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The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Civil Aviation Bill 1988

Explanatory Memorandum

(Circulated by the Authority of the Minister  
for Transport and Communications  
Senator Gareth Evans Q.C.)



## Civil Aviation Bill 1988

### OUTLINE

The purpose of the Bill is to establish a Civil Aviation Authority as a Commonwealth statutory authority.

The primary functions of the Authority are the safety regulation of civil aviation operations in Australia and Australian aircraft operating overseas, and the provision of air traffic and related services to aircraft operators in Australia.

The Minister will have the power to give directions to the Authority on safety matters.

The Bill defines the corporate arrangements for the Authority giving it powers to operate with greater freedom than is possible through a Department of State.

The Authority will be expected to earn a reasonable rate of return on assets used in the provision of air traffic and related services and to pay a reasonable dividend. The Government will meet from the Budget various safety regulation costs incurred by the Authority. The provision of search and rescue services also will be funded by the Government.

The future direction of the Authority will be guided by corporate and financial plans. The Minister will have the right to vary aspects of the financial plans.

The Authority will supply to the Minister on an annual basis estimates of receipts and expenditure associated with those functions for which the Government will meet the costs.

The Authority will be subject to the scrutiny of the Auditor-General.

These provisions make it clear that the Authority will remain responsive to Government policies and ensure a proper degree of Ministerial control.

The Bill provides for the Authority to be staffed under the Public Service Act. Staff transferred from the Public Service to the Authority will retain the same terms and conditions of employment.

Financial Impact Statement

There are no implications in the Bill for additional costs in the Public Sector. To the extent that greater efficiency is achieved costs can be expected to reduce in real terms over time.

To the extent that the Authority funds its capital investment program from commercial borrowings rather than Budget appropriations, the financial impact of the Bill will be to reduce Commonwealth Budgetary outlays.

## NOTES ON CLAUSES

### Part 1 - PRELIMINARY

#### Clause 1 : Short Title

Provides mode of citation of the Act.

#### Clause 2 : Commencement

With the exception of Part III, Clause 98 and Part X, and the amendments made by part IX, the legislation commences on Royal Assent. The exceptions commence on Proclamation.

#### Clause 3 : Interpretation

Sub-clause (1) defines certain terms used in subsequent clauses of the Bill.

Sub-clause (2) amplifies the meaning of services and facilities in sub-clause 13(4).

Sub-clause (3) provides for Companies Act definitions of subsidiary to be used to define a subsidiary of the Authority.

Sub-clause (4) clarifies the meaning of the terms securities when referred to in this Act.

Sub-clause (5) defines the effect of a lien as limited to that provided by this Act.

#### Clause 4 : Application to state aircraft

Defines the applicability of the Act to state aircraft.

#### Clause 5 : Act to bind Crown

Defines the extent to which the Bill binds the Crown.

#### Clause 6 : Extension to external Territories

Provides for the legislation to extend to all external Territories.

#### Clause 7 : Extra-territorial application

Outlines the extra-territorial application of the Bill to foreign aircraft flying within and in or out of Australia and to Australian aircraft operating outside Australia.

Part II - ESTABLISHMENT, FUNCTIONS AND  
POWERS OF AUTHORITY

Clause 8 : Establishment of Authority

Sub-clause (1) establishes the Civil Aviation Authority.

Sub-clause (2) provides for the Authority to be a body corporate with perpetual succession, to have a seal and sue or be sued in its corporate name.

Sub-clause (3) validates the presumption that a document has been duly sealed if it carries the imprint of the seal of the Authority.

Clause 9 : Functions of Authority

Sub-clause (1) generally defines the functions of the Authority. These extend to the safety regulation of civil air operations in Australian Territory and Australian aircraft operating outside Australian Territory; together with such matters as the provision of various air traffic services, the provision of consultancy and management services; the provision of services to BASI and other functions covered by the Air Navigation Act and Regulations or incidental to its functions.

Sub-clause (2) excludes aviation security as a function of the Authority, but does not preclude the Authority from involvement in arrangements to prevent or deal with hijacking.

Sub-clause (3) provides for the Authority's services and facilities to be provided within and outside Australian territory.

Sub-clause (4) empowers the Authority to provide services and facilities at its discretion, however, it must take account of any Ministerial directions under section 12. [NB : this discretion does not apply to safety regulatory functions].

Clause 10: Standards

Defines the Authority's functions to include: developing, ensuring compliance with, and implementing (including by means of licences, permits, registrations and certificates) standards in relation to: flight crew; various aspects of aircraft and equipment; maintenance personnel; various aspects of aerodromes and related personnel; airroute and airways facilities; rescue and fire fighting services and search and rescue services, including personnel.

Clause 11 : Functions to be performed in accordance with international agreements

Provides for the Authority to perform its functions consistent within obligations under the Chicago Convention and other relevant agreements between Australia and any other country.

Clause 12 : Directions

Sub-clause (1) provides general power for the Minister to give direction, to the Authority on the performance of its functions.

Sub-clause (2) limits directions in regard to the regulatory function to those of a general nature.

Sub-clause (3) requires that directions be included in the Authority's annual report for the year in question.

Clause 13 : Powers of Authority

Sub-clause (1) confers general power on the Authority, over and above specific powers in the Act, related to the performance of its functions.

Sub-clause (2) provides specific examples, including the Authority's power to enter into contracts; to acquire, hold and dispose of real and personal property; to join in the formation of companies and enter partnerships and to hire plant and machinery not immediately required.

Sub-clause (3) requires the Authority to get Ministerial approval to enter into contracts involving Authority payments exceeding \$6 million or such higher amounts as prescribed.

Sub-clause (4) permits the Authority to provide a facility or service itself, in co-operation with others, or by arranging for others to do so on its behalf.

Sub-clause (5) enables the Authority to set up advisory bodies.

Clause 14 : Limitations on formation of companies, etc

Sub-clause (1) requires the Authority to obtain written ministerial approval to acquire shares or securities in a company or to join in the formation of a company that would be a subsidiary of the Authority.

Sub-clause (2) provides for an approval to have general or specific application and made subject to conditions or restrictions.

Sub-clause (3) requires a statement of reasons for the purchase of an interest in a company to be laid before each House of Parliament within 15 days.

Sub-clause (4) limits the powers that can be exercised by companies in which the Authority has a controlling interest.

Sub-clause (5) by way of example in relation to sub-clause (4), requires the approval of the Treasurer for any borrowings or raising of money by companies in which the Authority has a controlling interest.

Clause 15 : Limitations on the formation of partnerships

Sub-clause (1) precludes the Authority entering into a partnership without the written approval of the Minister.

Sub-clause (2) provides that approval may be either general or specific and may be subject to conditions or restrictions.

Sub-clause (3) requires a statement of reason for participation in the partnership to be laid before each House of Parliament within 15 days.

Sub-clause (4) limits the powers that can be exercised by partnerships in which the Authority has a controlling interest.

Clause 16 : Consultation

Sub-clause (1) provides for the Authority to consult with government, commercial, industrial, consumer and other relevant bodies, as appropriate.

PART III - REGULATION OF CIVIL AVIATION

Clause 17 : Aeronautical Information Service

Requires the Authority to provide an Aeronautical Information Service and describes the nature of the information and instructions to be collected and disseminated.



Clause 18 : Aeronautical Information Publications  
and Notices to Airmen

Sub-clause (1) requires the Authority to publish publications to be known as Aeronautical Information Publications and notices to be known as Notices to Airmen.

Sub-Clause (2) describes the publications which are to be included in Aeronautical Information Publications.

Sub-clause (3) describes the information and instructions to be included in Notices to Airmen.

Sub-clause (4) requires copies of Aeronautical Information Publications and Notices to Airmen to be sent to the International Civil Aviation Organization.

Clause 19 : Civil Air Ensign

Sub-clause(1) designates the design and colours of the Civil Air Ensign to be those specified in the Gazette of 4 March 1948 until another ensign is appointed in its place under the Flags Act 1953

Sub-clause(2) specifies where the Civil Ensign can be flown or otherwise displayed.

Sub-clause(3) specifies the penalty for flying or otherwise displaying the Ensign other than provided for in sub-clause(2).

Clause 20 : Defence aerodromes

Provides for the Authority to make arrangements with appropriate Ministers for aircraft to use an aerodrome controlled by a part of the Defence Force.

Clause 21 : Interference with navigational aids

Sub-clause (1) defines terms used in this clause.

Sub-clause (2) provides for the following provisions to apply where interference with radio communications to or from aircraft or with navigational aids are likely to endanger the safety of aircraft engaged in navigation.

Sub-clause (3) provides for a notice to be served on a proprietor to permit an installation to be inspected and tested.

Sub-clause (4) provides for an officer of the Authority to carry out inspection or testing of an installation upon service of a notice.

Sub-clause (5) requires an officer acting under sub-clause (4) to produce identification in writing if requested.

Sub-clause (6) provides for the Authority to serve a notice directing the proprietor to modify etc an installation to eliminate interference within a reasonable time as specified in the notice.

Sub-clause (7) allows that where the installation is working in compliance with all applicable law the proprietor may recover from the Authority the costs or losses incurred in complying with the direction under sub-clause (6).

Sub-clause (8) provides that a person shall not, without reasonable excuse, fail to comply with a direction served under this Clause.

Penalties are specified.

Sub-clause (9) prescribes the action which may be taken by the Authority where a proprietor fails to comply with a direction under sub-clause (6).

Sub-clause (10) provides for a notice to be served personally or by post at the last known place of residence or business or at the address of the installation.

Clause 22 : Interception etc. of aircraft

Sub-clause (1) provides for this clause to apply to an Australian aircraft or any other aircraft being operated by an Australian operator.

Sub-clause (2) prohibits a pilot in command from operating an aircraft over the territory of a foreign country for a purpose prejudicial to security, public order or air safety of that country and specifies penalties.

Sub-clause (3) provides that where an aircraft flies over the territory of a foreign country and in the absence of required authorisation or where there are reasons to believe that its purpose for operating is prejudicial to security, public order or air safety, then the pilot in command shall comply with any direction to land etc. and specifies a penalty for non-compliance.

Sub-clause (4) provides that in a prosecution under sub-clause(3) it is a defence if it is established that compliance with a direction is more likely to endanger the aircraft or people on board.

Sub-clause (5) provides that sub-clauses (2) and (3) do not affect any other obligation imposed by law to comply with a direction given by an authorised official of a foreign country.

Sub-clause (6) provides that a person convicted of an offence under the law of a foreign country is not liable to be convicted of the same offence under this clause.

Sub-clause (7) defines terms used in this Clause.

Clause 23 : Dangerous goods

Sub-clause (1) provides that an aircraft shall not consign dangerous goods except in accordance with conditions specified in writing of the Authority.

Sub-clause (2) prohibits a person carrying or consigning dangerous goods except in accordance with conditions specified in writing of the Authority; penalties are specified.

Sub-clause (3) defines "dangerous goods".

Sub-clause (4) provides that this section does not preclude the carriage and use of signalling and other apparatus etc. for navigation of the aircraft or safety of crew and passengers.

Clause 24 : Interference with crew or aircraft

Sub-clause (1) prohibits a person, whilst in an aircraft, interfering with the crew or threatening the safety of the aircraft.

Sub-clause (2) prohibits a person tampering with the aircraft, aircraft component or an item of equipment.

Penalties are specified.

Clause 25 : Non-scheduled flights by foreign aircraft

Sub-clause (1) provides for the Authority to direct a non-scheduled flight by an aircraft of a Contracting State to follow an established air route or to be conducted in accordance with specified conditions.

Sub-clause (2) prohibits such flights from operating for hire and reward except as authorised by permission of the Authority.

Sub-clause (3) provides that a non contracting state aircraft shall not make a non-schedule flight over or into Australian Territory except with the approval of the Authority and in accordance with any conditions.

Clause 26 : Aircraft on international flights  
to have permission

Sub-clause (1) provides that an aircraft shall not conduct an international flight to or from Australia without the permission of the Authority.

Sub-clause (2) limits the scope of sub-clause (1), as specified.

Clause 27 : Air Operators' Certificates

Sub-clause (1) empowers the Authority to issue Air Operators Certificates for the purpose of regulating commercial air operations.

Sub-clause (2) describes the circumstances in which an aircraft shall not be flown or operated except as authorised by a Certificate.

Sub-clause (3) indicates that a Certificate has effect subject to conditions specified by the Authority.

Sub-clause (4) provides for the conditions of a Certificate to be varied by the Authority.

Sub-clause (5) provides that if a particular condition of a Certificate is breached, the Certificate does not authorise any operation to which the condition relates.

Sub-clause (6) empowers the Authority to cancel or suspend the Certificate or any specified authorisation contained therein.

Sub-clause (7) empowers the Authority to determine the term of a certificate.

Sub-clause (8) precludes the Certificate being transferred.

Sub-clause (9) prescribes that sub-clause (2) only applies to prescribed commercial operations.

Clause 28 : Exercise of discretion by Authority

Limits the exercise of discretion by the Authority to matters concerning the safety of air navigation.

Clause 29 : Offences in relation to aircraft

Sub-clause (1) specifies the circumstances in which an offence occurs in relation to an aircraft.

Sub-clause (2) specifies the penalties for offences under this clause.

Sub-clause (3) provides a defence in any proceedings if it is established that a person was not a party to or knowingly concerned in the act or omission charged.

Clause 30 : Weather etc. to be a defence

Provides that in respect of proceedings for an offence under this legislation, it is a defence to establish extreme weather conditions or another unavoidable cause.

Clause 31 : Review of decisions

Sub-clause (1) defines "decision" and "reviewable decision".

Sub-clause (2) provides that application for the review of a reviewable decision may be made to the Administrative Appeals Tribunal.

Sub-clause (3) provides that the person making a reviewable decision shall include in a notice to the person affected by the decision, a statement indicating the right to seek a review of the decision by the Administrative Appeals Tribunal.

Sub-clause (4) specifies that a failure to comply with sub-clause (3) does not effect the validity of a decision.

Clause 32 : Powers and functions under State and Territory laws

Specifies that the Authority or an officer having powers and functions under this legislation, may have similar powers and functions conferred by the law of a State or Territory relating to air navigation.

PART IV - CONSTITUTION OF AUTHORITY

Clause 33 : Constitution of Authority

Sub-clause (1) outlines the membership of the Authority.

Sub-clause (2) allows the Chairperson to be a full-time or part-time member.

Sub-clause (3) requires members, other than the Chairperson and the Chief Executive Officer, to be part-time members.

Sub-clause (4) provides for members (other than the Chief Executive Officer) to be appointed by the Minister on terms and conditions (other than as provided for in this legislation) as he determines.

Sub-clause (5) allows the staff of the Authority to be appointed as "other members" of the Authority under sub-clause 1(d).

Clause 34 : Period of appointment of members

Sub-clause (1) specifies a 5 year maximum period of appointment for members of the Authority, other than the Chief Executive Officer.

Sub-clause (2) provides that a member is eligible for re-appointment.

Sub-clause (3) specifies the Chairperson can not serve on a full-time basis once that person reaches the age of 65.

Clause 35 : Remuneration and allowances of members

Sub-clause (1) provides for the remuneration of members (other than the Chief Executive Officer) to be determined by the Remuneration Tribunal, or, if no determination is in operation they will be paid such remuneration as is prescribed.

Sub-clause (2) provides for allowances paid to members to be prescribed.

Sub-clause (3) provides that this Clause has effect subject to the Remuneration Tribunals Act 1973.

Clause 36 : Outside employment

Sub-clause (1) requires a full-time Chairperson to obtain the Minister's approval before engaging in outside employment.

Sub-clause (2) precludes a part-time member of the Authority from engaging in paid employment which, in the Minister's opinion, conflicts with the proper performance of the member's duties.

Clause 37 : Leave of absence

Sub-clause (1) allows the Minister to grant the Chairperson leave of absence under terms and conditions determined by the Minister.

Sub-clause (2) allows the Chairperson to grant another member leave of absence from meetings.

Clause 38 : Acting appointments

Sub-clause (1) and (2) allow the Minister to appoint members (other than the Chief Executive Officer or a member of staff) to act as Chairperson or Deputy Chairperson.

Sub-clause (3) allows the Minister to appoint a person to act as an "ordinary member" of the Authority during a vacancy.

Sub-clause (4) and (5) specify certain restrictions on acting appointments, including a maximum period of 12 months.

Sub-clause (6) denies certain grounds being used to invalidate things done by persons holding acting appointments under this Clause.

Clause 39 : Meetings

Sub-clause (1) provides for an Authority to hold such meetings as are necessary for the performance of its functions.

Sub-clauses (2) and (3) provide for the convening of Authority meetings, and specifies those entitled to convene such meetings.

Sub-clause (4) requires the Chairperson to preside at all meetings where he or she is present.

Sub-clause (5) specifies who shall preside at meetings when the Chairperson is not present.

Sub-clause (6) defines a quorum.

Sub-clause (7) and (8) specify how questions arising at Authority meetings are to be determined.

Clause 40 : Disclosure of interests

Sub-clause (1) requires a member to disclose any direct or indirect pecuniary interest in a matter being considered by the Authority.

Sub-clause (2) and (3) outline the procedure to be followed where such an interest is disclosed.

Clause 41 : Resignation

Prescribes the procedure for the resignation of a member (other than the Chief Executive Officer).

Clause 42 : Termination of appointment

Sub-clause (1) allows the Minister to terminate the appointment of a member for misbehaviour or physical or mental incapacity.

Sub-clause (2) specifies various actions by a member which constitute grounds under which the Minister may terminate the appointment.

Sub-clause (3) provides that this clause does not apply to the Chief Executive Officer.

Part V - OPERATION OF AUTHORITY

Clause 43 : Corporate Plan

Sub-clause (1), (2) and (3) require the Authority to develop a corporate plan for 3 years (including a statement of objectives), and provide for its annual review and revision.

Sub-clause (4) requires the Authority's plan to outline the strategies and policies designed to achieve its objectives.

Clause 44 : Corporate plan etc to Minister

Sub-clause (1) and (2) require the Authority to give a copy of the plan to the Minister as soon as practicable, together with a copy of a financial plan for each year of the three years covered by the corporate plan and specifies the contents of such financial plan.



Clause 45 : Financial targets and performance indicators

Defines the matters to taken into account by the Authority in preparing the financial plan.

Clause 46 : Estimates

Sub-clause (1) requires the Authority to prepare and submit estimates to the Minister in such form as he directs. It also provides for the timing of such submission.

Sub-clause (2) defines the meaning of estimates in relation to sub-clause (1).

Clause 47 : Minister may direct variation of financial plan

Sub-clause (1) empowers the Minister to direct the Authority to vary its financial plan in certain respects.

Sub-clause (2) defines matters which should be taken into consideration by the Minister when giving such a direction.

Sub-clause (3) requires a direction to be in writing and to set out its reasons.

Clause 48 : Reimbursement of costs of complying with directions

Sub-clause (1) describes the circumstances in which the Authority can be reimbursed for financial detriment as a result of complying with a direction.

Sub-clause (2) specifies that the reference to financial detriment in sub-clause (1) includes incurring greater costs or foregoing revenue.

Sub-clause (3) exempts certain Ministerial directions from the scope of this Clause.

Part VI - FINANCE

Division 1 - General

Clause 49 : Statutory transfers of land etc to Authority

Sub-clause (1) clarifies the term "interests" and "land" for the purposes of this clause.

Sub-clause (2) provides that where the Minister publishes in the Gazette a notice describing the land in which the Commonwealth has an interest and describing the interest, the following provisions have effect.

Sub-clause (3) provides for the interest to be transferred to the Authority on the date specified in the notice.

Sub-clause (4) defines the circumstances in which a transfer has effect as a grant of an estate in fee simple.

Sub-clause (5) requires the Minister to lodge a copy of the notice with the appropriate State or Territory titles office.

Sub-clause (6) provides that the officer with whom the copy of the notice is lodged to register the transfer.

Sub-clause (7) limits the period for the publication of a notice.

**Clause 50 : Transfer of certain Commonwealth assets to Authority**

Sub-clause (1) provides for the Minister to transfer to the Authority assets used in carrying out functions of the Authority.

Sub-clause (2) provides for transfer of assets to the Authority other than under this Clause.

**Clause 51 : Effects of transfers from Commonwealth to Authority**

Sub-clause (1) provides that where the Commonwealth transfers any assets to the authority, sub-sections 2 to 5 will apply.

Sub-clause (2) & (3) require the Minister and the Minister for Finance to determine the value of assets as on the day of transfer and the amount taken to be in the form of a loan.

Sub-clause (4) empowers the Minister for Finance to set down terms and conditions for servicing and repaying that loan.

Sub-clause (5) defines responsibilities for rights and outstanding obligations attendant to the assets transferred, the Minister and the Minister for Finance determining that part which is attached to the Authority.

Sub-clause (6) provides for the Minister and the Minister for Finance to determine the amount of provisions made for liabilities covering personnel transferring to the Authority.

Sub-clause (7) requires Ministerial determinations under this section to be in writing.

Sub-clause (8) makes it clear that values determined under this section may be redetermined, if necessary.

Clause 52 : Money paid in advance to Commonwealth

Defines which advance payments received by the Commonwealth are payable to the Authority.

Clause 53 : Rights in respect of services and facilities formerly provided by Department

Sub-clause (1) provides for the transfer of rights concerning liabilities etc. in favour of the Commonwealth in relation to functions to be transferred to the Authority.

Sub-clause (2) provides for any proceedings in court in relation to matters covered in sub-clause (1) to be continued by the Authority.

Sub-clause (3) defines "liability".

Clause 54 : Capital of Authority

Sub-clause (1) defines capital at any time.

Sub-clause (2) specifies no interest is due on Capital, but that Capital is repayable. Also empowers the Minister to determine in writing any capital repayment details.

Sub-clause (3) requires the Minister to have regard to advice from the Authority in relation to a determination under sub-clause (2).

Clause 55 : Exemption from tax

Provides for the Authority to be exempt from Commonwealth and State Taxes, except in relation to Commonwealth sales tax and customs duty.

Clause 56 : Payments of dividends to Commonwealth.

Provides for the Authority to recommend to the Minister, before 4 months after the end of a financial year, the dividend (if any) it proposes paying to the Commonwealth for that financial year. Also provides for the Minister to either accept the recommendation or direct the Authority to pay a different dividend.

Clause 57 : Borrowing from Commonwealth

Provides for the Authority to borrow money appropriated by Parliament for that purpose, on terms and conditions determined by the Minister for Finance.

Clause 58 : Borrowings otherwise than from Commonwealth

Provides for the Authority, with the Treasurer's approval, to borrow money otherwise than from the Commonwealth or raise money otherwise than by borrowing, including money in foreign currency.

Clause 59 : Guarantee of borrowings by Authority

Provides that the Treasurer may, on behalf of the Commonwealth, enter into a contract to guarantee repayment of the borrowings or payment of money raised other than by borrowing (including any interest payable) from sources other than the Commonwealth.

Clause 60 : Authority may give security

Empowers the Authority to give security over all or part of its assets in meeting its obligations arising from, borrowings, or moneys raised other than by borrowing, or arising from repayments to the Commonwealth for payments made in honouring Commonwealth guarantees.

Clause 61 : Borrowings not otherwise permitted

Provides that the Authority shall not borrow or otherwise raise money, except as permitted in this legislation.

Clause 62 : Guarantee of borrowings by subsidiary of Authority

Sub-clause (1) limits the application of this clause to borrowings by wholly-owned subsidiaries of the Authority.

Sub-clause (2) provides that the Treasurer may, if requested to do so by the subsidiary, enter into a contract to guarantee its borrowings.

Sub-clause (3) defines the conditions which must be satisfied before the Treasurer may enter into a guarantee contract for borrowings of a subsidiary, including undertakings required of the subsidiary.

Sub-clause (4) requires the Treasurer to furnish, within a specified time, each House of Parliament with details of guarantee contracts entered into by the Treasurer for borrowings by a subsidiary.

Sub-clause (5) deems specified types of financial commitments to be borrowings for the purpose of this Clause.

Sub-clause (6) provides that borrowing contracts, entered into by the Treasurer in relation to borrowings by a subsidiary, may include provision for court proceedings to be possible against the Commonwealth, within and outside of Australian courts.

Sub-clause (7) defines a wholly owned subsidiary of the Authority.

Clause 63 : Delegation by Treasurer

Provides for the Treasurer to delegate any or all of his powers under clauses 14, 58, 59 and 62 to an office of the Treasury.

Clause 64 : Application of Division 2  
of Part XI of the Audit Act

Declares the Authority to be a public authority to which Division 2 of part XI of the Audit Act 1901 applies, and specifies details which must be included in its annual report under that Act.

Clause 65 : Audit of subsidiaries

Provides for the Auditor-General to inspect and audit the accounts and records of financial transactions of the Authority's subsidiaries and authorises him to have access to other information; provides for penalties where such information sought is not furnished to the Auditor-General.

A report is to be submitted to the Minister.

Division 2 - Charges and statutory liens

Clause 66 : Charges for services and facilities.

Sub-clause (1) defines "charge" for the purpose of this section.

Sub-clause (2) empowers the Authority (subject to certain conditions) to make determinations fixing charges and related matters (and penalties - for the purpose of sub-clause 8).

Sub-clause (3) requires the Authority to provide the Minister, in advance, specified details in writing of a proposed determination.

Sub-sections (4) & (5) provide for the Minister to approve or disapprove the proposed determination within 60 days of being advised and in so doing to have regard to the duties and responsibilities of the Authority in this decision.

Sub-clause (6) limits the Authority to making a determination, only if the Minister has approved it, or if the Authority has not received a ministerial disapproval within the 60 days provided for in sub-clause (4).

Sub-clause (7) requires the Authority to make public the determination.

Sub-clause (8) provides for charges which are not paid within a prescribed period after the due date to attract a penalty, the penalty to compound over the time the debt continues to be outstanding.

Sub-clause (9) limits the penalty in sub-clause (8) to a ceiling of a prescribed percentage of the unpaid charge, levied monthly and compounded over the time the debt continues to be outstanding.

Sub-clause (10) specifies that sub-clause (9) does not require a penalty to be calculated on a monthly basis.

Sub-clause (11) specifies that charges and penalties are recoverable as debts due to the Authority.

Clause 67 : Charges not to be taxes

Specifies that a charge shall not be such as to amount to taxation.

Clause 68 : Register of statutory liens

Requires the establishment and maintenance of a Register of Statutory liens, which will be open to public inspection, as prescribed.

Clause 69 : Imposition of statutory liens

Sub-clause (1) allows for an entry to be made in the Register, having the effect of vesting in the Authority a statutory lien over an aircraft, covering debt owed to the Authority (in respect of that aircraft) which has not been paid within the payment period allowed.

Sub-clause (2) contains a definition of "appropriate officer" for the purpose of sub-clause (1).

Clause 70 : Effect of lien

Sub-clause (1) specifies that where a statutory lien has been registered on an aircraft (and is in effect), the following provisions apply, irrespective of: whether the Authority is in possession of the aircraft; the ownership of the aircraft; dealings or interests in the aircraft.

Sub-clause (2) defines the priority ranking (amongst creditors) of the statutory lien as a security interest as being second after security interests arising from debts incurred prior to the date of registration of the lien.

Clause 71 : De-registration of Australian aircraft

Provides for cancellation of the certificate of registration of the aircraft in the register of Australian aircraft if all the amounts covered by the statutory lien are not paid within 6 months, and that re-registration cannot then take place while the lien is in effect.

Clause 72 : Seizure of aircraft

Empowers authorized personnel of the Authority to seize and retain possession of an aircraft where debts covered by the statutory lien are unpaid after 9 months, and requires that reasonable steps be taken to give notice of seizure to specified persons.

Clause 73 : Sale of aircraft

Empowers the Authority to sell the aircraft, irrespective of whether it has been seized, where debts covered by the Statutory lien are unpaid after 9 months and requires reasonable notice of the sale to be given.

Clause 74 : Application of money

Sub-clause (1) specifies that any payments received or recovered relating to a statutory lien are to be credited in the same order as the debts became payable.

Sub-clause (2) requires that the proceeds of any sale under clause 73 be treated as prescribed.

Sub-clause (3) specifies the amount to be paid to the Commonwealth where an amount is payable under the Air Navigation (Charges) Act in respect of services or facilities not falling within the functions of the Authority.

Clause 75 : Cessation of lien

Sub-clause (1) defines the conditions to be satisfied before an entry in the Register may be made causing the statutory lien to cease to have effect.

Sub-clause (2) defines "appropriate officer" for the purpose of sub-clause (1).

Clause 76 : Certificates of amounts unpaid

Sub-clause (1) provides for a prescribed person to seek and obtain a certificate detailing, in respect of an aircraft, any debts owed at a point in time, and the dates they became payable.

Sub-clause (2) limits the debt covered by a statutory lien (where a certificate has been issued under sub-clause (1)) to the amount specified in the certificate.

Clause 77 : Notice relating to lien

Sub-clause (1) requires the Registrar to publish in the Gazette notice of prescribed particulars concerning entries made in the Register or the de-registration of an aircraft, and to take reasonable steps to serve copies upon prescribed persons.

Sub-clause (2) preserves the validity of actions taken in relation to Register entries and the de-registration of an aircraft where sub-clause (1) has not been complied with.



Clause 78 : Dismantling etc. aircraft under lien

Sub-clause (1) prescribes the penalty for unauthorised removal of parts or equipment from an aircraft by any person knowing that a statutory lien is in effect on that aircraft.

Sub-clause (2) exempts acts required under the regulations as indictable offences under sub-clause (1).

Clause 79 : Manner of seizure of aircraft

Provides an authorised person to seize an aircraft under Clause 72, conditional on the person producing, if requested, evidence of their authority for this action.

Clause 80 : Protection against actions

Prescribes that neither the Authority nor persons acting for the Authority are liable for any loss or damage to an aircraft occasioned in the course of duties associated with seizure and possession of an aircraft, except where the loss or damage was wilfully or negligently caused by those persons.

Clause 81 : Insurance of aircraft

Requires the Authority to insure an aircraft which is to be seized, and provides for the insurance premium to be an extra debt payable to the Authority.

Clause 82 : Review of decisions

Sub-clause (1) defines "decision" as having the same meaning as in the Administrative Appeals Tribunal Act 1975 and de-registration decisions under clause 71 and sale of aircraft decisions under Clause 73 as "reviewable decisions".

Sub-clause (2) permits, within a specified period, a person affected by a reviewable decision to request the Authority to reconsider its decision.

Sub-clause (3) requires the request for reconsideration of a decision to set out the grounds on which reconsideration is sought.

Sub-clause (4) requires the Authority to respond to the request within 28 days of receipt, affirming, revoking or varying the decision, as necessary.

Sub-clause (5) requires the Authority's response under Sub-clause (4) to be served on the requestor, in writing, giving reasons for the response.

Sub-clause (6) provides for application to be made to the Administrative Appeals Tribunal for review of responses under sub-clause (4) affirming or varying the original decision.

Clause 83 : Statements to accompany notices

Sub-clause (1) requires that where a person gives notice (i.e. under clause 77(1)) concerning the decision to de-register an aircraft, the notice shall include reference to the right-to:

- (a) request (under Clause 82(2)) reconsideration (under Clause 82(4)) of the decision, and
- (b) make application to the Administrative Appeals Tribunal where there is dissatisfaction with the outcome of a reconsidered decision (under Clause 82(4)), for a review of that reconsidered decision.

Sub-clause (2) requires that notices under Clause 82(5) (concerning reconsideration of a decision) must also include reference to the right to make application to the Administrative Appeals Tribunal for a review of the reconsidered decision.

Sub-clause (3) provides that where notices under 77(1) or 82(5) fail to comply with Sub-clauses (1) and (2) (ie advising of rights to reconsideration/review of the decision), this omission does not render the decision (under Clause 71 or Clause 82(4)) invalid.

PART VII - CHIEF EXECUTIVE OFFICER,  
STAFF AND CONSULTANTS

Clause 84 : Chief Executive Officer

Sub-clause (1) provides for the position of Chief Executive Officer and for appointment to be by the Minister.

Sub-clause (2) limits the period of appointment of the Chief Executive Officer to a maximum of 5 years.

Sub-clause (3) specifies a person appointed Chief Executive Officer is eligible for re-appointment.

Sub-clause (4) precludes the appointment or re-appointment of a person as Chief Executive Officer: who is 65; for a period beyond his or her 65th birthday.

Sub-clause (5) provides for the Minister to determine terms and conditions of employment for the Chief Executive Officer in matters not provided for in this Act.

Clause 85 : Chief Executive Officer not to engage in other work

Prevents the Chief Executive Officer from engaging in outside work, except with Ministerial approval.

Clause 86 : Remuneration and allowances of Chief Executive Officer

Sub-clause (1) provides for the remuneration of the Chief Executive Officer to be determined by the Remuneration Tribunal, or, if no determination is in operation, remuneration will be as prescribed.

Sub-clause (2) provides for the Chief Executive Officer to be paid such allowances as are prescribed.

Sub-clause (3) provides for this clause to have effect subject to the Remuneration Tribunals Act 1973.

Clause 87 : Leave of absence

Allows the Minister to grant the Chief Executive Officer leave of absence, under terms and conditions determined by the Minister.

Clause 88 : Resignation

Prescribes the procedure for the resignation of the Chief Executive Officer.

Clause 89 : Termination of appointment

Sub-clause (1) and (2) specify the grounds on which the Minister may terminate the appointment of the Chief Executive Officer.

Clause 90 : Acting Chief Executive Officer

Sub-clause (1) provides for the Minister to appoint a person to act as Chief Executive Officer during a vacancy or absence and limits the acting period to 12 months.

Sub-clause (2) provides for a person, other than an employee, who is acting as Chief Executive Officer to receive the same remuneration and allowances as are payable to the Chief Executive Officer.

Sub-clause (3) provides for an employee acting as the Chief Executive Officer to be paid at the same level as the Chief Executive Officer but in the form of payments at the substantive level of the employee plus additional amounts to make up the difference.

Sub-clause (4) denies certain grounds being used to invalidate things done by a person acting as the Chief Executive Officer.

Clause 91 : Staff of Authority

Sub-clause (1) provides for the staff of the Authority to be appointed or employed under the Public Service Act 1922.

Sub-clause (2) provides for the Chief Executive Officer to have powers of a Secretary under the Public Service Act 1922.

Sub-clause (3) provides for the exchange of staff between the Authority and another authority.

Clause 92 : Consultants

Empowers the Authority to engage consultants.

Part VIII - MISCELLANEOUS

Clause 93 : Delegation by Minister

Empowers the Minister to delegate specified powers to a person performing the duties of the office of Secretary or an SES officer or to an unattached Secretary in the Department.

Clause 94 : Delegation by Authority

Allows the Authority to delegate its powers to members or employees.

Clause 95 : Substitution of Authority for Commonwealth in contracts etc

Empowers the Minister to substitute the Authority for the Commonwealth in respect of a contract or other instrument relating to the assets of the Authority.

Clause 96 : Publication of directions

Required that directions under Clauses 12, 47 or 56 shall be published in the Gazette within 21 days.

Clause 97 : Lands Acquisition Act

Exempts the Authority from certain provisions of the Lands Acquisition Act 1955.

Clause 98 : Regulations

Sub-clause (1) empowers the Governor-General to make regulations and defines their scope.

Sub-clause (2) permits the regulations to apply to state aircraft.

Sub-clause (3) without limiting the generality of sub-clauses (1) and (2), states that those sub-sections empower regulations to be made for, or in relation to certain specified matters.

Sub-clause (4) requires the regulations to enable payment of compensation for losses, damage or expenses as a result of removal, marking or lighting of anything referred to in paragraph 3(g).

Sub-clause (5) prescribes the provisions of this section to have effect as if the Northern Territory were a State (even where there is no reference to a State or Territory).

Sub-clause (6) provides that the law of a Territory (not a Commonwealth Law) does not have effect to the extent to which it is inconsistent with regulations having effect in the Territory.

Part IX - CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Clause 99 : Consequential amendments of other Acts

Provides, in a schedule, for consequential amendments to other legislation as a result of this Act.

Part X - TRANSITIONAL PROVISIONS

Clause 100 : Actions etc. under provisions amended or repealed

Provides for acts done or decisions made under other legislation amended by this act or repealed and re-enacted to continue to have effect but does not extend to the making of regulations.

Clause 101 : Statutory liens

Sub-clause (1) provides for the Register of Statutory Liens under the Air Navigation (Charges) Act 1952 to be transferred to the custody of the Registrar.

Sub-clause (2) provides that the Register maintained under Clause 68 shall be taken to include everything in the Register in sub-clause (1).

Sub-clause (3) provides for a statutory lien, in effect immediately before commencement of this Clause, to continue in effect but be vested in the Authority.

Sub-clause (4) precludes this clause limiting the generality of Clause 100.

Clause 102 : Review of decisions

Sub-clause (1) provides for continuation of proceedings in respect of reviews of decisions taken under provisions of the Air Navigation Act 1920 or the Air Navigation (Charges) Act 1952 which are repealed and re-enacted by this Act.

Sub-clause (2) provides that this clause does not limit the generality of Clause 100 or of section 8 of the Acts Interpretation Act 1901.

Clause 103 : Delegations

Sub-clause (1) and (2) enable delegations (under specified sections of the Air Navigation Act 1920) in force immediately before the commencing day to continue to have effect on and from the commencing day.

Sub-clause (3) defines "commencing day".



