



## Australian Astronomical Observatory Bill 2009

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## Australian Astronomical Observatory Bill 2009

**Date introduced:** 25 November 2009

**House:** House of Representatives

**Portfolio:** Innovation, Industry, Science and Research

**Commencement:** The Act commences on 1 July 2010.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

This Bill will establish the Australian Astronomical Observatory (the observatory) within the Department of Innovation, Industry, Science and Research (the Department) and set up its associated governance arrangements, including the creation of an Australian Astronomical Observatory Advisory Committee (the advisory committee).

### Background

The Australian Astronomical Observatory Bill 2009 (the Bill) and the Australian Astronomical Observatory (Transitional Provisions) Bill 2009 is a package of Bills that will give effect to a 2005 supplementary agreement between the UK Government and the Australian Government to wind up the Anglo-Australian Telescope Board by mid-2010 and to vest sole ownership of the Anglo-Australian Telescope, to be renamed the Australian Astronomical Observatory (the observatory), in the Australian Government.

#### *Anglo-Australian Telescope Agreement Act 1970*

The principal agreement between the UK Government and the Australian Government was signed on 25 September 1969 'to provide for the establishment and operation of a large optical telescope'.<sup>1</sup> The *Anglo-Australian Telescope Agreement Act 1970* implemented that agreement in Australia. The Anglo-Australian Telescope Board was established under the Act, with the constitution of the Board and its functions being spelt out in the principal agreement.

In 1970, the then Minister for Education and Science, Nigel Bowen MP, commented:

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1. *Anglo-Australian Telescope Agreement Act 1970*, section 4.

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In 1967, the United Kingdom and Australian governments agreed to join together in the construction and subsequent operation of a large optical telescope to be located in Australia ... The Australian National University's Observatory at Siding Spring Mountain near Coonabarabran was chosen as the site for the instrument ...

The arrangements arrived at between the two governments were incorporated in a formal agreement which was signed on 25 September 1969. It provides for the establishment of an Anglo-Australian Telescope Board to represent the two governments in the process of construction and subsequent operation of the telescope. The agreement contemplates the creation of that Board as a statutory authority under legislation of this Parliament. The present Bill, to which the text of the agreement is annexed, has been prepared accordingly ...

When the telescope has been completed access to it will be shared equally by British and Australian astronomers, although there will be provision for each party to make available a portion of its time to other astronomers.<sup>2</sup>

## 2005 supplementary agreement

In 2001, the UK Government advised the Australian Government that it intended to end its involvement with the Anglo-Australian Telescope due to science budget cuts in the UK.<sup>3</sup> In 2005, it was agreed that under a supplementary agreement, the UK would continue its commitment but at a reduced level. Ownership and responsibility for the telescope and associated assets and liabilities would pass to Australia on 1 July 2010.<sup>4</sup> At the time, the National Interest Analysis observed:

The Supplementary Agreement is intended to provide for the effective operation of the Anglo-Australian Telescope during the transition period from full joint funding to sole Australian ownership. It will allow Australia to maintain a higher level of financial contribution if it decides to do so, and for the [Anglo-Australian Telescope Board] to develop and access other sources of funding. The Supplementary Agreement puts in place operational arrangements to reflect the new financial arrangements and termination date. Australian astronomers will have greater access to observing time at the Anglo-Australian Observatory, commensurate with Australia's higher expected financial contribution.

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2. NH Bowen MP, 'Second reading speech: Anglo-Australian Telescope Agreement Bill 1970', House of Representatives, *Debates*, 4 March 1970, pp. 84–85.
  3. C Emerson MP, 'Second reading speech: Australian Astronomical Observatory Bill 2009', House of Representatives, *Debates*, 25 November 2009, p. 12771.
  4. *National Interest Analysis for the Supplementary Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Anglo-Australian Optical Telescope, at Siding Spring, New South Wales, Australia*, Canberra, 9 August 2005, paragraph 4.

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The extension of the Agreement will give Australia additional time to determine its long term policy on the [Australian Astronomical Observatory], while continuing to benefit from the collaboration with the UK. The collaboration has been an important factor in Australia's world competitive performance in astronomy. The new termination arrangements will assure long term access for Australian astronomers to a valuable scientific instrument.<sup>5</sup>

The supplementary agreement made provision for the following aspects:

- transfer of the Anglo-Australian Telescope to sole Australian ownership on 1 July 2010
- the UK Government would withdraw from the joint ownership arrangement as from 1 July 2010 and reduce its funding commitment from 2006
- Australia could maintain a higher level of financial contribution to the Anglo-Australian Telescope if it chooses
- the Anglo-Australian Telescope Board would develop and access other sources of funding
- revision of time sharing arrangements for use of the observatory, and
- Australia would have additional time to develop its long-term policy for the observatory while it continues to benefit from the collaboration with the UK.<sup>6</sup>

#### Basis of policy commitment

In the 2009–10 Budget, the Rudd Government announced that the observatory would continue to operate under new governance arrangements. It will operate as a business unit within the Department of Innovation, Industry, Science and Research. As part of the *Super Science Initiative for Space and Astronomy* in the Budget, the Government announced additional funding of \$20.9 million over four years.<sup>7</sup>

According to the Department's annual report, funding of \$4.9 million was provided to the Anglo-Australian Observatory in 2008–09 to support its operations. The National

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5. Ibid., paragraphs 5–6.

6. Joint Committee on Treaties, *Supplementary Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Anglo-Australian Optical Telescope, at Siding Spring, New South Wales, Australia*, Report No. 68, October 2005, p. 21.

7. Senator K Carr (Minister for Innovation, Industry, Science and Research), *Super Science-Space and Astronomy*, media release, 12 May 2009, viewed 2 February 2010.

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Collaborative Infrastructure Strategy also provides funding to develop a new instrument for the observatory that will extend the life of the facility to at least 2015.<sup>8</sup>

### Committee consideration

The Senate Selection of Bills Committee resolved on 25 November 2009 that the Australian Astronomical Observatory Bill 2009 and the Australian Astronomical Observatory (Transitional Provisions) Bill 2009 not be referred to Committees.<sup>9</sup>

## Financial implications

The Explanatory Memorandum states that the Australian Government is providing increased funding to the observatory in part to compensate for the changed governance arrangements. The net increase in funding over four years is \$20.91 million. Details relating to the budget commitment over the four year period are contained in the Explanatory Memorandum.<sup>10</sup>

## Main provisions

### Part 1—Preliminary

**Clause 4** provides a number of definitions relating to the operation of the proposed Act. For example, it defines the following terms: *Advisory Committee*; *constitutional corporation*; *optical*; and *optical astronomy facility*.

### Part 2—Australian Astronomical Observatory

**Clause 8** proposes to place the observatory within the Department of Innovation, Industry, Science and Research. **Clause 9** proposes that there be a Director of the observatory and that the Director be a Senior Executive Service (SES) employee.<sup>11</sup>

**Subclause 10(1)** proposes that the Secretary may appoint an APS employee as an Acting Director when there is a vacancy in the position or when the Director is absent from duty, is overseas, or for any reason is unable to perform the duties of the position.

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8. Department of Innovation, Industry, Science and Research (DIISR), *Annual report, 2008–09*, DIISR website, Canberra, 2009, p. 59.

9. Senate Selection of Bills Committee, *Report No. 18*, 26 November 2009, p. 1.

10. Explanatory Memorandum, Australian Astronomical Observatory Bill 2009, p. 3.

11. ‘SES employee’ is defined in section 34 of the *Public Service Act 1999* as ‘those [APS employees](#) who are classified as [SES employees](#) under the Classification Rules’. See also section 17AA of the *Acts Interpretation Act 1901*.

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**Subclause 10(2)** provides that any act done by a person or in relation to a person purporting to act under an appointment is not invalid simply because:

- the occasion for the appointment had not arisen
- appointment was defective or irregularity in connection with the appointment
- the appointment had ceased to have effect, or
- the occasion to act had not arisen or had ceased.

### Part 3—Astronomical functions

**Subclause 11(1)** invests the Secretary of the Department of Innovation, Industry, Science and Research with functions relating to optical astronomy. **Subclause 11(2)** lists some of the functions vested in the Secretary. Any other functions will be specified in the regulations. The Secretary is also empowered to do anything incidental to or conducive to the performance of any of the functions set out in subclause 11(2). **Subclause 11(3)** makes it clear that the functions conferred on the Secretary are not limited to those functions listed in subclause 11(2).

**Clause 12** allows the Commonwealth to charge fees for things done in the performance of the functions conferred by clause 11. The Explanatory Memorandum states that this will enable the observatory ‘to recover costs in relation to the development and construction of instruments for external clients or the provision of access to [the observatory’s] facilities under certain circumstances, amongst other things’.<sup>12</sup>

### Part 4—Australian Astronomical Observatory Advisory Committee

**Clause 13** establishes the advisory committee to advise the Secretary of the Department about the performance of the functions that have been conferred on the Secretary by proposed section 11 (**clause 14**).

**Clause 15** provides for the appointment of committee members. Each member is to be appointed by the Secretary by written instrument (**subclause 15(1)**) and hold office for the period specified in the instrument of appointment not exceeding three years (**subclause 15(2)**).<sup>13</sup> An advisory committee member holds office on a part-time basis (**subclause 15(3)**). **Subclause 15(4)** enables the Secretary to terminate the appointment of a committee member.

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12. Explanatory Memorandum, p. 6.

13. The note in clause 15(2) refers to subsection 33(4A) of the *Acts Interpretation Act 1901* which states that ‘in any Act appoint includes re-appoint’.

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**Clause 16** enables the Secretary to give the advisory committee written directions concerning the way in which it should carry out its functions and the procedures to be followed in relation to meetings. **Subclause 16(2)** states that a direction given by the Secretary is not a legislative instrument. This means that the Secretary's directions are not subject to parliamentary scrutiny or disallowance under the *Legislative Instruments Act 2003*.

**Subclause 17(1)** states that the remuneration of advisory committee members will be determined by the Remuneration Tribunal. If no determination is in operation, the member is to be paid the remuneration prescribed by the regulations. An advisory committee member will also be paid the allowances prescribed by the regulations (**subclause 17(2)**). **Subclause 17(3)** provides that this section has effect subject to the *Remuneration Tribunal Act 1973*.

**Clause 20** requires that an advisory committee member must give written notice to the Secretary of all interests, whatever their nature, if there is a possibility that they would conflict with the proper performance of the member's functions.

**Subclause 21(1)** provides that if a member has an interest, whether pecuniary or otherwise, in a matter being considered or about to be considered by the advisory committee, they must disclose the interest to the committee. Disclosure must be made as soon as possible after the member becomes aware of the interest (**subclause 21(2)**). **Subclause 21(3)** states that the disclosure to the committee must be recorded in the minutes of the meeting of the advisory committee. **Subclause 21(4)** provides that unless the advisory committee determines otherwise, the member must not be present when the matter is being deliberated and must not take part in any decision on the matter (**subclause 21(5)**). A determination under subclause 21(4) must be recorded in the minutes (**subclause 21(6)**).

The Secretary may terminate the appointment of the member if the member fails to comply with section 21 without a reasonable excuse (**subclause 21(7)**). The Secretary's power under subsection 21(7) does not limit subsection 15(4), which states that the Secretary may terminate the appointment of an advisory committee member (**subclause 21(8)**).

**Clause 22** provides that advisory committee members hold office on such terms and conditions as the Secretary may determine (in relation to matters not covered by the proposed Act).

## Part 5—Miscellaneous

**Clause 23** states that the Secretary may, in writing, delegate any or all of his or her functions or powers under the proposed Act. The delegate must be the Director or an APS employee within the observatory who has appropriate expertise.

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**Clause 26** makes provision for the Governor-General to make regulations prescribing matters required or permitted to be prescribed by the Act or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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