THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN ASTRONOMICAL OBSERVATORY (TRANSITION) BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister for Science, Jobs and Innovation,
Senator the Honourable Zed Seselja)
OUTLINE

Purpose and effect of the Bill

The purpose of the Australian Astronomical Observatory (Transition) Bill is to give effect to the government’s 2017-18 Budget measure ‘Maintaining Australia’s Optical Astronomy Capability’. The Bill is essential to ensure: retention of critical Australian Astronomical Observatory (AAO) scientific capabilities and key expertise in Australia’s research sector; delivery of AAO commitments to the national and global astronomy communities; and support for the Australia-European Southern Observatory (ESO) Strategic Partnership, including securing essential operational savings to offset its administered costs.

The principal effects of the amendments are: to abolish the AAO in the Department of Industry, Innovation and Science (the Department) on 1 July 2018, along with all AAO governance structures; and to facilitate a smooth transition of its critical scientific roles, including the transfer of necessary assets, liabilities, commitments and other matters, to external entities by Ministerial designation. The Bill amends and renames the Australian Astronomical Observatory Act 2010 (the Act) and retains the astronomical functions of the Secretary in section 11 of the Act, to provide an ongoing legislative basis for departmental activities that would facilitate the AAO transition, support the ESO Strategic Partnership, and enable Australian optical astronomy more widely. The Bill also repeals the Australian Astronomical Observatory (Transitional Provisions) Act 2010 which is no longer required.

The government entered into a 10-year Strategic Partnership with the ESO on 11 July 2017. This gives Australian astronomers merit-based access to the world-class optical-infrared telescopes at the La Silla Paranal Observatory in Chile, and provides additional scientific and industry benefits for Australia.

The Strategic Partnership addresses the most pressing unmet infrastructure needs of the Australian astronomy community, identified in the Decadal Plan for Australian Astronomy 2016-2025 published by the National Committee for Astronomy of the Australian Academy of Science and in the government’s 2016 National Research Infrastructure Roadmap.

To ensure strong domestic scientific support for the ESO Strategic Partnership, while realising essential operational savings to offset its costs, the AAO’s critical scientific roles and expertise are to be transferred to the research sector as follows.

First, the operations of the 3.9-metre Anglo-Australian Telescope (AAT) sited on land owned by the Australian National University (ANU) at Siding Spring Observatory near Coonabarabran in New South Wales would be transferred to the ANU, acting on behalf of a consortium of universities managed by Australia Astronomy Limited: a not-for-profit company that manages a range of research infrastructure programs for astronomy. The consortium would continue to operate this historic, scientifically productive infrastructure until at least the expected end of its operational life in 2024-25. This would extend telescope
operations by five years compared to the previous AAO operational appropriation, scheduled to terminate on 30 June 2020. The extended telescope operations would enable the ongoing provision of optical-infrared observing capability to the Australian astronomy sector, deliver committed support to Australian Research Council Centres of Excellence, and contribute to the testing of new Australian-designed astronomical instruments and postgraduate training in astronomy.

Second, the renowned astronomical instrumentation capability of the AAO at North Ryde in Sydney would be transferred to a research sector consortium comprised of Macquarie University, the ANU, and the University of Sydney. The new consortium would establish a national optical instrumentation capability that would continue and further develop the excellent AAO instrumentation activities to maximise the scientific dividend from the Australia-ESO Strategic Partnership. The new capability would link to other Australian hubs of instrumentation and optical research, deliver on existing AAO commitments to external clients, foster new research-industry collaboration and commercialise technological innovations arising in astronomy for new applications.

**Consultation**

In drafting and reviewing the Bill, elements of the 2017-18 Budget measure, and obtaining their essential policy and regulatory inputs, the following entities have been consulted: Attorney-General’s Department; Office of Best Practice Regulation; Department of the Prime Minister and Cabinet; National Archives of Australia; Department of Foreign Affairs and Trade; Department of Home Affairs; Australian Public Service Commission; Department of Finance; current staff and executives of the AAO; expert stakeholders in Australian national astronomy organisations; the Australian astronomy community; and the European Southern Observatory.

**FINANCIAL IMPACT STATEMENT**

The Bill terminates the AAO two years earlier than the termination date of its previous appropriation. The resulting operational savings total $25.2 million during 2018-19 and 2019-20. This includes total regulatory savings of $0.1 million across the same years from the abolition of the AAO governance body, the AAO Advisory Committee.

The operational savings will partly offset administered expenditure for the Australia-ESO Strategic Partnership and departmental expenditure to facilitate a smooth transition of AAO scientific activities to the university sector, provided for the optical astronomy measure in the relevant budget appropriation bills.
The net new government funding for the optical astronomy measure totals $26.1 million over four years, as summarised in the following table:

<table>
<thead>
<tr>
<th>Expenditure item</th>
<th>Year</th>
<th>2017-18 ($m)</th>
<th>2018-19 ($m)</th>
<th>2019-20 ($m)</th>
<th>2020-21 ($m)</th>
<th>Total ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Astronomical Observatory (AAO) operations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Previous appropriation - Departmental</td>
<td></td>
<td>10.8</td>
<td>11.1</td>
<td>11.1</td>
<td>0.0</td>
<td>33.0</td>
</tr>
<tr>
<td>Previous appropriation - Administered</td>
<td></td>
<td>1.5</td>
<td>1.5</td>
<td>1.5</td>
<td>0.0</td>
<td>4.5</td>
</tr>
<tr>
<td>Savings - AAO abolition on 1 July 2018</td>
<td></td>
<td>0.0</td>
<td>-12.6</td>
<td>-12.6</td>
<td>0.0</td>
<td>-25.2</td>
</tr>
<tr>
<td>2017-18 Budget measure: Maintaining Australia’s Optical Astronomy Capability</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ESO Strategic Partnership - Administered</td>
<td></td>
<td>5.6</td>
<td>11.3</td>
<td>11.9</td>
<td>12.5</td>
<td>41.3</td>
</tr>
<tr>
<td>Transitional costs - Departmental</td>
<td></td>
<td>8.2</td>
<td>1.3</td>
<td>0.5</td>
<td>0.0</td>
<td>10.0</td>
</tr>
<tr>
<td>Total resourcing for the new measure</td>
<td></td>
<td>13.8</td>
<td>12.6</td>
<td>12.4</td>
<td>12.5</td>
<td>51.3</td>
</tr>
<tr>
<td>Net expenditure after AAO savings offset</td>
<td></td>
<td>13.8</td>
<td>0.1</td>
<td>-0.2</td>
<td>12.5</td>
<td>26.1</td>
</tr>
</tbody>
</table>

**REGULATION IMPACT STATEMENT**

The primary regulatory impact associated with this Bill is minor in nature – the abolition of the AAO and its governance body, the AAO Advisory Committee, which reports to the Secretary of the Department and to the Director of the AAO on the performance of the optical astronomy functions defined in Section 11 of the *Australian Astronomical Observatory Act 2010*. The Regulation Impact Statement (OBPR reference 21996) is attached.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


AUSTRALIAN ASTRONOMICAL OBSERVATORY (TRANSITION) BILL 2018

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The purpose of this Bill is to amend the Australian Astronomical Observatory Act 2010 and repeal the Australian Astronomical Observatory (Transitional Provisions) Act 2010, and to include transitional provisions to:

- transfer certain Commonwealth assets, liabilities, funds and other matters to third party designated entities; and
- permit certain matters to be exempt from stamp duty and other taxes; and
- provide the Minister with powers of delegation.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

The Assistant Minister for Science, Jobs and Innovation

Senator the Honourable Zed Seselja
Regulation Impact Statement (Short Form)

Name of Department/Agency:  
Department of Industry, Innovation and Science

OBPR Reference number:  
21996

Name of proposal:  
Maintaining Australia’s Optical Astronomy Capability

Summary of the proposed policy and any options considered:

Under the 2017-18 Budget Measure ‘Maintaining Australia’s Optical Astronomy Capability’, The Australian Government has entered into a 10-year strategic partnership with the European Southern Observatory (ESO) effective 11 July 2017. ESO is the world’s foremost optical astronomy organisation offering member states access to infrastructure, research and industry opportunities, and unparalleled international collaboration. The Strategic Partnership provides Australian astronomers competitive access to the world’s best 8-metre class optical telescopes and other front-line optical-infrared telescopes at the ESO La Silla-Paranal Observatory in Chile.

The Budget measure addresses the issue of departmental funding of Australian Astronomical Observatory (AAO) operations, scheduled to terminate on 30 June 2020. The measure will terminate the AAO as a division of the Department along with its governance body, the AAO Advisory Committee, effective 1 July 2018. Resulting operational savings will offset costs of the ESO Strategic Partnership in 2018-19 and 2019-20. Responsibility for Anglo-Australian Telescope (AAT) operations would transfer to the Australian National University (ANU) acting on behalf of a consortium of universities managed by Australia Astronomy Limited, a not-for-profit company that manages a range of research infrastructure programs for astronomy. A second research sector consortium, comprised of Macquarie University, the ANU and the University of Sydney, would retain and further develop the AAO’s world-class astronomical instrumentation capability.

What are the regulatory impacts associated with this proposal? Explain.

The proposal amends governance arrangements for Australian astronomy. It abolishes the AAO Advisory Committee. The resulting regulatory savings are minor and are already included in the budgeted operational savings in 2018-19 and 2019-20 from the early abolition of the AAO. The Budget measure transfers responsibility for managing AAO scientific functions to university-led consortia. This eliminates direct government administration of AAT time allocation.

Under the ESO Strategic Partnership, ESO administers access to its own telescope facilities. Australian Government and astronomer representatives are eligible and invited to participate at regular meetings of the ESO governance bodies: ESO Council, ESO Finance Committee, ESO Scientific Technical Committee (STC) and ESO Users Committee (UC).

What are the regulatory costs/savings associated with this proposal? Explain and quantify.

Regulatory savings from abolishing the AAO Advisory Committee are estimated at $70,000 per annum, in 2018-19 and 2019-20 only (Total savings $140,000).

There are no quantifiable regulatory savings from transferring responsibility for AAT time allocation from AAO to the research sector, as the Australian Time Allocation Committee operates on a ‘volunteer’ basis, and the application process for researchers continues as before.

Costs to support government and astronomer representatives to attend ESO governance meetings are treated as an operational expense, as this is not Australian government-imposed regulation.

Although not mandatory at the time of the policy decision, have you considered the offsets for the regulatory costs associated with this proposal? Has the portfolio Deputy Secretary or delegate warranted that the net regulatory target will be met by the end of the relevant reporting period?

Not applicable – only (minor) regulatory savings are created by the measure.
NOTES ON CLAUSES

Clause 1: Short title

Clause 1 provides that the Bill, when enacted, may be cited as the Australian Astronomical Observatory (Transition) Act 2018.

Clause 2: Commencement

Clause 2 provides that all provisions of the Bill will commence on 1 July 2018.

Clause 3: Schedules

Clause 3 gives effect to the provisions in each of the Schedules to this Bill.

Schedule 1 – Amendments

Part 1 – Amendments

Australian Astronomical Observatory Act 2010

Item 1: Title

Item 1 replaces the words “to establish the Australian Astronomical Observatory” with “to provide for astronomical functions”. From commencement of this amendment, the new long title of the amended Australian Astronomical Observatory Act 2010 (the Act) would read: “An Act to provide for astronomical functions, and for other purposes”. This change in the long title recognises that the repealing amendments in Part 1 of Schedule 1 have the effect of removing all references to the Australian Astronomical Observatory (AAO) from the Act, changing its primary purpose from the establishment of the Australian Astronomical Observatory to the provision of astronomical functions of the Secretary of the Department of Industry, Innovation and Science (the Department).

Item 2: Section 1

Item 2 amends the short title of the Act to “Astronomical Functions Act 2010”. The change in the short title is consistent with the long title and primary purpose of the amended Act. Item 2 also recognises that on commencement of this item, section 10 of the Acts Interpretation Act 1901 allows that any other amendment referring to the Act as the
“Australian Astronomical Observatory Act 2010” has effect as an amendment to the Act under its new short title.

**Item 3: Section 3**

Item 3 repeals section 3 of the Act and substitutes a new simplified outline. The new outline recognises the primary purposes of the Act as amended: it provides that the Secretary of the Department has various functions relating to optical astronomy as specified in section 11 of the Act; the Commonwealth may charge fees in association with performing these astronomical functions, and the Secretary may delegate certain astronomical functions or powers under the Act to APS employees.

Retaining the Secretary’s optical astronomy functions under section 11 of the Act is a key policy objective of this Bill. The amended Act would provide ongoing legislative authority for expenditure on optical astronomy-related activities after 1 July 2018, to address a variety of government policy objectives relating to the support of Australian optical astronomy.

**Item 4: Section 4**

Item 4 repeals the definitions of Advisory Committee, Advisory Committee member, constitutional corporation and Director, from the Act. Repealing these unnecessary definitions is consistent with the following item 5, which abolishes the AAO and its related governance structures by removing all reference to these entities from the Act.

**Item 5: Parts 2 and 4**

Item 5 repeals Parts 2 and 4 of the Act. The repeal of Part 2 of the Act abolishes the AAO as an entity within the Department, along with the positions of Director and Acting Director. The repeal of Part 4 of the Act abolishes the AAO Advisory Committee and the associated provisions governing its function and operations.

**Item 6: Subsections 23(1) and (2)**

Item 6 repeals subsections 23(1) and (2) and inserts a new subsection 23(1) which provides the Secretary with the power to delegate all or any of the Secretary’s functions or powers under the Act to an APS employee in the Department who has expertise appropriate to the function or power delegated. The amendment removes the Secretary’s power to delegate to the Director, as this position will no longer exist upon abolition of the AAO.

This amendment does not provide the Secretary with new powers of delegation beyond those previously provided in section 23. The power to delegate to an APS employee enables the Secretary to appoint officials with specific expertise to particular roles relating to optical
astronomy in which the delegate may need to exercise particular optical astronomy functions. The appointment does not need to be an SES official – the required technical or astronomical expertise may reside at a lower Executive or APS level in the Department.

Part 2 – Repeals

*Australian Astronomical Observatory (Transitional Provisions) Act 2010*

Item 7: The whole of the Act

Item 7 of the Bill repeals the *Australian Astronomical Observatory (Transitional Provisions) Act 2010* (Transitional Act) in its entirety. The Transitional Act provided for the integration of the former Anglo-Australian Observatory and its staff, assets, liabilities, contracts and commitments into the Commonwealth on 1 July 2010. As this Bill abolishes the AAO, the Transitional Act is no longer required.

**Schedule 2 – Transitional provisions**

Part 1 – Preliminary

Item 1: Definitions

Subitem 1(1) contains a number of definitions required for the purposes of Schedule 2.

Subitem 1(2) enables the Minister to determine, by writing, that a person is a designated entity for the purposes of the Schedule. Specified Commonwealth assets, liabilities, funds and other matters may only be transferred to a designated entity. There may be more than one designated entity.

Subitem 1(3) specifies that a determination under subitem (2) is not a legislative instrument. This clarifies that the determination is not legislative in character and therefore does not fall within the meaning of ‘legislative instrument’ under section 8 of the *Legislation Act 2003*.

Item 2: Extra-territorial operation

Item 2 provides that all items of Schedule 2 apply within and outside of Australia. This would ensure that matters such as the transfer to designated entities of current AAO liabilities or commitments to offshore entities, or AAO instruments involving offshore entities would be covered by the relevant transfer items in this Schedule.
Part 2 – Assets and liabilities

Item 3: Transfer of assets and liabilities from Commonwealth to designated entities

Application

Subitem 3(1) specifies that item 3 is restricted to those Commonwealth assets and liabilities that relate to the AAO immediately before the transition time of July 1, 2018.

Ministerial declarations

Subitem 3(2) provides for the Minister to declare that certain assets or liabilities become the assets or liabilities of a designated entity at or after the transition time, without the need for any conveyance, transfer or assignment. The designated entity would become the Commonwealth’s successor in law in relation to those assets or liabilities.

Subitem 3(3) gives effect to the Minister’s declaration under subitem 3(2).

Subitem 3(4) provides that such a declaration would not be a legislative instrument, as with Item 1 of Schedule 2.

Assets subject to trust

Subitem 3(5) provides that for assets held by the Commonwealth on trust and transferred by ministerial designation to a designated entity under subitem 3(2), the designated entity must hold the asset on trust, on the same terms of the trust that applied to the Commonwealth. This would ensure that trust assets such as bequests or philanthropic gifts provided to the AAO for particular purposes, or on particular terms, continue to be subject to the same purposes or terms of trust when transferred to a designated entity.
Item 4: Certificates relating to vesting of assets

Item 4 relates to the treatment of a Ministerial certificate that specifies the vesting of an asset in a designated entity under Part 2 of Schedule 2. Its effect is that a person with responsibility to keep a register of assets can deal with and give effect to such a certificate, once lodged, as if it was a transaction instrument, and update the register of assets as necessary.

The procedure is as follows:

- The Minister signs a certificate identifying the asset and the designated entity in which that asset has become vested under Part 2, stating that the asset is so vested.
- The certificate is lodged with an assets official (the person or authority who, under a law of the Commonwealth, a State or a Territory, a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned).
- The assets official may deal with and give effect to the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind and make such entries in a register as are necessary having regard to the effect of Part 2 of Schedule 2 to this Bill.

Subitem 4(3) provides that a ministerially signed certificate created and lodged in accordance with subitem 4(1)(b) is not a legislative instrument, as with item 1 of Schedule 2.

Part 3 – Transfer of other matters

Item 5: References in certain instruments

Item 5 deals with certain instruments relating to the AAO that are in existence prior to the transition time, and provides for such instruments to be declared by the Minister to be instruments relating to a ministerially-designated entity in place of the AAO. Such instruments may include relevant contracts, deeds, agreements, written undertakings or other instruments specified in subitem 5(4), which contain a reference to the AAO, the AAO Director or the Commonwealth. The designated entity would, upon Ministerial declaration, assume the referenced role of the AAO, AAO Director, or the Commonwealth, respectively, in the instrument so declared.

Subitem 5(1) provides that in order for item 5 to apply to an instrument, the instrument must be in force immediately prior to 1 July 2018; must make reference to the Commonwealth, the Director, or the AAO; must relate to AAO assets or liabilities that vest in a designated entity under Part 2, or be otherwise related to the activities of the AAO; and must be declared in writing by the Minister as being an instrument to which item 5 applies.
Subitem 5(2) confirms that, for an instrument specified in a declaration under subitem 5(1), references made to the Commonwealth, the Director, or the AAO are taken to be references to the designated entity specified by the Minister in the declaration.

Subitem 5(3) provides that a declaration under subitem 5(1) is not a legislative instrument, as with item 1 of Schedule 2.

Subitem 5(4) defines instrument for the purposes of item 5 to include a contract, undertaking, deed, agreement, memorandum, notice, authority, order, instruction, and an instrument made under an Act or under a legislative instrument. Paragraph 5(4)(b) specifically excludes Acts, instruments made under this Bill, and instruments specified in transitional rules made under item 12 of this Bill, from the definition of instrument for the purposes of item 5.

Item 6: Legal proceedings

Subitem 6(1) provides that the Minister may declare that item 6 applies to certain court or tribunal proceedings pending immediately prior to the transition time (that is, 1 July 2018), to which the Commonwealth is a party and which relate to an AAO asset or liability being transferred to a designated entity under Part 2, or otherwise to AAO activities.

Subitem 6(2) provides that the designated entity declared by the Minister for the purposes of item 6 is substituted for the Commonwealth as a party to the proceedings, at a time specified by the Minister in the declaration, at or after the transition time.

Subitem 6(3) provides that the Minister’s declaration made under paragraph 6(1)(c) is not a legislative instrument, as with item 1 of Schedule 2.

Part 4 – Miscellaneous

Item 7: Nothing in this Schedule to affect staff

Item 7, for avoidance of doubt, clarifies that the employment, engagement or appointment of a person as an AAO officer before the transition time will not result in any corresponding employment, engagement or appointment of that person in a designated entity at or after the transition time.

The Department would administer changes in employment arrangements of AAO staff through other existing legislative and regulatory frameworks.

Subitem 7(2) defines officer of the AAO for the purposes of item 7 to mean the Director or an APS employee engaged in operations associated with the AAO.
Item 8: Exemption from stamp duty and other State or Territory taxes

Item 8 is required to ensure that State and Territory taxes such as stamp duty do not apply to the operations of Schedule 2 to the Bill.

Subitem 8(1) provides that no stamp duty or other tax is payable under a law of a State or Territory in respect of an exempt matter or anything connected with an exempt matter. **Exempt matter** is defined under subitem 8(2) as the vesting of an asset or liability under Schedule 2 or any other operation of Schedule 2.

Under subitem 8(3) the Minister may certify in writing that a specified matter is an exempt matter or that a specified thing is connected with an exempt matter. If the Minister does so, subitem 8(4) provides that such a certificate is prima facie evidence in all courts and for all purposes (other than in criminal proceedings) of matters stated in the certificate.

Subitem 8(5) specifies that a certificate under subitem 8(3) is not a legislative instrument, as with item 1 of Schedule 2.

Item 9: Certificates taken to be authentic

Item 9 allows persons to assume that a document purporting to be a certificate made under Schedule 2 is a validly issued certificate, unless there is sufficient evidence to the contrary.

Item 10: Delegation by Minister

Item 10 enables the Minister to delegate any of his or her powers and functions under Schedule 2 to the Secretary of the Department, or an SES or acting SES employee in the Department.

Subitem 10(2) specifies that the delegate must comply with any directions of the Minister when exercising powers or functions under a delegation.

Subitem 10(3) provides that the delegations allowed by subitem 10(1) do not apply in relation to the Minister’s powers provided in item 12 to make transitional rules.

Item 11: Compensation for acquisition of property

The effect of subitem 11(1) is to specify that the Commonwealth is liable to pay a reasonable amount of compensation if the operation of Schedule 2 results in the Commonwealth acquiring property from a person other than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution).
Subitem 11(2) provides that, where the Commonwealth and the person cannot agree on the amount of compensation payable, the person can institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory to recover such a reasonable amount of compensation as determined by the court.

Item 12: Transitional rules

Subitem 12(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature, in relation to repeals made by this Bill.

Subitem 12(2) provides that where such rules are made within a 12 month period starting at the transition time, 1 July 2018, the rules may modify the effect of Schedule 2.

Subitem 12(3) sets out certain things which the rules may not do.

Subitem 12(4) provides that, other than the limitations specified in subitem 12(3), Schedule 2 does not limit the transitional rules that may be made for the purposes of subitem 12(1).

Taken together, item 12 will allow the Minister to make rules prescribing matters of a transitional nature relating to the repeals made by the Bill. This will allow for more detailed and specific aspects of the Bill relating to the transitional arrangements to be included in rules.

While this provision represents a Henry VIII clause (as the rules may modify the operation of Schedule 2 of this Bill), there is a sound justification for this approach. Modifications to the operation of Schedule 2 may be necessary to deal with unforeseen circumstances arising from the transfer of the AAO. There is a need for broad rule-making powers, and for the operation of Schedule 2 of the Bill to be able to be modified by rules, in order to facilitate a smooth transition of the AAO’s critical scientific roles, including the transfer of necessary assets, liabilities, commitments and other matters, to external entities. Rules may also be necessary to minimise disruption to ongoing scientific activities, and to address any operational issues that arise during the transition.

The power to make rules, and the extent to which the rules may modify the effect of Schedule 2, are subject to appropriate limitations and safeguards. In this regard, the rules may only prescribe matters of a transitional nature, including savings or application provisions relating to the repeals made by the Bill.

The rules are expressly limited by subitem 12(3), which stipulates that the rules: may not create an offence or civil penalty provision; provide powers of arrest or detention; provide powers relating to entry, search or seizure; impose a tax; set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Bill; or directly amend
the text of this Bill. The rules are time limited: they may only be made within a 12 month period from the commencement of the Bill.

Finally, such rules would be made by legislative instrument and would therefore be subject to Parliamentary consideration and disallowance in accordance with section 42 of the *Legislation Act 2003*. Subsection 12(2) of that Act would prevent the rules from applying retrospectively to the extent they would disadvantageously affect a person’s rights, or retrospectively impose liabilities on a person.