(2) The Minister may give directions to the Commission with respect to the circumstances or cases in which applications are, or are not, to be referred to the Minister under sub-section (1), and the Commission shall comply with any such direction. 40

(3) Where an application has been referred to the Minister under sub-section (1) and the Minister is of the opinion that—

(a) the overseas investment transaction to which the application relates will assist in the social and economic development of a foreign country; and

5 (b) it is in the national interest that the Commission should enter into a contract of insurance of the kind referred to in sub-section 46 (1) or (2) in respect of the whole, or a part, of the transaction, the Minister may, by writing, approve the entry by the Commission into such a contract in respect of the whole of the transaction or of a part of the transaction specified in the approval.

10 (4) An approval under sub-section (3) may contain conditions in relation to the proposed contract of insurance, including conditions with respect to the amount of the premium or fee to be charged in relation to the proposed contract and the cause of the loss or detriment to which the proposed contract may relate.

15 (5) Where the Minister is of the opinion that—

(a) overseas investment transactions of a particular kind will assist in the social and economic development of a foreign country; and

20 (b) it is in the national interest that the Commission should enter into contracts of insurance in respect of overseas investment transactions of that kind,

the Minister may, by writing, direct the Commission that it should, wherever application is made to it to enter into a contract of insurance that is included within a specified class of contracts, enter into that contract (whether or not the Commission would, but for the operation of this section, be authorised to enter into that contract and whether or not the Commission would enter into that contract in the ordinary course of business).

25 (6) A direction under sub-section (5) may contain conditions in relation to the entry into a contract to which the direction relates, including conditions with respect to the amount of premium or fee to be charged in relation to the proposed contract and the cause of the loss or detriment to which the contract may relate.

35 (7) The Minister shall not, under sub-section (3), approve, or under sub-section (5), direct, the entering into by the Commission of a contract of insurance under which a person is insured against loss or other detriment attributable to circumstances within the control of that person.

(8) Where an approval is given under sub-section (3), or a direction is given under sub-section (5), the Commission is empowered to enter into a contract in accordance with that approval or direction and, unless that approval or direction is revoked, shall not decline to do so.

40 (9) The Commission may, before entering into a contract in accordance with an approval given under sub-section (3) or a direction given under sub-section (5), inform the Minister, in writing, that the Commission will bear such a proportion of the liability of the Commission under the contract as is specified in the notice.

(10) Where a contract is entered into in accordance with an approval given under sub-section (3), or a direction given under sub-section (5), the Commission shall notify the fact in the *Gazette* (without reference to the names of the parties to the overseas investment transaction to which the contract relates), together with particulars of the nature and extent of the liability of the Commonwealth under the contract. 5

Division 4—Finance Services

Financing eligible export transactions

49. Where an eligible export transaction has been entered into, or is proposed to be entered into, the Commission may, for the purpose of financing that transaction in whole or in part, lend money to such person or persons as the Commission considers appropriate, whether or not that person is or will be a party, or those persons are or will be parties, to the transaction or proposed transaction. 10

Certain loans to be made in the national interest 15

50. (1) Subject to sub-section (2), the Commission may refer to the Minister for consideration under sub-section (3), an application made to it for a loan for the purpose of financing, in whole or in part, an eligible export transaction, whether or not the Commission is authorised to make the loan, or to make the loan on the terms and conditions proposed, and whether or not the Commission would make the loan, or would make the loan on the terms and conditions proposed, in the ordinary course of business. 20

(2) The Minister may give directions to the Commission with respect to the circumstances or cases in which applications are, or are not, to be referred to the Minister under sub-section (1), and the Commission shall comply with any such direction. 25

(3) Where, in relation to an application referred to the Minister under sub-section (1), the Minister is of the opinion that it is in the national interest that the Commission should make a loan in respect of the transaction the subject of the application, the Minister may, by writing, approve the making of such a loan by the Commission. 30

(4) An approval under sub-section (3) may contain conditions in relation to the proposed loan and the terms and conditions of the loan, including conditions with respect of the amount of the loan, the rate of interest to be charged, and the security, if any, to be given. 35

(5) Where the Minister is of the opinion that it is in the national interest that the Commission should do so, the Minister may, in writing, direct the Commission that it should, whenever application is made to it for a loan that is included within a specified class of loans, make that loan (whether or not the Commission would, but for the operation of this section, be authorised to make that loan or to make that loan on the terms and 40

conditions proposed, and whether or not the Commission would make that loan or would make that loan on the terms and conditions proposed, in the ordinary course of business).

5 (6) A direction under sub-section (5) may contain conditions in relation to the making of, and the terms and conditions of, a loan to which the direction relates, including conditions with respect of the amount of the loan, the rate of interest to be charged, and the security, if any, to be given.

10 (7) Where, under sub-section (3), the Minister has approved the making of a loan by the Commission, the Minister may, on behalf of the Commonwealth, guarantee to the Commission the repayment of the money lent, or to be lent, by the Commission under that loan and the payment of any interest or other charges that may become payable to the Commission in respect of the money lent, or to be lent, by the Commission under that loan.

15 (8) Where, under sub-section (5), the Minister has given a direction to the Commission in respect of the making of loans by the Commission, the Minister may, on behalf of the Commonwealth, guarantee to the Commission the repayment of the money lent, or to be lent, by the Commission under any loan made in accordance with that direction and the payment of any interest or other charges that may become payable to the Commission in
20 respect of the money lent, or to be lent, by the Commission under any such loan.

25 (9) Where an approval is given under sub-section (3), or a direction is given under sub-section (5), the Commission is empowered to make a loan in accordance with that approval or direction and, unless that approval or direction is revoked, shall not decline to do so.

30 (10) The Commission may, before making a loan in accordance with an approval given under sub-section (3) or a direction given under sub-section (5), not being a loan in respect of which a guarantee has been, or is to be, given under sub-section (7) or (8), inform the Minister, in writing, that the Commission proposes to provide, from sources other than the Commonwealth, such proportion of the money to be lent as is specified in the notice.

35 (11) Where the Commission makes a loan in accordance with an approval given under sub-section (3), or a direction given under sub-section (5), the Commission shall notify the fact in the *Gazette*, together with particulars of the amount of the loan and the interest rate to be charged on the money lent and, if the Minister gives or has given a guarantee under sub-section (7) or (8), in respect of the loan, particulars of the nature and extent of the liability of the Commonwealth under the guarantee.

PART VI—STAFF

Division 1—Managing Director and Deputy Managing Director

Managing Director and Deputy Managing Director

51. There shall be a Managing Director and Deputy Managing Director of the Commission. 5

Appointment of Managing Director and Deputy Managing Director

52. (1) The Managing Director and the Deputy Managing Director shall be appointed by the Minister.

(2) In making an appointment under sub-section (1) the Minister shall have regard to the views of the Board. 10

(3) A person appointed as Managing Director or Deputy Managing Director shall hold office for such term, not exceeding 7 years, as the Minister specifies in the instrument of appointment of that person.

(4) A person appointed as Managing Director or Deputy Managing Director is eligible for re-appointment. 15

(5) A person who has attained the age of 65 years shall not be appointed as Managing Director or Deputy Managing Director and a person shall not be appointed as Managing Director or as Deputy Managing Director for a period that extends beyond the day on which that person will attain the age of 65 years. 20

(6) The Managing Director or Deputy Managing Director holds office on such terms and conditions (if any) in respect of matters not provided for in this Act as are determined by the Minister.

Duties of Managing Director and Deputy Managing Director

53. (1) The affairs of the Commission shall, to the extent determined by the Board, be managed by the Managing Director. 25

(2) There are conferred upon the Managing Director by this section all powers necessary to enable the performance of the duty imposed upon the Managing Director by sub-section (1).

(3) The Managing Director shall, in managing the affairs of the Commission, act in accordance with the policy of, and any directions given by, the Board. 30

(4) The Deputy Managing Director shall perform such duties as the Managing Director directs.

Remuneration and allowances 35

54. (1) The Managing Director and the Deputy Managing Director shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) The Managing Director and the Deputy Managing Director shall be paid such allowances as are prescribed.

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

Managing Director and Deputy Managing Director not to engage in paid employment

5 **55.** The Managing Director and the Deputy Managing Director shall not engage in paid employment outside the duties of their respective offices except with the approval of the Board.

Acting Managing Director and acting Deputy Managing Director

10 **56. (1)** At any time when there is a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office) or the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of Managing Director, the Deputy Managing Director or a person acting as Deputy Managing Director under sub-section (2) shall act as Managing Director.

15 **(2)** The Minister may appoint a person to act as Deputy Managing Director—

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

20 (b) during any period, or during all periods, when the Deputy Managing Director is absent from duty or from Australia or is, for any other reason (including the reason that the Deputy Managing Director is acting as Managing Director) unable to perform the functions of his or her office,

25 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(3) An appointment of a person under sub-section (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

) **(4)** The Minister may—

30 (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Managing Director or Deputy Managing Director; and

(b) at any time terminate such an appointment.

35 **(5)** Where a person is acting as Managing Director in accordance with paragraph (1) (b) or as Deputy Managing Director in accordance with paragraph (2) (b) and the office in which the person is acting becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever
40 first happens.

(6) The appointment of a person to act as Managing Director or as Deputy Managing Director ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(7) While a person is acting as Managing Director, the person may exercise all the powers, and shall perform all the functions, of the Managing Director. 5

(8) While a person is acting as Deputy Managing Director, the person may exercise all the powers, and shall perform all the functions, of the Deputy Managing Director.

(9) The validity of anything done by, or in relation to, a person purporting to act under sub-section (1) or (2) shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there was a defect or irregularity in or in connection with the appointment of the person, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased. 10
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Leave of absence

57. The Board may grant leave of absence to the Managing Director or the Deputy Managing Director on such terms and conditions as the Board determines.

Resignation

58. The Managing Director or the Deputy Managing Director may resign from office by writing signed by the Managing Director or the Deputy Managing Director, as the case requires, and delivered to the Minister. 20

Termination of appointment

59. (1) The Minister may terminate the appointment of the Managing Director or the Deputy Managing Director for misbehaviour or physical or mental incapacity. 25

(2) Subject to sub-section (3), the Minister may terminate the appointment of the Managing Director or of the Deputy Managing Director on the ground of incompetence. 30 (

(3) The Minister shall not exercise the power conferred under sub-section (2) unless the Minister has received from the Board a recommendation that the power be exercised.

(4) The Board shall not make a recommendation under sub-section (3) otherwise than upon a resolution that is supported by not less than 7 appointed members. 35

(5) If—

(a) the Managing Director or the Deputy Managing Director—

(i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with 40

his or her creditors or makes an assignment of his or her remuneration for their benefit;

(ii) except with the approval of the Board, engages in paid employment outside the duties of his or her office; or

(iii) is absent from duty, except on leave of absence granted by the Board, for 14 consecutive days or for 28 days in any 12 months; or

(b) the Managing Director fails without reasonable excuse, to comply with his or her obligations under section 22,

the Minister shall terminate the appointment of the Managing Director or Deputy Managing Director, as the case requires.

Division 2—Other Staff

Employment of other staff

60. (1) The Commission may employ such persons as the Board considers necessary in connection with the performance of the functions and duties, and the exercise of the powers, of the Commission.

(2) A person employed by the Commission under sub-section (1) shall, subject to the other provisions of this Division, be employed on such terms and conditions as are, with the approval of the Public Service Board, determined in writing by the Commission.

Location and designation of persons employed

61. Without limiting the generality of sub-section 60 (2), a person employed by the Commission—

(a) shall undertake his or her duties at such location as the Commission determines to be appropriate; and

(b) shall have, in the performance of his or her duties, such a designation as the Commission determines to be appropriate.

Application of *Merit Protection (Australian Government Employees) Act 1984* to persons employed

62. (1) The regulations may provide for the application of the provisions, or of specified provisions, of the *Merit Protection (Australian Government Employees) Act 1984*, subject to such modifications and adaptations (if any) as are prescribed, to and in relation to persons employed by the Commission under section 60.

(2) In sub-section (1), “modification” includes the addition or omission of a provision or a substitution of a provision for another provision.

(3) A reference in sub-section (1) to persons employed by the Commission under section 60 does not include a reference to overseas engaged employees.

Persons employed under section 60 to have certain rights of entry into the Australian Public Service

63. (1) Where, pursuant to section 50 of the Public Service Act, notification of a vacancy in an office in a Department is given in the *Gazette*, a relevant staff member is entitled to apply for appointment to the office. 5

(2) Where—

- (a) a relevant staff member applies under sub-section (1) for appointment to an office in a Department; and
- (b) the Secretary of the Department requests the Board to appoint the relevant staff member to the office, 10

the Board may appoint the relevant staff member, in accordance with section 42 or 43 of the Public Service Act, to the office.

(3) Notwithstanding section 47 of the Public Service Act, the appointment of a relevant staff member, pursuant to an application made under sub-section (1), to an office in a Department shall not be an appointment on probation if the relevant staff member has been employed by the Commission under section 60 for the period of 12 months immediately preceding the appointment. 15

(4) Where the Board appoints a relevant staff member, pursuant to an application under sub-section (1), to an office in a Department— 20

- (a) the provisions of Subdivision D of Division 5 of Part III of the Public Service Act (other than sections 50E, 50EA and 52) and the provisions of the *Merit Protection (Australian Government Employees) Act 1984* apply to and in relation to the appointment as if— 25

- (i) the appointment were a promotion (in this sub-section referred to as the “deemed promotion”) of the relevant staff member to the office by the Secretary of the Department, being a promotion— 30

- (A) in a case where the appointment is in accordance with the advice of a Joint Selection Committee—made under section 50DA of the Public Service Act; or

- (B) in any other case—made under section 50 of the Public Service Act; and 35

- (ii) the relevant staff member were an officer within the meaning of the Public Service Act;

- (b) the deemed promotion takes effect—

- (i) in a case where the deemed promotion is a promotion under section 50 of the Public Service Act— 40

- (A) if no appeal is made under section 50B of that Act against the deemed promotion of the relevant staff member or an appeal is, or appeals are, made under section 50B of that Act against the deemed promotion,

but the appeal or each of the appeals, is disallowed or becomes inoperative not later than the prescribed day in respect of the deemed promotion—on the prescribed day in respect of the deemed promotion;
or

5

(B) if an appeal is, or appeals are, made under section 50B of that Act against the deemed promotion and the appeal, or each of the appeals, is disallowed or becomes inoperative but the day on which the appeal or one of the appeals is disallowed or becomes inoperative is later than the prescribed day in respect of the deemed promotion—on the day on which the appeal is disallowed or becomes inoperative or the latest day on which any of the appeals is disallowed or becomes inoperative, as the case may be; or

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(ii) in a case where the deemed promotion is a promotion under section 50DA of that Act—on the prescribed day in respect of the deemed promotion;

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(c) the relevant staff member may, by writing signed by the relevant staff member and delivered to the Board, decline the deemed promotion at any time before the deemed promotion takes effect and, if the relevant staff member so declines the deemed promotion, the deemed promotion shall be taken not to have been made;

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(d) the appointment does not take effect upon the making of the appointment but takes effect on the day (if any) on which the deemed promotion takes effect;

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(e) the relevant staff member shall be deemed to be absent from the Service on leave of absence without pay until the relevant staff member commences to perform the duties of the office; and

(f) if the relevant staff member does not commence to perform the duties of the office within a reasonable time after the appointment takes effect, the Board may cancel the appointment.

(5) In this section, unless the contrary intention appears—

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“Board”, “Department”, “office”, “Secretary” and “Service” have the same respective meanings as they have in the Public Service Act;

“Joint Selection Committee”, “prescribed day”, “promotion” and “vacancy” have the same respective meanings as they have in Division 4 of Part III of the Public Service Act;

“Public Service Act” means the *Public Service Act 1922*;

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“relevant staff member” means a person employed by the Commission under section 60 (not being an overseas engaged employee) who—

(a) is not an officer, within the meaning of the Public Service Act, to whom Division 2 of Part IV of the Public Service Act applies; and

- (b) is not a person to whom Division 3 of Part IV of that Act applies.

PART VII—CORPORATE PLANS AND ANNUAL OPERATIONAL PLANS

Division 1—Corporate Plans

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Commission to develop corporate plans

64. (1) The Commission shall develop, and prepare in written form, for each period determined in accordance with sub-section (3), for the purpose of the more effective performance by the Commission of its functions under this Act, a corporate plan defining the principal objectives of the Commission in performing those functions during that period and giving a broad outline of the policies and strategies to be pursued by the Commission to achieve those objectives. 10

(2) A corporate plan prepared in accordance with this Division shall, in addition to the matters referred to in sub-section (1), specify, in broad terms, in relation to each financial year to which the plan relates, the resources that are to be applied during that financial year to achieve the objectives set out in that plan. 15

(3) The first corporate plan prepared in accordance with this Division shall be expressed to relate to the period of 3 years commencing on 1 July 1986 and ending on 30 June 1989 and each subsequent corporate plan shall be expressed to relate to the period of 3 years commencing on 1 July next following the end of the first year of the period to which the immediately preceding plan relates. 20

(4) Notwithstanding sub-section 3 (3), the reference in sub-section (1) to the functions of the Commission under this Act does not include a reference to any functions conferred upon the Commission by the *Export Expansion Grants Act 1978*. 25

Approval of corporate plans

65. (1) Each corporate plan shall be submitted to the Minister for approval not less than 3 months, or such longer period as is prescribed, before the intended day of commencement of the period to which the corporate plan relates and shall not come into force until— 30

(a) the day on which it is approved by the Minister; or

(b) the day of commencement of the period to which it relates, 35

whichever is the later.

(2) Upon the coming into force of a corporate plan under sub-section (1), any corporate plan that is already in force ceases to be in force.

Variation of corporate plans

66 (1) The Commission may, at any time, review a corporate plan, whether or not it has come into force, and consider whether a variation to the plan is necessary.

5 (2) The Commission may, with the approval of the Minister, vary a corporate plan.

(3) The Minister may, at any time, request the Commission to vary a corporate plan, whether or not it has come into force.

10 (4) Where the Minister requests a variation of a corporate plan, the Commission shall, with the approval of the Minister, vary that plan accordingly.

(5) Where a variation of a corporate plan is approved by the Minister after the plan has come into force, the plan as so varied shall continue in force on and after the day on which the variation is so approved.

15 ***Division 2—Annual Operational Plans***

Managing Director to develop annual operational plans

20 67. (1) The Managing Director shall develop, and prepare in written form, for each financial year, an annual operational plan that sets out the details of the strategies the Commission proposes to pursue, the programs the Commission proposes to carry out, and the resources the Commission proposes to allocate to each such program, during that financial year, in giving effect to the corporate plan that relates, or the intended corporate plan that will relate, to that financial year.

25 (2) The first annual operational plan prepared in accordance with this Division shall be expressed to relate to the financial year commencing on 1 July 1986.

Approval of annual operational plans

30 68. (1) Each annual operational plan prepared in accordance with section 67 shall be submitted by the Managing Director to the Commission for approval not less than 2 months, or such longer period as is prescribed, before the day of commencement of the financial year to which the plan relates and the plan shall not come into force until—

- (a) the day on which it is approved by the Commission; or
 - (b) the first day of the financial year to which the plan relates,
- 35 whichever is the later.

(2) The Commission shall approve an annual operational plan submitted to it under sub-section (1) unless the Commission is of the opinion that it is inconsistent with the provisions of the corporate plan that relates, or the intended corporate plan that will relate, to the period of 3 years commencing on the day of commencement of the financial year to which the annual operational plan relates.

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Variation of annual operational plans at request of Commission

69. (1) The Commission may, at any time, request the Managing Director to vary an annual operational plan, whether or not it has come into force.

(2) Where the Commission requests a variation of an annual operational plan under sub-section (1), the Managing Director shall, with the approval of the Commission, vary that plan accordingly. 5

(3) The Commission shall not request a variation of an annual operational plan unless it is satisfied that the annual operational plan as varied would be consistent with the provisions of the corporate plan that relates, or the intended corporate plan that will relate, to the period that includes, or will include, the financial year to which the annual operational plan relates. 10

PART VIII—FINANCE

Interpretation

70. In this Part, unless the contrary intention appears, "Fund" means the Export Finance and Insurance Fund established under section 73. 15

Money of the Commission

71. (1) There shall be available to the Commission such amounts as are, from time to time, appropriated by the Parliament for the purposes of the Commission including, but without limiting the generality of the foregoing— 20

- (a) amounts for the purpose of making payments of grants under the *Export Market Development Grants Act 1974*; and
- (b) amounts for the purpose of making payments of subsidy under sub-sections 38 (2) and 39 (2).

(2) Money appropriated under sub-section (1) is payable to the Commission at such times, and in such amounts, as the Minister for Finance determines in writing. 25 (

(3) In making a determination under sub-section (2) in relation to money appropriated under sub-section (1), the Minister for Finance shall have regard to any advice that is given to that Minister by the Commission in relation to its financial affairs. 30

(4) In sub-section (1), the reference to the purposes of the Commission under this Act includes a reference to the purposes of the Commission in performing the functions conferred upon the Commission by the *Export Expansion Grants Act 1978*. 35

Application of money of Commission other than money standing to credit of Fund

72. The money of the Commission, other than the money standing to the credit of the Fund, may be applied only—

- 5 (a) in payment of any liabilities incurred by the Commission in or in connection with the performance of its functions or the exercise of its powers, not being liabilities required to be paid from the Fund;
- (b) in payment of remuneration or allowances payable under this Act;
- 10 (c) in payment of any expenses of an administrative nature incurred by the Commission in the performance of its functions or the exercise of its powers;
- (d) in making payments to the Fund of amounts that the Commission determines from time to time should be so paid in order to ensure that the Commission complies with the obligation imposed on it under sub-section 73 (4); or
- 15 (e) in making investments that the Commission is authorised to make under section 63E of the *Audit Act 1901* as that section applies to the Commission by virtue of sub-section 89 (1) of this Act.

Export Finance and Insurance Fund

20 73. (1) There is established by this Act a fund to be known as the Export Finance and Insurance Fund.

(2) There shall be paid into the Fund—

- 25 (a) such amounts as are received by the Commission in relation to the business conducted by the Commission under Part V;
- (b) such amounts (if any) as the Commission determines from time to time should be paid into the Fund in order to ensure that the Commission complies with the obligation imposed upon it by sub-section (4);
- 30 (c) amounts received by the Commission from the sale of investments or other property paid for with money from the Fund; and
- (d) amounts received as interest on the investment of money standing to the credit of the Fund.

(3) Money standing to the credit of the Fund may be applied only—

- 35 (a) in payment of any liabilities incurred by the Commission under or in connection with the conduct of the business of the Commission under Part V;
- (b) in making payment from the Fund of amounts that the Commission from time to time determines exceed the amount required to ensure that the Commission complies with the obligation imposed on it under sub-section (4);
- 40 (c) in payment of such amounts as are required to be debited to the Fund pursuant to sub-section (5); or

- (d) in making investments that the Commission is authorised to make under section 63E of the *Audit Act 1901* as that section applies to the Commission by virtue of sub-section 89 (1) of this Act.

(4) The Commission shall ensure that the money and other assets constituting the Fund at any time are, in accordance with sound commercial principles, sufficient— 5

- (a) to meet the likely liabilities of the Fund having regard to the estimated contingent liability of the Fund at that time under Part V; and

- (b) to make adequate provision for default in the repayment of principal, or in the payment of interest and fees, on loans that have been made by the Commission under Part V. 10

(5) The Commission shall, once in each quarter, determine, in writing—

- (a) an amount that represents so much of the total of all payments made, or likely to be made, by the Commission, during that quarter in relation to remuneration and allowances as is attributable to business conducted by the Commission under Part V; and 15

- (b) an amount that represents so much of the total of all payments made, or likely to be made, by the Commission, during that quarter in relation to other expenses of an administrative nature as is attributable to business conducted by the Commission under Part V, 20

and, upon the making of the determination, an amount equal to the sum of the amounts so determined shall be debited to the Fund.

(6) In this section, a reference to the estimated contingent liability of the Commission under Part V at any time is a reference to the amount that the Commission estimates to be, at that time, the total contingent liability of the Commission under all contracts of insurance and contracts of indemnity entered into, and all guarantees given, by the Commission under Part V. 25

(7) In this section “quarter” means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December in any year. 30

Commission to keep separate bank accounts and maintain separate financial records in relation to Fund

74. (1) The Commission shall, in complying with section 63D of the *Audit Act 1901* in its application to the Commission by virtue of sub-section 89 (1), maintain at all times an account or accounts with an approved bank in relation to the money of the Fund that is separate from the account or accounts maintained in respect of other money of the Commission. 35

(2) The Commission shall, in complying with section 63F of the *Audit Act 1901* in its application to the Commission by virtue of sub-section 89 (1), cause such accounts and records to be kept, and such other things to be done, as will ensure that payments required to be made from the Fund are correctly made and properly authorised and that adequate control is maintained over the assets from time to time constituting the Fund and 40

over the incurring by the Commission of liabilities required to be met from the money standing to the credit of the Fund.

5 (3) Nothing in sub-section (2) shall be taken to derogate from the generality of the obligations imposed upon the Commission by section 63F of the *Audit Act 1901* in its application to the Commission by virtue of sub-section 89 (1).

Only Fund assets to be taken in execution in proceedings relating to contracts and guarantees under Part V

10 75. Where a person who institutes proceedings against the Commission on a contract of insurance or a contract of indemnity entered into, or a guarantee given, under Part V obtains a judgment against the Commission, the only assets of the Commission that may be taken in execution are the money and other assets of the Fund.

Estimates

15 76. The Commission shall prepare estimates in such form as the Minister directs of its receipts and expenditure for each financial year and, if so directed by the Minister, for any other period, and shall submit those estimates to the Minister not later than such date as the Minister directs.

Provision in the nature of reserves

20 77. The Commission shall make provision in its accounts, to such extent as it determines to be appropriate, for depreciation or for future or contingent liabilities.

Borrowings from Commonwealth

25 78. The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Commission on such terms and conditions as the Minister for Finance determines.

Borrowings otherwise than from Commonwealth

30 79. (1) The Commission may, with the approval of the Treasurer—
(a) borrow money otherwise than from the Commonwealth; or
(b) raise money otherwise than by borrowing,
on such terms and conditions as are specified in the approval.

35 (2) Without limiting the generality of sub-section (1), the Commission may, under that sub-section, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(3) An approval may be given under sub-section (1) in relation to a particular transaction or in relation to a transaction included in a class of transactions.

(4) An approval under sub-section (1) shall be given in writing.

Commission may give security

80. (1) Subject to sub-section (2), the Commission may give security over the whole or any part of its assets—

- (a) for the repayment by the Commission of money borrowed by virtue of section 78 or of paragraph 79 (1) (a) and the payment by the Commission of interest on money so borrowed; or 5
- (b) for the payment by the Commission of money (including any interest) that the Commission is liable to pay in respect of money raised by virtue of paragraph 79 (1) (b).

(2) The Commission shall not give security over any of its assets that are also assets of the Fund unless that security is given in relation to money borrowed or money raised for purposes relating to the entry by the Commission into a contract of insurance or indemnity, the giving by the Commission of a guarantee, or the making by the Commission of a loan, under Part V. 10 15

Borrowings not otherwise permitted

81. The Commission shall not borrow money or raise money otherwise than by borrowing, except in accordance with section 78 or 79.

Guarantee by Commonwealth

82. By force of this section, the Commonwealth guarantees the due payment by the Commission of money that is, or may at any time become, payable by the Commission to any person other than the Commonwealth. 20

Exemption from taxation

83. (1) Subject to sub-section (3) the Commission is not subject to taxation under any law of the Commonwealth or of a State or Territory. 25

(2) The exemption from taxation conferred by sub-section (1) does not extend to any company, partnership, consortium or other business association formed by the Commission, or in the formation of which the Commission has joined, pursuant to section 29, by reason only of the involvement of the Commission in its formation. 30

(3) The regulations may provide that sub-section (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory or laws included in a specified class of laws of the Commonwealth or of a State or Territory.

(4) If regulations made by virtue of sub-section (3) provide that sub-section (1) does not apply in relation to the laws of the Commonwealth that impose income tax, the Commission shall be deemed not to be a public authority for the purposes of paragraph 23 (d) of the *Income Tax Assessment Act 1936*. 35

(5) Securities issued by the Commission are not public securities or Commonwealth securities for the purposes of the *Income Tax Assessment Act 1936*. 40

Contracts and guarantees in the national interest

84. (1) This section applies to—

5 (a) contracts of insurance and contracts of indemnity entered into, and guarantees given, by the Commission in accordance with approvals or directions given under section 44 other than contracts in respect of which the Commission has, under sub-section 44 (8), informed the Minister that the Commission will bear the whole of the liability of the Commission; and

10 (b) contracts of insurance entered into by the Commission under section 48, other than contracts in respect of which the Commission has, under sub-section 48 (9), informed the Minister that the Commission will bear the whole of the liability of the Commission.

15 (2) The Commission shall keep a separate account of its receipts and disbursements in respect of each contract or guarantee to which this section applies.

(3) Subject to this section, the Commission shall pay to the Commonwealth from time to time, as directed by the Minister for Finance, the receipts of the Commission arising out of contracts and guarantees to which this section applies.

20 (4) Subject to this section, the Commonwealth shall pay to the Commission, out of money lawfully available for the purpose, the amount needed to discharge any liability of the Commission under a contract or guarantee to which this section applies.

25 (5) Where the Commission informs the Minister, by notice under sub-section 44 (8) or 48 (9), that the Commission will bear a proportion of the liability of the Commission under a contract or guarantee to which this section applies—

30 (a) the Commission may, if the amount of any receipts that it is required to pay to the Commonwealth under sub-section (3) includes receipts arising out of that contract or that guarantee, deduct from that amount such proportion of the receipts of the Commission arising out of that contract or that guarantee as is equal to the proportion specified in the notice; and

35 (b) there shall be deducted from an amount required under sub-section (4) to be paid by the Commonwealth to the Commission in respect of that contract or that guarantee such proportion of that amount as is equal to the proportion so specified.

40 (6) The Commission may deduct from the amount of any receipts that it is required to pay to the Commonwealth under sub-section (3) a reasonable amount, to be ascertained in such manner as the Minister for Finance directs, in respect of the expenses of the Commission, other than payments in discharge of liabilities of the Commission, under contracts and guarantees to which this section applies.

Loans made under Division 4 of Part V in the national interest

85. (1) This section applies to loans made by the Commission in accordance with approvals or directions given for the purposes of section 50, other than loans in respect of which a guarantee has been given under sub-section (7) or (8) of that section or in respect of which the Commission has, under sub-section (10) of that section, informed the Minister that it will provide, from sources other than the Commonwealth, the whole of the money to be lent. 5

(2) The Commission shall keep a separate account of its receipts and disbursements arising out of loans to which this section applies. 10

(3) Subject to this section, the Commission shall pay to the Commonwealth from time to time, as directed by the Minister for Finance, the receipts of the Commission arising out of loans to which this section applies.

(4) Subject to this section, the Commonwealth shall pay to the Commission, out of money lawfully available for the purpose, the amount needed by the Commission to finance loans to which this section applies. 15

(5) Where the Commission informs the Minister, by notice under sub-section 50 (10), that the Commission proposes to provide, from sources other than the Commonwealth, a proportion of the money to be lent under a loan to which this section applies— 20

(a) the Commission may, if the amount of any receipts that it is required to pay to the Commonwealth under sub-section (3) includes receipts arising out of that loan, deduct from that amount such proportion of the receipts of the Commission arising out of that loan as is equal to the proportion specified in the notice; and 25

(b) there shall be deducted from an amount required under sub-section (4) to be paid by the Commonwealth to the Commission in respect of that loan such proportion of that amount as is equal to the proportion so specified. 30

(6) The Commission may deduct from the amount of any receipts that it is required to pay the Commonwealth under sub-section (3) a reasonable amount, to be ascertained in such manner as the Minister for Finance directs, in respect of the expenses of the Commission under loans to which this section applies. 35

Maximum contingent liability of Commission under Part V

86. (1) The Commission shall carry on its business so that—

(a) its total contingent liability at any time under contracts of insurance and contracts of indemnity entered into, and guarantees given, by the Commission under Division 2 of Part V does not exceed such amount as is prescribed for the purposes of this paragraph; and 40

(b) its total contingent liability at any time under contracts of insurance entered into by the Commission under Division 3 of Part V does

not exceed such amount as is prescribed for the purposes of this paragraph.

5 (2) Regulations made for the purposes of paragraph (1) (a) or (b) may provide that the contingent liability of the Commission under a contract of insurance, contract of indemnity or guarantee of a kind specified in the regulations shall not be taken into account or shall be taken into account only to such extent as is specified in the regulations.

Maximum amount of loans given by Commission under Part V

10 87. (1) The Commission shall carry on its business so that the total amount of money at any time lent by the Commission under Part V and not repaid or written off does not exceed such amount as is prescribed for the purposes of this sub-section.

15 (2) Regulations made for the purposes of sub-section (1) may provide that a loan of a kind specified in the regulations shall not be taken into account, or shall be taken into account only to such extent as is specified in the regulations.

20 (3) In calculating, for the purposes of this section, the total amount of money lent by the Commission under Part V and not repaid or written off, there shall be included in that amount the amount of any contingent liability of the Commission under the terms of any loan made by the Commission under that Part.

Assessed net commercial risk in relation to business of Commission relating to overseas development projects

25 88. (1) In this section, "assessed net commercial risk" of the Commission in relation to its business in respect of overseas development projects means the maximum financial liability, as assessed by the Commission, that the Commission might be required to discharge in respect of contracts (in this section referred to as "relevant contracts") to carry out overseas development projects, in whole or in part, being contracts that have been, or are to be, entered into—

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- (a) by the Commission;
 - (b) by a Commission company; or
 - (c) by a company, partnership, consortium or other business association in the formation of which the Commission has joined.

35 (2) The Commission shall ensure, at all times, that the assessed net commercial risk of the Commission in relation to its business in respect of overseas development projects does not at any time exceed the prescribed amount.

40 (3) Without limiting the generality of sub-section (2), the Commission shall make an assessment under sub-section (1) of the assessed net commercial risk of the Commission in relation to its business in respect of overseas development projects whenever it is considering a proposal that is likely to

result in a relevant contract being entered into by a party referred to in paragraph (1) (a), (b) or (c).

(4) In making an assessment for the purposes of sub-section (1) of the maximum financial liability of the Commission that is referred to in that sub-section, the Commission shall—

- (a) act in accordance with generally accepted commercial practice; and
- (b) assess the likelihood of the Commission being required to discharge liabilities in respect of each relevant contract and, if it considers that the Commission is not likely to be required to discharge liability in respect of any such contract, make appropriate allowance accordingly.

Application of Division 2 of Part XI of *Audit Act 1901*

89. (1) It is hereby declared that the Commission is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) The Commission shall, in the financial statements prepared in respect of each financial year pursuant to section 63H of the *Audit Act 1901* (as that section applies in relation to the Commission by virtue of sub-section (1)), show separately the financial effect on the operations of the Commission of each direction given to it by the Minister under sub-section 10 (1) and in force during the whole or a part of that financial year.

PART IX—MISCELLANEOUS

Delegations by Minister and Managing Director

90. (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Minister, delegate to the Board all or any of the powers of the Minister—

- (a) under this Act other than this power of delegation or the Minister's powers under sections 44, 48, 50, 65 and 66; and
- (b) under the *Export Market Development Grants Act 1974*.

(2) The Managing Director may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Managing Director, delegate to the Deputy Managing Director or a person employed by the Commission all or any of the powers of the Managing Director under this Act other than this power of delegation.

(3) A power under this Act or under the *Export Market Development Grants Act 1974* that is delegated under sub-section (1) or (2), when exercised by the delegate, shall, for the purposes of this Act or the *Export Market Development Grants Act 1974*, as the case requires, be deemed to have been exercised by the person who gave the delegation.

(4) A delegation of a power by a person under this section does not prevent the exercise of that power by that person.

Delegation by Commission

5 91. (1) Subject to sub-section (2), the Commission may, either generally or as otherwise provided in the instrument of delegation, by writing, delegate all or any of its powers and functions under this Act, other than this power of delegation, to—

- (a) a committee appointed under section 14;
- (b) the Managing Director or the Deputy Managing Director; or
- (c) any other person.

10 (2) The Minister may, if the Minister thinks it appropriate to do so, give directions to the Commission concerning the exercise of its power of delegation under sub-section (1).

(3) A power or function that is delegated pursuant to sub-section (1) when exercised or performed by the delegate, shall be deemed to have been exercised or performed by the Commission.

15 (4) A delegation of a power or a function by the Commission under this section does not prevent the exercise of that power or the performance of that function by the Commission.

Annual Reports

20 92. (1) In the application of section 63H of the *Audit Act 1901*, as that section applies, by virtue of sub-section 89 (1) of this Act, to and in relation to the annual reports and financial statements of the Commission—

- 25 (a) the period commencing on the commencing day and ending on 30 June 1987 shall be treated, for the purposes of preparing and furnishing to the Minister the first such report and financial statements, as if it were a period of one year ending on 30 June 1987; and
- 30 (b) the operations of the Commission shall be taken to include the operations of the Commission under the *Export Market Development Grants Act 1974* but not the operations of the Commission under the *Export Expansion Grants Act 1978*.

35 (2) The Commission shall include in each annual report referred to in sub-section (1), particulars of all directions given by the Minister to the Commission under sub-section 10 (1) other than any direction that includes a statement to the effect that the direction is not to be disclosed for reasons of national security or because its disclosure would have an adverse effect on the financial interests or property interests of the Commonwealth or of an instrumentality of the Commonwealth.

(3) The Commission shall include in each annual report referred to in sub-section (1)—

- 40 (a) a statement of the principal objectives of the Commission for the period to which the report relates; and
- (b) an assessment of the extent to which the Commission has achieved its principal objectives for that period.

Commission to keep the Minister informed

93. The Commission shall—

- (a) from time to time inform the Minister concerning the general conduct of its activities; and
- (b) furnish to the Minister such information in relation to its activities as the Minister, from time to time, requires. 5

Secrecy

94. (1) This section applies to a person who is or has been—

- (a) Chairperson, Deputy Chairperson, acting Chairperson or acting Deputy Chairperson; 10
- (b) any other appointed member of the Board, or an acting member of the Board appointed under sub-section 17 (1);
- (c) Managing Director, Deputy Managing Director, acting Managing Director or acting Deputy Managing Director; or
- (d) employed by the Commission under section 60. 15

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person by reason of his or her employment; or 20
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2,000 or imprisonment for 1 year, or both.

(3) Sub-section (2) does not apply to the disclosure of information, or the production of a document, to the Minister, to the Secretary to the Department, or to an officer of the Department designated by the Secretary. 25

(4) Sub-section (2) does not prevent the Commission from communicating, or making available to another person—

- (a) particulars of—
 - (i) a guarantee given, or proposed to be given, under section 39, 41 or 43 or a guarantee of a like nature given, or proposed to be given, under section 44; 30
 - (ii) a contract of indemnity entered into, or proposed to be entered into, under section 40 or 42 or a contract of a like nature entered into, or proposed to be entered into, under section 44; or 35
 - (iii) a loan made, or proposed to be made, under section 49 or 50;
- (b) the names of persons to whom the Commission has authorised payments of grants under the *Export Market Development Grants Act 1974* and the respective amounts of those grants; and 40

(c) any information of a statistical nature relating to the making of grants under the *Export Market Development Grants Act 1974*.

5 (5) A person to whom this section applies shall not be required to divulge or communicate to a court any information referred to in sub-section (2) or to produce in a court any document referred to in that sub-section, except when it is necessary to do so for the purposes of, or of a prosecution for an offence against, this Act or the *Export Market Development Grants Act 1974*.

10 (6) A person to whom information is communicated under sub-section (3) and an employee or other person under that person's control are, in respect of that information, entitled to rights and privileges, and subject to obligations and liabilities, under sub-sections (2) and (5) as if they were persons referred to in sub-section (1).

15 (7) In this section—
 “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;
 “produce” includes to permit access to.

Offences

20 95. (1) A person shall not, in or in connection with a claim under a contract of insurance or a contract of indemnity entered into, or a guarantee given, under this Act, make a statement that the person knows to be false or misleading in a material particular or present a document that, to the person's knowledge, contains information that is false or misleading in a material particular.

25 Penalty—

(a) in the case of a corporation—\$50,000; or

(b) in any other case—\$10,000 or imprisonment for 5 years, or both.

30 (2) A person shall not, in or in connection with an application or proposal for a contract of insurance, an application for a contract of indemnity, an application for a guarantee or an application for a loan, under this Act, make a statement that the person knows to be false or misleading in a material particular or present a document that, to the person's knowledge, contains information that is false or misleading in a material particular.

Penalty—

35 (a) in the case of a corporation—\$5,000; or

(b) in any other case—\$1,000 or imprisonment for 6 months, or both.

(3) For the purposes of the application of this section in relation to a corporation, but without prejudice to the liability of any person other than the corporation—

40 (a) a statement made, or a document presented, by a person acting on behalf of the corporation shall be deemed to be made or presented by the corporation; and

(b) the knowledge of any person employed by, or concerned in the management of, the corporation shall be deemed to be knowledge of the corporation.

(4) An offence against sub-section (1) is an indictable offence.

(5) Notwithstanding that an offence against sub-section (1) is expressed to be an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent. 5

(6) Where, in accordance with sub-section (5), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is— 10

(a) in the case of a corporation—\$10,000; or

(b) in any other case—\$2,000 or imprisonment for 1 year, or both.

Validity of contracts, guarantees and agreements

96. Without prejudice to the duty of the Commission to comply with the provisions of this Act and to observe the limits of its powers under this Act, a contract or other agreement entered into, or a guarantee given, by the Commission is not invalidated by reason of a provision of this Act not having been complied with by the Commission in relation to that contract or other agreement, or that guarantee, as the case may be, or by reason of its not being within those limits. 15 20

Regulations

97. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

(a) required or permitted by this Act to be prescribed; or 25

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

and in particular—

(c) requiring the verification, by statutory declaration, of claims made under, or documents supplied for, the purposes of a claim under Part V; and 30

(d) prescribing penalties, not exceeding a fine of \$500, for offences against the regulations.





