



Air Passenger Ticket Levy (Collection) Act 2001

No. 132, 2001



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**An Act to provide for a levy on certain air
passenger tickets, and for related purposes**

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Air Passenger Ticket Levy (Collection) Act 2001

No. 132, 2001

An Act to provide for a levy on certain air passenger tickets, and for related purposes

[Assented to 27 September 2001]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Air Passenger Ticket Levy (Collection) Act 2001*.

2 Commencement

This Act commences, or is taken to have commenced, on 1 October 2001.

3 Crown to be bound

This Act binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

4 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to offences against this Act.

5 Definitions

In this Act, unless the contrary intention appears:

air passenger ticket means a ticket, or electronic record, on the basis of which a person is treated as being entitled to travel as a passenger on a particular flight or flights.

Australia, when used in a geographical sense, includes the external Territories.

Australian flight means a flight that takes off from a place in Australia (whether the flight is to another place in Australia or to a place outside Australia).

Commonwealth authority means a corporation established for a public purpose by a law of the Commonwealth.

due date for accounting for an amount received on account of levy payable on the purchase of an air passenger ticket is the end of the month that follows the month in which the ticket is purchased.

entity means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a partnership;

final levy month means the month notified by the Minister as the final levy month under section 12.

inspector means a person appointed as an inspector under section 19.

levy means the levy payable under this Act.

month means any of the months of the year.

operator of a flight by an aircraft means the person who conducts, or offers to conduct, an air service by the use of the aircraft for that flight.

regular public transport operation has the same meaning as in the *Air Navigation Act 1920*.

relevant flight means an Australian flight that is operated as part of a regular public transport operation.

Secretary means the Secretary of the Department.

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Special Employee Entitlements Scheme for Ansett group employees means the scheme whose terms are determined under subsection 22(1).

Workplace Relations Minister means the Minister administering the *Workplace Relations Act 1996*.

6 What constitutes one air passenger ticket for the purposes of this Act

- (1) An air passenger ticket that covers flights provided by 2 or more operators is treated as one air passenger ticket for the purposes of this Act (and not as a separate air passenger ticket in relation to each of those operators).
- (2) The regulations may provide that, in the circumstances specified in the regulations, what would, or might, otherwise be 2 or more air passenger tickets are to be treated as one air passenger ticket for the purposes of this Act.
- (3) The regulations may provide that, in the circumstances specified in the regulations, what would otherwise be one air passenger ticket is to be treated as 2 or more air passenger tickets for the purposes of this Act.

Note: If regulations are made for the purposes of this subsection, a separate amount of levy will be payable in relation to the purchase of each of the 2 or more air passenger tickets.

7 Purpose of the levy

The purpose of the levy is to meet the cost of payments by the Commonwealth under the Special Employee Entitlements Scheme for Ansett group employees.

8 Extension of Act to the external Territories

This Act extends to all the external Territories.

Part 2—Liability for levy

9 Air passenger ticket levy

- (1) Levy is payable on an air passenger ticket that:
 - (a) is purchased on or after 1 October 2001 and before the end of the final levy month; and
 - (b) covers at least one relevant flight.
- (2) Levy is not payable on an air passenger ticket if:
 - (a) the ticket is a paper ticket that the passenger takes possession of at a place outside Australia; or
 - (b) the regulations provide that levy is not payable on the ticket.

10 Purchaser liable to pay levy

The levy payable on an air passenger ticket is payable by the person who purchases the ticket.

11 Ticketing airline responsible for collecting levy on air passenger tickets

- (1) A person who is the operator of flights (whether relevant flights or not) commits an offence if:
 - (a) the person issues an air passenger ticket; and
 - (b) levy is payable on the purchase of the ticket; and
 - (c) the person does not:
 - (i) collect; or
 - (ii) make adequate arrangements for the collection of; an amount from the purchaser on account of, and sufficient to cover, the levy payable on the ticket.

Penalty: 1 penalty unit.

- (2) If 2 or more operators of flights issue an air passenger ticket in conjunction with one another, subsection (1) applies only to the

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operator who is to provide the first relevant flight covered by the ticket.

- (3) A person who receives an amount on account of a purchaser's liability for the levy on an air passenger ticket must ensure that, before the due date for accounting for the amount, the amount is:
- (a) applied to discharge the purchaser's liability for the levy; or
 - (b) if the purchaser is entitled to a refund of the levy:
 - (i) refunded to the purchaser; or
 - (ii) offset against the purchaser's liability for levy on the purchase of another air passenger ticket.

Penalty: 1 penalty unit.

12 Final levy month

- (1) The Minister may, by notice in the *Gazette*, notify a month as the final levy month for the purposes of this Act.
- (2) A notice under this section cannot be amended or revoked.

12A Special arrangements for payment of levy

- (1) The Minister may make an arrangement with a person who is the operator of relevant flights under which the operator agrees to pay to the Commonwealth, in the manner provided in the arrangement, an amount in respect of the levy payable on air passenger tickets issued by the operator.
- (2) In deciding whether to make an arrangement with an operator under subsection (1), the Minister must have regard to:
 - (a) the desirability of mitigating, or limiting, any distortions that the operator's ticketing arrangements would otherwise cause in the incidence of the levy on air passenger tickets issued by the operator (compared with the levy on air passenger tickets issued by other operators of relevant flights); and
 - (b) any other relevant matter.
- (3) A person who purchases an air passenger ticket to which the arrangement with the operator under subsection (1) applies is

Section 12A

taken, for all the purposes of this Act, to have paid any levy payable on the ticket when the ticket is purchased.

- (4) An amount payable by the operator to the Commonwealth under the arrangement under subsection (1) may be recovered by the Commonwealth by action against the operator in a court of competent jurisdiction.

Part 3—Collection of levy

13 Returns

- (1) A person who is the operator of flights, and issues air passenger tickets for relevant flights, must lodge a return in relation to air passenger tickets for relevant flights issued by the operator in a particular month.
- (2) The return must:
 - (a) be lodged with the Secretary; and
 - (b) be lodged before the end of the month that follows the month in which the tickets are purchased; and
 - (c) be in a form approved by the Secretary; and
 - (d) contain the information required by the form.

14 When levy payable

The levy on an air passenger ticket is due for payment when the ticket is purchased.

15 Recovery of levy

- (1) Levy that has become due for payment may be recovered by the Commonwealth as a debt due to the Commonwealth.
- (2) In proceedings for recovery of the levy, a statement or averment in the complaint, claim or declaration of the plaintiff is prima facie evidence of the matter stated or averred.

16 Refunds

- (1) An amount of the levy overpaid on an air passenger ticket must be refunded to the purchaser of the ticket.
- (2) The levy paid on an air passenger ticket must be refunded to the purchaser if the ticket is cancelled without being used for a relevant flight.

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- (3) The levy paid on an air passenger ticket must be refunded to the purchaser if:
- (a) the ticket covers at least one relevant flight; and
 - (b) the date for the last relevant flight covered by the ticket passes; and
 - (c) the ticket has not been used for any of the relevant flights.

Part 4—Miscellaneous

17 Authorised officers' powers to seek information

- (1) An authorised officer may give a person a written notice requiring the person:
 - (a) to give the authorised officer specified information on matters relevant to:
 - (i) the receipt of amounts on account of purchasers' liability for the levy; or
 - (ii) the application of the amounts received to discharge purchasers' liability for the levy; or
 - (ia) the operation of an arrangement under section 12A; or
 - (iii) otherwise in relation to the collection of the levy; within a reasonable time specified in the notice; and
 - (b) to verify the information by statutory declaration.
- (2) The Secretary may authorise an officer in writing for the purposes of this section.
- (3) In this section:

authorised officer means:

 - (a) the Secretary; or
 - (b) an officer authorised by the Secretary for the purposes of this section.

officer means an APS employee in the Department or an officer, member or employee of a Commonwealth authority.

18 Access to premises etc.

- (1) The functions of an inspector under this section are to search for, inspect, take extracts from and make copies of any levy-related documents.

- (2) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector under this section.
- (3) If an inspector has reason to believe that there are levy-related documents on particular premises, the inspector may make an application to a Magistrate for a warrant authorising the inspector to enter the premises for the purpose of exercising the functions of an inspector under this section.
- (4) If the Magistrate is satisfied by information on oath or affirmation:
- (a) that there is reasonable ground for believing that there are levy-related documents on the premises; and
 - (b) that the issue of the warrant is reasonably required for the purposes of this Act;
- the Magistrate may issue a warrant authorising the inspector to enter the premises:
- (c) with such assistance as the inspector thinks necessary, and if necessary by reasonable force; and
 - (d) during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time;
- for the purpose of exercising the functions of an inspector under this section.
- (5) If an inspector has entered any premises under subsection (2), or under a warrant, the inspector may exercise the functions of an inspector under this section.
- (6) A person must not obstruct or hinder an inspector who is acting:
- (a) under a warrant; or
 - (b) under subsection (5) in relation to the execution of a warrant.

Penalty: 20 penalty units.

- (7) In this section:

levy-related documents means any documents relating to:

- (a) matters in respect of which the levy is, or may be, payable; and

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- (b) the collection of amounts on account of the levy and the application of those amounts to discharge purchasers' liabilities for the levy; and
- (ba) the operation of an arrangement under section 12A; and
- (c) the payment of the levy.

premises includes the following:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not);
- (c) a part of a thing referred to in paragraph (a) or (b).

warrant means a warrant granted under this section.

19 Appointment of inspectors

- (1) The Secretary may, by instrument in writing, appoint any of the following persons as an inspector for the purposes of this Act:
 - (a) a person employed by the Commonwealth;
 - (b) a person employed by a State, by the Australian Capital Territory or by the Northern Territory.
- (2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the Secretary.
- (3) The Secretary must issue an identity card to an inspector, in the form prescribed by the regulations. The identity card must contain a recent photograph of the inspector.
- (4) If a person to whom an identity card has been issued ceases to be an inspector, the person must immediately return the identity card to the Secretary.

Penalty: 1 penalty unit.

- (5) An inspector must carry the identity card at all times when exercising powers or performing functions as an inspector.

20 Offences

- (1) A person must not:
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- (a) fail to lodge a return as required by section 13; or
- (b) fail to give information that the person is required to give under this Act or the regulations.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) The offence created by subsection (1) is an offence of strict liability.
- (4) A person is not excused from giving information (including information required by a return) on the ground that the information might tend to incriminate the person. However, any information given, and any information or thing (including any document) obtained as a direct or indirect consequence of the giving of the information, is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against subsection (1).

21 Delegation

- (1) The Minister may, by instrument in writing, delegate to an SES employee, or acting SES employee, in the Department all or any of the Minister's powers or functions under this Act. In exercising powers or functions under the delegation, the delegate must comply with any directions of the Minister.
- (2) The Secretary may, by instrument in writing, delegate to an SES employee, or acting SES employee, in the Department all or any of the Secretary's powers or functions under this Act. In exercising powers or functions under the delegation, the delegate must comply with any directions of the Secretary.

Section 22

22 Special Employee Entitlements Scheme for Ansett group employees

- (1) The Workplace Relations Minister may determine, in writing, the terms of a scheme for the payment of certain entitlements to former employees of companies in the Ansett group whose employment has been terminated as a result of the insolvency of those companies.
- (2) Without limiting subsection (1), the determination may specify:
 - (a) the companies that are to be covered by the Scheme; and
 - (b) the entitlements to be covered by the Scheme; and
 - (c) the terms on which payments under the Scheme are to be made.
- (3) The Workplace Relations Minister may authorise the following payments:
 - (a) payments in connection with the Scheme, including:
 - (i) payments to an entity for the purpose of helping the entity to meet payment obligations in respect of money borrowed for the purpose of making payments in connection with the Scheme; and
 - (ii) payments by the Commonwealth under a guarantee given by a Minister on behalf of the Commonwealth in connection with a borrowing referred to in subparagraph (i);
 - (b) payments to meet costs incurred by the Commonwealth in connection with:
 - (i) the collection or administration of the levy; or
 - (ii) the establishment or operation of the Scheme.
- (4) No more than \$500 million in total may be authorised under this section.
- (5) The Consolidated Revenue Fund is appropriated for the purposes of payments under subsection (3).

23 Distribution of surplus levy

- (1) If the Minister is satisfied that more levy has been received by the Commonwealth than is needed for the purpose for which the levy was imposed, the Minister may determine that the surplus is to be distributed in accordance with a scheme prescribed by the regulations for the purposes of this section.
- (2) The Consolidated Revenue Fund is appropriated for the purposes of payments under subsection (1).

24 Ministerial reports

- (1) As soon as practicable after the end of each reporting period, the Workplace Relations Minister must prepare a report that sets out details of the following matters:
 - (a) the payments that were authorised by the Minister under section 22 during the reporting period;
 - (b) the activities during the reporting period of any entity that were activities in respect of which the entity received payments under section 22 in any reporting period;
 - (c) distributions under section 23 during the reporting period.
- (2) The Workplace Relations Minister must cause a copy of the report to be tabled in each House of the Parliament.
- (3) For the purposes of this section, each of the following is a *reporting period*:
 - (a) the period from the commencement of this Act to the end of the fifth month after the month in which this Act commences;
 - (b) each subsequent period of 12 months.

25 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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- (2) In particular, regulations may be made on the following matters:
- (a) providing for the manner of payment of the levy;
 - (b) providing for the repayment of overpayments;
 - (ba) providing for civil penalties in relation to failures to comply with subsection 11(1) or (3) or 13(1);
 - (bc) providing for the payment of refunds of levy on behalf of the Commonwealth by the issuers of air passenger tickets;
 - (c) requiring persons to keep records about air passenger tickets;
 - (d) requiring persons to provide information, to such persons as are prescribed, about air passenger tickets;
 - (e) prescribing the form of warrant for the purposes of section 18;
 - (f) prescribing penalties for offences against the regulations by way of fines of up to 10 penalty units.
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*[Minister's second reading speech made in—
House of Representatives on 20 September 2001
Senate on 26 September 2001]*

(189/01)