

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN FILM COMMISSION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
the Arts, Sport, the Environment, Tourism and Territories,
Senator the Hon Graham Richardson)

AUSTRALIAN FILM COMMISSION AMENDMENT BILL

OUTLINE

The purpose of this Bill is to amend the Australian Film Commission Act 1975 as required for the implementation of the Government's decision to incorporate a company under the Companies Act 1981, with the name "Film Australia Pty Limited", and to transfer certain staff, assets and contractual rights and obligations from the Australian Film Commission to the new company.

The production aspects of the Commission's "special activities" under the Act (making, promoting and distributing films and TV programs which are either for the purposes of a Commonwealth Department or authority, deal with matters of national interest, or are generally about Australia and its people) are currently carried out by the Production Division of the Commission. The Government has decided that this function should be performed in future by a wholly Commonwealth-owned company, Film Australia Pty Limited, to be incorporated under the Companies Act 1981, and to operate as far as possible along commercial lines.

Accordingly, this Bill removes from the Commission the function of making films and TV programs (collectively referred to as "programs"), transfers certain staff, assets, liabilities and contractual rights and obligations from the Commission to Film Australia, and makes various associated minor amendments to the Act.

Financial Impact Statement

The proposed amendments in this Bill have no continuing financial implications. The establishment of Film Australia and the transfer of staff and resources will have associated one-off financial costs, which are estimated at between \$0.8 million and \$1.8 million, depending on any need for redundancy payments.

NOTES ON CLAUSES

Clause 1 - Short title etc.

1. Provides for the Act to be cited as the Australian Film Commission Amendment Act 1988, and identifies the Australian Film Commission Act 1975 as the Principal Act for the purposes of the Bill.

Clause 2 - Commencement

2. Provides that the changes to the Principal Act will come into effect on a day to be fixed by Proclamation (which could specify different commencement dates for the various clauses of the Bill).

Clause 3 - Interpretation

3. This clause amends section 3 of the Principal Act. The definition of "Australian short film" is amended by removing the reference to films made or commissioned by the Commission (the Commission will no longer have the power to make or commission films - see paragraph 5).

4. The definitions of "special activities" (making, promoting and distributing films and TV programs which are either for the purposes of a Commonwealth Department or authority, deal with matters of national interest, or are generally about Australia and its people) and "general activities" (all other activities of the Commission) are deleted, as the distinction between them is not required, once the production aspects of the Commission's "special activities" become the responsibility of Film Australia. Related formal amendments of provisions of the Principal Act referring to "general activities" or "special activities" are effected by clauses 7-10 and 14 of the Bill.

Clause 4 - Functions of Commission

Clause 5 - Commission may form company for certain purposes etc.

Clause 6 - Repeal of section 9

5. Clause 4 amends section 5 of the Principal Act so as to remove the Commission's function of making programs, while retaining in full its present function of promoting or distributing programs, which will continue to be required, for example, to enable bilateral agreements under which the Commission would promote and distribute within Australia films produced in another country, in return for similar services within that country for Australian films. (Although existing subparagraphs 5(1)(b)(i), (ii) and (iii) are to be deleted, with the result that new paragraph 5(1)(b) will no longer make specific reference to the kinds of programs currently made by the Commission under its "special activities" responsibility, it is not intended to reduce the scope of the Commission's existing promotion and distribution functions in any way).

6. Clauses 5 and 6 make formal amendments of sections 7 and 9 of the Principal Act, respectively, to take account of the alteration of the Commission's functions effected by clause 4. (Section 9 refers to the standards to be pursued by the Minister and the Commission in the exercise of their powers under the Act in relation to the making of programs).

Clause 7 - Bank accounts

Clause 8 - Application of moneys by Commission

Clause 9 - Estimates

Clause 10 - Proper accounts to be kept

7. These clauses make formal amendments to sections 32, 33, 34 and 37 of the Principal Act, respectively, in relation to "general activities" or "special activities" (see paragraph 4).

TRANSITIONAL PROVISIONS

Clause 11 - Heading to Part VI

Clause 12 - Insertion of new heading in Part VI

Clause 13 - Insertion of new Division in Part VI

8. Clause 13 inserts a new Division, "Film Australia", constituted by new sections 40-40C (which deal with transitional arrangements in connection with the establishment of Film Australia), into Part VI of the Principal Act (which currently contains transitional provisions related to the former Australian Film Development Corporation). Accordingly, clause 11 amends the heading to Part VI of the Principal Act, by deleting the words "WITH RESPECT TO ASSETS" (since new sections 40B and 40C deal with matters other than assets), clause 12 inserts a heading referring to the Australian Film Development Corporation, for what will become Division 1 of Part VI, and clause 13 inserts Division 2 of Part VI as a whole, including a heading referring to Film Australia, as well as new sections 40-40C.

- Interpretation

9. New section 40 is a formal provision which, amongst other things, defines the assets that may be transferred to Film Australia so as to include both tangible assets and intangible assets assignable at law, but not interests in land, and defines the date of effect for new sections 40A-40C as the date of commencement of those sections (by clause 2, this is to be fixed by Proclamation).

- Transfer of certain assets, liabilities etc. from Commission to Film Australia

10. New section 40A provides for the Minister to specify assets to be transferred to Film Australia, and that all liabilities incurred by the Commission in connection with its "special functions" become liabilities of Film Australia.

- Transfer of certain staff from Commission to Film
Australia

11. New section 40B provides for the Minister to specify staff of the Commission performing particular "special activities" of the Commission which are to be performed by Film Australia, by notice in the Gazette: on the commencement of this section, those persons cease to be members of staff of the Commission, and become employees of Film Australia.

12. This section is based on s.10A of the Supply and Development Act 1939, which was introduced to facilitate changes relating to the former Government Aircraft Factories.

13. New subsection 40B(3) provides that Film Australia may determine special terms and conditions of employment, other than in relation to superannuation, applying to persons compulsorily transferred to Film Australia. However, this is expressly subject to any relevant industrial award.

- Agreements etc. to which Commission is as party

14. New section 40C substitutes Film Australia for the Commission in all agreements concerning the Commission's "special activities" (to which it was a party).

Clause 14 - Annual report and financial statements

15. This clause makes formal amendments to section 44 of the Principal Act in relation to "general activities" and "special activities" (that is, the Commission will not be required to report on "special activities" to be undertaken by Film Australia rather than the Commission - see paragraph 4).
