

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CIVIL AVIATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Transport
and Communications, the Hon Kim Beazley, M.P.)



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OUTLINE

The aim of the Bill is to:

- . implement reforms to the Civil Aviation Authority which remove a range of detailed controls exercised by Government and enhance the accountability of the Board for performance of the Authority;
- . make a number of minor, unrelated amendments, to the *Civil Aviation Act 1988* to facilitate the operation of the Authority.

The Government has been progressively reviewing Commonwealth business enterprises as part of its overall program of microeconomic reforms. The Bill represents the Government's reform package for the Civil Aviation Authority.

The reform package accords broadly with reform packages for other enterprises in the Transport and Communications portfolio which were announced by the Treasurer in his Economic Statement in May 1988.

The *Civil Aviation Act 1988* already generally reflects the Government's policies on reform of its business enterprises. For example, the Act establishes corporate planning and financial targeting as the basis for Government oversight of the Civil Aviation Authority. However, the Bill modifies strategic controls over the Authority along the lines of other reform packages agreed to by the Government and removes a range of detailed controls which the Government still exercises.

The reforms included in the Bill constitute part of a wider package of reforms, other elements of which will be introduced through appropriate administrative arrangements.

Among the reforms included in the Bill are:

- . removal of the Civil Aviation Authority's staff from coverage by the *Public Service Act 1922*, with the Board having the power to determine terms and conditions of employment for its staff;
- . oversight by the Prices Surveillance Authority of statutory charges proposed by the Civil Aviation Authority, with the Minister to have power to disallow charges following a report by the Prices Surveillance Authority and to set replacement charges;

- . the Minister to have power to dismiss the Board on grounds expanded to include ongoing underperformance;
- . removal of a range of day-to-day controls exercised by Government, including controls over the terms and conditions of individual borrowings, the approval of individual contracts, the purchase of shares and the establishment of subsidiaries and partnerships; and
- . removal of the Civil Aviation Authority's current exemption from income tax, with effect from 1 July 1991.

The other amendments in the Bill include:

- . the implementation of two recommendations of the Air Safety Regulation Review Task Force;
- . the provision of the Authority with immunity from State laws in limited circumstances;
- . the revision of the provisions relating to carriage of dangerous goods on aircraft; and
- . the provision of protection to the Authority where the owner of an aircraft suffers economic loss following seizure of the aircraft where there is an amount of money covered by a statutory lien in respect of that aircraft.

FINANCIAL IMPACT STATEMENT

The reforms of the Civil Aviation Authority included in the Bill are expected to enhance the efficiency of the Authority and improve its returns to the Commonwealth.

The imposition of income tax on the Civil Aviation Authority in 1991/92 and subsequent financial years is expected to result in increased revenue to the Commonwealth. The amounts cannot be accurately quantified at this time, as they depend on a number of factors including the profitability of the Authority, the extent of tax deductions obtained and the prevailing tax rates.

The amendments not related to the reform package do not have any financial impact.

NOTES ON CLAUSES

Clause 1: Short title etc.

1. Provides for the proposed Act to be cited as the *Civil Aviation Amendment Act 1990* and that "Principal Act" means the *Civil Aviation Act 1988*.

Clause 2: Commencement

2. Provides for commencement of the proposed Act. Proposed paragraph 3(a), which replaces the existing definition of "statutory lien", will be deemed to have commenced on 1 July 1988, the commencement date of the Principal Act. Clause 26, which will remove the Civil Aviation Authority's exemption from the payment of Commonwealth income tax, will commence on 1 July 1991. Other provisions relating to the reform package will commence on a date to be proclaimed. Any of those provisions which are not proclaimed to commence within 6 months from the date of Royal Assent will commence on the first day following the 6 month period. The remaining provisions will commence on the date of Royal Assent.

Clause 3: Interpretation

3. Inserts new definitions of "Board", "corporate plan" and "financial plan" into section 3 of the Principal Act and replaces the existing definition of "statutory lien" to make it clear that the definition includes a statutory lien in effect under the *Air Navigation (Charges) Act 1952* that is vested in the Authority under subsection 101(3).

Clause 4: Standards etc.

4. Gives effect to a recommendation in the first report on air safety regulation in Australia by the Air Safety Regulation Review Task Force that the Authority should have regard to the cost to industry of proposed standards of aviation safety.

Clause 5: Immunity of the Authority from certain State and Territory laws

5. Inserts new section 11A into the Principal Act, which will give the Authority immunity from State laws in certain limited circumstances. A State law will not apply to the Authority or its property where it is necessary to perform one of its functions that is directly related to the purpose of regulating the safety of air navigation. The particular functions are the provision of air route and airway facilities, air traffic control and flight services on aerodromes, rescue and fire fighting services and search and rescue services. It is intended that this particular provision will only be used where the matter is essential to the performance of the Authority and negotiations with a State or local government authority have been unable to result in agreement with the parties involved.

Clause 6: Power of Authority

6. Amends section 13 of the Principal Act to remove the requirement that the Authority obtain the approval of the Minister to enter into a contract involving the payment by the Authority of an amount exceeding \$6m or such higher amount as is prescribed. This will allow the Authority greater commercial freedom in arranging contracts.

**Clause 7: Limitation on the formation of companies etc.
Limitation on the formation of partnerships etc.**

7. This clause substitutes the existing sections 14 and 15 of the Principal Act with new sections 14 and 15 to:

- (a) remove the requirements that the Authority obtain the approval of the Minister before it subscribes for or purchases shares, debentures or securities, joins in the formation of a subsidiary of the Authority, or enters into a partnership;
- (b) retain the requirement that the Authority must advise the Minister in writing before joining in the formation of a subsidiary of the Authority, subscribing for, or purchasing shares in a company which would become a subsidiary of the Authority, or entering into a partnership; and
- (c) retain the existing provisions that the Authority must ensure that its subsidiaries and, where possible, partnerships of which it is a member, do not do anything that the Authority cannot do.

Clause 8: Negligent etc. operation of aircraft

8. Inserts new section 20A into the Principal Act to give effect to a recommendation of the Air Safety Regulation Review Task Force, in its first report, that it would be useful to highlight in the Act significant offences which relate to crucial areas of air safety. The Task Force identified regulation 148 of the Civil Aviation Regulations as being an offence that should be "elevated to the Act". The new section 20A provides that an aircraft must not be flown in a manner that will endanger life or property.

Clause 9: Dangerous goods

9. Amends section 23 of the Principal Act. Section 23 currently provides that dangerous goods must not be carried, or consigned for carriage, in an aircraft except in accordance with conditions specified by the Authority in a written permission. This clause amends section 23 by providing that dangerous goods may be carried, or consigned for carriage, in accordance with conditions specified by the Authority or in accordance with conditions specified in regulations.

10. Proposed new subsection 23(2) makes it an offence for a person to knowingly or recklessly carry, or consign for carriage,

any dangerous goods on an aircraft except in accordance with the regulations or the permission of the Authority. The proposed maximum penalty of 5 years imprisonment reflects the gravity of the offence and the very real potential for loss of life.

11. Paragraphs (b) and (c) of this clause give effect to paragraph 2.2 of Annex 18 to the Chicago Convention which requires Contracting States to take the necessary measures to achieve compliance with the detailed provisions contained in the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved, issued and amended by the Council of the International Civil Aviation Organization.

**Clause 10: Declarations of the contents of cargo
Training relating to dangerous goods**

12. Inserts new sections 23A and 23B into the Principal Act. Proposed new section 23A requires air cargo to be accompanied by a declaration of its contents. The purpose of such a declaration is to alert trained personnel to the possibility that cargo may contain dangerous goods. For example, cargo described as "photographic materials" would alert a trained freight forwarder that the cargo may contain volatile chemicals and would constitute dangerous goods.

13. Proposed new section 23B provides for the establishment of dangerous goods training programs in accordance with Chapter 10 of Annex 18 to the Chicago Convention and the Technical Instructions issued by the International Civil Aviation Organization under that Annex. The provisions recognises that the successful application of restrictions concerning the transport of dangerous goods is dependent on the appreciation by all persons concerned of the risks involved and on a detailed understanding of legislative requirements. This can only be achieved by properly planned training programs for all persons involved in the transport of dangerous goods by air.

Clause 11: Air Operators' Certificates

14. Amends section 27 of the Principal Act. Section 27 currently provides that an Air Operator's Certificate has effect subject to conditions specified by the Authority. This clause amends section 27 to make it clear that such conditions may be specified in the regulations or in the Certificate itself.

Clause 12: Offences in relation to aircraft

15. Amends section 29 of the Principal Act by making it an offence for a person:

- (a) to operate an aircraft in contravention of proposed new subsection 20A(1) (reckless or negligent operation of an aircraft so as to be likely to endanger life); and
- (b) to knowingly or recklessly operate an aircraft in contravention of proposed new subsection 23(1) (carrying dangerous goods).

Clause 13: Powers and functions under State and Territory laws

16. Amends section 32 of the Principal Act to provide that the newly-defined Board may have powers and functions conferred under State and Territory laws, similar to its powers and functions under the Civil Aviation Act and Regulations.

Clause 14: Heading to Part IV

17. Makes a minor change necessary as a result of defining the Board.

**Clause 15: The Board
Purposes of the Board**

18. Inserts new section 32A into the Principal Act to recognise the Board of the Authority.

19. Inserts new section 32B into the Principal Act to define the purposes of the Board as being to decide the objectives, strategies and policies to be followed by the Authority, and to ensure that the Authority performs its functions in a proper, efficient and economical manner.

Clause 16: Constitution of Board

20. Amends section 33 of the Principal Act to substitute the reference to "Authority" with "Board" which is necessary following recognition of the Board as a discrete body.

21. Provides that the current members of the Authority are to continue as members of the Board.

Clause 17: Period of appointment of members

22. Amends section 34 of the Principal Act to remove the prohibition on a person who has attained the age of 65 holding the office of Chairperson on a full time basis.

Clause 18: Remuneration and allowances of members

23. Amends section 35 of the Principal Act to provide that, on appointment of a person to the position of Chief Executive Officer following commencement of this section, the Chief Executive Officer's allowances will no longer be prescribed by regulation. By virtue of proposed new section 86, to be inserted by clause 35 the Chief Executive officer's allowances will be determined by the Board.

**Clause 19: Conduct of meetings
Resolutions without meetings**

24. Inserts new section 39A into the Principal Act to provide that the Board may regulate proceedings at its meetings, including by permitting members to participate in meetings by means of telecommunications.

25. Inserts new section 39B into the Principal Act to provide that, if the Board so determines, a resolution may be passed by a majority of the members of the Board outside a meeting but a resolution will not be considered to have been passed if the number of members in favour of the resolution is not at least equal to the quorum provided for under subsection 39(6).

26. The above two new sections are intended to facilitate the business of the Board where urgent matters must be decided at short notice or there is difficulty in members getting to meetings.

Clause 20: Termination of appointment

27. Inserts new paragraph 42(2)(ca) into the Principal Act to expand the grounds on which the Minister may terminate the appointment of a member of the Board (other than the Chief Executive Officer) to include circumstances in which the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

28. Adds new subsection 42(4) to the Principal Act to provide that, if the Minister is of the opinion that the performance of the Board or the Authority has been unsatisfactory for a significant period of time, the Minister may terminate the appointment of all members or specified members. Again, this provision does not apply to the Chief Executive Officer.

29. The Chief Executive Officer, who is an ex officio Board member, is not subject to dismissal by the Minister, but will be subject to dismissal by the Board under provisions made under proposed new section 89.

30. Adds new subsection 42(5) to the Principal Act to provide that, if the Chief Executive Officer is dismissed by the Board, he or she will be taken to have resigned from the Board.

Clause 21: Corporate plan

31. Amends section 43 of the Principal Act to provide that the Civil Aviation Authority's corporate plans are to cover periods of at least three years, rather than three year periods as at present.

Clause 22: Corporate plan etc. to Minister

32. Makes a minor drafting change to section 44 of the Principal Act consequential upon the amendment of section 43.

Clause 23: Board to notify Minister of significant affecting events etc.

33. Inserts new section 48A into the Principal Act to provide that, if the Board forms the opinion that matters have arisen that may prevent, or significantly affect, achievement of the objectives of the Authority and its subsidiaries under the corporate plan, or that may prevent, or significantly affect, achievement of the Authority's financial targets under the

financial plan, then the Board must immediately notify the Minister of its opinion and the reasons for its opinion.

Clause 24: Revaluation of assets

34. Inserts new section 54A into the Principal Act to require the revaluation of the Authority's assets at least once every five years.

Clause 25: Exemption from tax

35. Amends section 55 of the Principal Act to remove the Authority's exemption from the payment of income tax imposed by the Commonwealth. Clause 2 provides that the exemption will be removed with effect from 1 July 1991.

Clause 26: Borrowings otherwise than from Commonwealth

36. Amends section 58 of the Principal Act to remove the requirement that the Authority obtain the approval of the Treasurer for the borrowing of monies otherwise than from the Commonwealth.

Clause 27: Repeal of section 61

37. Repeals section 61 of the Principal Act to remove restrictions on the manner in which the Authority may borrow money.

Clause 28: Guarantee of borrowings by subsidiary of Authority

38. Amends section 62 of the Principal Act to remove the requirement that the Treasurer be satisfied about, or approve, various matters related to borrowings by wholly-owned subsidiaries of the Authority before he or she may guarantee the repayment of the borrowings and interest thereon.

Clause 29: Delegation by Treasurer

39. Amends section 63 of the Principal Act to make a minor amendment to the Treasurer's powers of delegation consequential upon the amendments to sections 14 and 58.

Clause 30: Application of Division 2 of Part XI of the Audit Act

40. Amends section 64 of the Principal Act to insert a requirement that the Authority's annual reports include an evaluation of performance against the objectives included in the Authority's corporate plan, and an assessment of the adverse effect, if any, of non-commercial commitments imposed on the Authority on its profitability.

Clause 31: Charges for services and facilities

41. Amends section 66 of the Principal Act to provide that determinations of statutory charges proposed by the Board are to be subject to examination by the Prices Surveillance Authority. The Minister will have a maximum period of 30 days within which

to approve or disapprove a proposed determination, and may set a replacement determination. If the Prices Surveillance Authority conducts an inquiry into a proposed determination, then the Minister's 30 day period will commence when he or she receives a copy of its report.

42. These provisions are intended to enhance the effectiveness of the Minister's present power to approve or disapprove charges, by providing the Minister with the opportunity to consider any report of the Prices Surveillance Authority before making his or her decision and by enabling the Minister to set charges to replace those which are unacceptable.

Clause 32: Protection against actions

43. Amends section 80 of the Principal Act. Section 72 provides that where an amount covered by a statutory lien in respect of an aircraft remains unpaid after 9 months an authorised person may seize the aircraft and keep possession of it until all outstanding amounts covered by the statutory lien are paid. Section 80 protects the Authority in respect of loss or damage to an aircraft seized under section 72. This clause amends section 80 to make it clear that that section extends to economic loss suffered as a result of a seizure under section 72. Section 80 does not extend to loss or damage wilfully or negligently caused by the Authority or its officers.

Clause 33: Chief Executive Officer

44. Amends section 84 of the Principal Act to:

- (a) provide that the Chief Executive Officer shall be appointed by the Minister, after the Minister has received a recommendation from the Board;
- (b) remove the prohibition on a person who has attained the age of 65 holding the office of Chief Executive Officer; and
- (c) provide that the Chief Executive Officer holds office on terms and conditions determined by the Board, rather than by the Minister as at present.

Clause 34: Duties of Chief Executive Officer

45. Inserts new section 84A into the Principal Act to define the duties of the Chief Executive Officer as the manager of the Civil Aviation Authority and makes it clear that the Chief Executive Officer is responsible to the Board.

Clause 35: Chief Executive Officer not to engage in other work

46. Amends section 85 of the Principal Act to require that the approval of the Board, rather than of the Minister as at present, be obtained for the Chief Executive Officer to engage in paid employment outside the duties of Chief Executive Officer.

Clause 36: Remuneration and allowances of Chief Executive Officer

47. Amends section 86 of the Principal Act to provide that the Board, rather than the Remuneration Tribunal as at present, shall determine the remuneration and allowances of the Chief Executive Officer.

48. The Board and the Remuneration Tribunal are to consult on executive remuneration under the *Remuneration Tribunals Act 1973*

Clause 37: Leave of absence

49. Amends section 87 of the Principal Act to provide that the Board, rather than the Minister as at present, may grant leave of absence to the Chief Executive Officer.

Clause 38: Resignation

50. Amends section 88 of the Principal Act to provide that the Chief Executive Officer presents his or her resignation to the Board, rather than to the Minister as at present.

Clause 39: Chief Executive Officer holds office during Board's pleasure

51. Substitutes existing section 89 of the Principal Act with a new section to provide that the Chief Executive Officer will hold office during the pleasure of the Board. The present provisions relating to dismissal of the Chief Executive Officer by the Minister are repealed.

Clause 40: Transitional - existing appointee as Chief Executive Officer

52. Inserts a savings provision in relation to the current Chief Executive Officer's appointment.

53. Also inserts savings provisions to ensure the continuity of the current provisions relating to the Chief Executive Officer's terms and conditions of appointment, leave, resignation and termination of employment continue in force until an appointment to the office following commencement of this Bill. It is intended that the position be widely advertised and subsequently filled before the new provisions, which give greater autonomy to the Board, are to apply.

Clause 41: Acting Chief Executive Officer

54. Amends section 90 of the Principal Act to provide that the Minister may appoint an acting Chief Executive Officer after receiving a recommendation from the Board.

Clause 42: Staff of Authority

55. Replaces the existing section 91 of the Principal Act with a new section to repeal the present provisions on appointment and employment of the staff of the Authority under the *Public Service Act 1922*. Provides that staff shall be appointed or employed by the Authority on such terms and conditions as are determined by the Board.

56. Inserts transitional provisions to ensure continuity of current appointments of the staff of the Authority, and related terms and conditions.

Clause 43: Delegation by Minister

57. Amends section 93 of the Principal Act to provide that the Minister may delegate his or her power under section 92 to assign contracts to which the Commonwealth is party, and which relate to assets of the Authority, to the Authority.

Clause 44: Delegation by Chief Executive Officer

58. Replaces the existing section 94 of the Principal Act with a new section 94 to provide that the Chief Executive Officer may delegate the Authority's powers. The existing provision provides that those powers may be delegated by the Authority under its common seal. Existing delegations made by the authority are to continue in force as if made by the Chief Executive Officer.

Clause 45: Delegation by Board

59. Inserts new section 94A in the Principal Act to provide that the Board may delegate its powers to a member of the Board or an officer of the Authority.

Clause 46: Conduct by Directors, Servants and Agents

60. Inserts new section 97A into the Principal Act. Proposed section 97A is a standard provision relating to offences against the Principal Act by a director, servant or agent of a body corporate or by an agent or servant of a person other than a body corporate.

Clause 47: Regulations etc.

61. Amends section 98 of the Principal Act to authorise the Authority to make Civil Aviation Orders for the purposes of the proposed new sections 23, 23B and 27. Such Orders may not prescribe any pecuniary penalties and are disallowable instruments for the purposes of section 48A of the *Acts Interpretation Act 1901*.

Clause 48: Amendments relating to penalties

62. Provides for the amendment of penalty provisions in the Principal Act which provide for a pecuniary penalty as well as a term of imprisonment as set out in Schedule 1 to the Bill. The amendments are consequential upon amendments to the *Crimes Act*

1914 which came into operation on 1 March 1989. Those amendments to the Crimes Act provide for an alternative maximum pecuniary penalty where a law of the Commonwealth provides for a term of imprisonment. The maximum pecuniary penalty applicable to a body corporate is five times the maximum penalty applicable to a natural person. The penalty provisions in the Principal Act are being amended to remove the references to a pecuniary penalty where the existing penalty provides for both a term of imprisonment and a fine.

Clause 49: Amendments relating to the Board

63. Provides for amendments to the Principal Act as detailed in Schedule 2. The amendments are replacements of references to "Authority" with references to "Board" which are necessary as a result of the recognition of the Board as a discrete entity.

Clause 50: Amendment of the Civil Aviation Regulations

64. Amends the Civil Aviation Regulations consequential upon the insertion into the Principal Act of new section 20A to be inserted by clause 8. The clause removes from the Regulations regulation 148, which is similar to the new section 20A.



