



Airlines Equipment Amendment Act 1981

No. 77 of 1981

An Act to amend the *Airlines Equipment Act 1958*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

[Assented to 18 June 1981]

Short title, &c.

1. (1) This Act may be cited as the *Airlines Equipment Amendment Act 1981*.

(2) The *Airlines Equipment Act 1958*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Repeal of section 4

3. Section 4 of the Principal Act is repealed.

Repeal of Parts II and III

4. Parts II and III of the Principal Act are repealed.

5. Section 11 of the Principal Act is repealed and the following section substituted:

Interpretation

“11. (1) In this Act, unless the contrary intention appears—

‘aircraft capacity’, in relation to an aircraft in respect of a period, means the number of revenue passenger kilometres capable of being performed by the aircraft in the period;

‘Air Navigation Regulations’ means the regulations for the time being in force under the *Air Navigation Act 1920*;

‘cargo’ means things other than passengers carried in aircraft;

‘cargo operator’ means a person who operates domestic air services, not being passenger air services that are regular public transport services;

‘Commission’ means the Australian National Airlines Commission or any body, whether corporate or unincorporate, in which the Australian National Airlines Commission has a controlling interest and which owns or operates aircraft;

‘commuter operator’ means a person, other than the Commission, the Company or a regional operator, who operates a domestic passenger air service that is a regular public transport service;

‘Company’ means Ansett Transport Industries Limited or any body, whether corporate or unincorporate, in which Ansett Transport Industries Limited has a controlling interest and which owns or operates aircraft;

‘competitive route’ means a route over which passenger air services are operated both by the Commission and by the Company;

‘Corporation’ means the body corporate referred to in section 5 of the *Australian National Airlines Repeal Act 1981* or any body, whether corporate or unincorporate, in which the first-mentioned body corporate has a controlling interest and which owns or operates aircraft;

‘Customs (Prohibited Imports) Regulations’ means the Customs (Prohibited Imports) Regulations as amended and in force from time to time under the *Customs Act 1901*;

‘non-competitive route’ means a route other than a competitive route;

‘passenger revenue load factor’, in relation to an aircraft in respect of a period, means the percentage that the revenue value of the work performed on the flights made by the aircraft in the period is of the revenue value of the work that could have been performed on those

100A

flights ascertained in accordance with the formula $\frac{A}{B}$, where—

B

A is the number of revenue passenger kilometres performed by the aircraft in the period; and

B is the total revenue passenger kilometres for which the aircraft could have been used on the flights made by the aircraft in the period;

‘prescribed route’ means—

(a) a route—

- (i) between a place in a State and another place in that State;
- (ii) between a place in a Territory and another place in that Territory;
- (iii) between a regional centre and another place in Australia; or
- (iv) over which the Minister has requested the Commission and the Company to provide a passenger air service and over which neither the Commission nor the Company has, within a reasonable time after the making of that request, provided a service that, in the opinion of the Minister, is satisfactory; and

(b) a route, other than a route referred to in paragraph (a), over which a person, other than the Commission or the Company, operated a scheduled passenger air service on 1 July 1980 (whether or not any other person operated such a service over that route on that date);

‘regional centre’ means a city or town in Australia other than Adelaide, Alice Springs, Brisbane, Cairns, Canberra, Coolangatta, Darwin, Gove, Hobart, Launceston, Mackay, Melbourne, Mount Isa, Perth, Proserpine, Rockhampton, Sydney, Townsville or any other city or town in Australia that is, for the purposes of paragraph 6 (1) (e) of the agreement referred to in section 5 of the *Airlines Agreement Act 1981*, agreed by the parties to that agreement to be a trunk route centre for the purposes of that agreement;

‘regional operator’ means a person, other than the Commission or the Company, who holds an airline licence under Regulation 198 of the Air Navigation Regulations and who operates a domestic passenger air service;

‘regular public transport service’ has the same meaning as in the Air Navigation Regulations;

‘traffic’ means traffic in respect of passengers.

“(2) For the purposes of this Act, the functions of regional operators are to provide passenger air services over prescribed routes.

“(3) References in sub-paragraph (a) (iv) of the definition of ‘prescribed route’ in sub-section (1) to the Commission shall—

(a) after the commencement of section 3 of the *Australian National Airlines Repeal Act 1981*; and

(b) in relation to anything done after that commencement, be read as references to the Corporation.

“(4) References in the definitions of ‘commuter operator’, ‘competitive route’ and ‘regional operator’ in sub-section (1) and in any of the succeeding provisions of this Act to the Commission shall, after the commencement of section 3 of the *Australian National Airlines Repeal Act 1981*, be read as references to the Corporation.”.

Determination by Minister of overall aircraft capacity

6. Section 12 of the Principal Act is amended—

(a) by omitting sub-paragraph (1) (b) (i) and substituting the following sub-paragraph:

“(i) carrying one-half of so much of the total traffic estimated by the Minister in respect of the competitive routes as will not, in the opinion of the Minister, be carried by regional operators or commuter operators; and”;

(b) by inserting in paragraph (2) (c) “passenger” before “revenue load factor” (wherever occurring);

(c) by omitting from paragraph (2) (g) “on non-competitive routes”; and

(d) by omitting from sub-section (3) “twenty-eight days” and substituting “90 days”.

Conditional obligations of Commission and Company

7. Section 13 of the Principal Act is amended—

(a) by omitting “that are, in accordance with section ten of this Act, to become applicable to the Company and the Commission upon the giving of a guarantee on behalf of the Commonwealth under section eight of this Act” and substituting “to which the Commission and the Company are, in accordance with the agreement referred to in section 5 of the *Airlines Agreement Act 1981* or, if that agreement does not have force and effect, the agreements referred to in section 3 of the *Airlines Agreements Act 1952*, to be subject”;

(b) by omitting from paragraph (a) “revenue traffic tonne-kilometres” and substituting “revenue passenger kilometres”; and

(c) by omitting from sub-paragraph (b) (i) “, and to fulfil any arrangements for the use by an operator other than the Commission or the Company of any aircraft operated by the Commission or the Company, as the case may be”.

Consultation between airlines and Secretary

8. Section 14 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:
“(1) The Secretary to the Department of Transport may, from time to time, convene conferences to be attended by—

(a) representatives of the Department of Transport, the Commission and the Company; and

- (b) other persons invited by the Secretary to the Department of Transport,
for the purpose of considering matters relevant to the making of estimates and determinations by the Minister under section 12.”; and
- (b) by omitting from sub-section (2) “this Part” and substituting “section 12”.

9. The Principal Act is amended by adding at the end thereof the following sections:

Undertakings by regional operators

“16. (1) The Secretary to the Department of Transport shall not give permission under the Customs (Prohibited Imports) Regulations for the importation by—

- (a) a regional operator; or
- (b) a person acting on behalf of a regional operator,

of any turbo jet aircraft, being aircraft having a capacity exceeding 30 passengers or a maximum payload exceeding 3,500 kilograms, or of airframes or engines for aircraft of that kind, unless the regional operator gives to the Secretary an undertaking, in the form approved by the Minister, to operate the domestic passenger air services of the regional operator in accordance with the obligations from time to time applicable in relation to the regional operator under section 19.

“(2) Nothing in sub-section (1) shall be taken as limiting the discretion of the Secretary to the Department of Transport to refuse to give permission under the Customs (Prohibited Imports) Regulations to any person to import aircraft, airframes or aircraft engines.

Undertakings by cargo operators

“17. (1) The Secretary to the Department of Transport shall not give permission under the Customs (Prohibited Imports) Regulations for the importation by—

- (a) a cargo operator; or
- (b) a person acting on behalf of a cargo operator,

of any turbo jet aircraft, being aircraft having a maximum payload exceeding 3,500 kilograms and which are to be used for the carriage of cargo, unless the cargo operator gives to the Secretary an undertaking, in the form approved by the Minister, to comply with the obligations applicable in relation to the cargo operator under section 21.

“(2) Nothing in sub-section (1) shall be taken as limiting the discretion of the Secretary to the Department of Transport to refuse to give permission under the Customs (Prohibited Imports) Regulations to any person to import aircraft.

Determinations by Minister in relation to regional operators

- “18. (1) Subject to sub-section (7), this section applies to a regional operator—
- (a) who has given an undertaking in accordance with sub-section 16 (1); or

- (b) who has given an undertaking, in connection with the acquisition of an aircraft, to comply with the obligations applicable in relation to a regional operator to which this section applies.

“(2) The Minister shall, in accordance with sub-sections (4) and (5), in relation to a specified future period in relation to each regional operator to which this section applies—

- (a) estimate the total traffic that will be carried by that regional operator in operating passenger air services on prescribed routes; and
- (b) determine the maximum aircraft capacity of the aircraft required by that regional operator for the purposes of operating passenger air services on prescribed routes.

“(3) A reference in sub-section (2) to prescribed routes, in relation to a regional operator to which this section applies, shall be read as including a reference to any trunk routes over which that regional operator is permitted to operate scheduled passenger services in accordance with paragraph 6 (1) (d) of the agreement referred to in section 5 of the *Airlines Agreement Act 1981*.

“(4) In making an estimate and a determination under sub-section (2) in relation to a regional operator, the Minister shall have regard to—

- (a) the functions of regional operators;
- (b) the traffic carried by the regional operator before the making of the estimate and determination;
- (c) the rates of traffic increase in the regional operator’s services;
- (d) the types, speeds and reasonable extent of utilization of the aircraft proposed to be used by the regional operator;
- (e) the passenger revenue load factor that would be the optimum passenger revenue load factor for the operation of aircraft on each prescribed route on which the regional operator will carry traffic during the period concerned, due consideration being given to the interests of the public and the maintenance of a proper relation between revenue and costs;
- (f) the necessity for the overhaul and maintenance of aircraft;
- (g) the necessity for having aircraft available to meet emergency situations;
- (h) the operation of paragraph 6 (1) (c) of the agreement referred to in section 5 of the *Airlines Agreement Act 1981*;
- (j) aircrew training requirements; and
- (k) any other factors affecting the stability of the domestic air transport industry.

“(5) The Minister may make an estimate and determination under sub-section (2) in relation to a regional operator to which this section applies at any time, but shall make such an estimate and determination in relation to a regional operator to which this section applies before the expiration of 60 days after—

- (a) the importation by or on behalf of that regional operator of any aircraft, airframes or engines in relation to the importation of which an undertaking has been given by that regional operator under sub-section 16 (1); or

- (b) the acquisition by that regional operator of an aircraft in connection with the acquisition of which an undertaking has been given by that regional operator to comply with the obligations applicable in relation to a regional operator to which this section applies.

“(6) Where the Minister makes an estimate and determination under sub-section (2) in relation to a regional operator to which this section applies, the Minister shall make another estimate and determination under that sub-section in relation to that regional operator within each succeeding period of 12 months after the making of that first-mentioned estimate and determination.

“(7) Where the Minister makes an estimate and a determination under sub-section (2) in relation to a regional operator, the Minister shall, not less than 90 days before the commencement of the period in relation to which that estimate and determination were made, give notice of the terms of the estimate and determination to the regional operator.

“(8) This section does not apply to a regional operator during any period during which neither that regional operator nor any body (whether corporate or unincorporate) in which that regional operator has a controlling interest owns, leases or has the use of turbo jet aircraft having a capacity exceeding 30 passengers or a maximum payload exceeding 3,500 kilograms.

Obligations applicable to regional operators

“19. (1) The obligations that are, from time to time, applicable in relation to each regional operator to which section 18 applies are the following:

- (a) where the Minister has, under sub-section 18 (7), given notice to that regional operator of the terms of an estimate and determination in relation to a period—
 - (i) an obligation not to provide, during that period, passenger air services capable of performing a number of revenue passenger kilometres in excess of the aircraft capacity specified in that determination; and
 - (ii) an obligation to provide, during that period, passenger air services on prescribed routes capable of performing a number of revenue passenger kilometres that is as near as is practicable to the aircraft capacity specified in that determination;
- (b) where, at any time during a period in relation to which the Minister has made a determination under sub-section 18 (2) in relation to that regional operator, the Minister—
 - (i) notifies the regional operator that he is satisfied that the aircraft owned, operated, or otherwise available for use, by the regional operator exceed the aircraft required to provide, in that period, the aircraft capacity determined in relation to the regional operator; and
 - (ii) directs the regional operator to dispose, within the time specified by the Minister, of aircraft to the extent that the Minister considers necessary to eliminate the excess,

- an obligation to comply with the direction within the time specified by the Minister in a manner that does not involve a contravention by that regional operator of the obligation set out in paragraph (d);
- (c) an obligation not to purchase, lease or otherwise obtain the use of any aircraft unless the Minister has certified in writing that, in his opinion, the obtaining of the aircraft will not result in the regional operator having the use of any aircraft in excess of the aircraft required to provide the aircraft capacity determined from time to time under sub-section 18 (2) in relation to that regional operator, and that, in his opinion, the obtaining of an aircraft of the type proposed to be obtained will not, having regard to the types of aircraft operated by the regional operator or in respect of which a certificate under this paragraph has been or is proposed to be issued, be detrimental to the stability of the domestic air transport industry;
 - (d) an obligation not to dispose of an imported aircraft to a person other than—
 - (i) the Commission, the Company or Qantas Airways Limited;
 - (ii) a person who gives to the Minister, before the acquisition of the aircraft by that person, an undertaking in the form approved by the Minister not to use the aircraft in Australia;
 - (iii) a regional operator who gives to the Minister, before the acquisition of the aircraft by that regional operator, an undertaking in the form approved by the Minister to comply with the obligations applicable in relation to a regional operator to which section 18 applies; or
 - (iv) a cargo operator who gives to the Minister, before the acquisition of the aircraft by that cargo operator, an undertaking in the form approved by the Minister to comply with the obligations applicable in relation to a cargo operator to which section 21 applies; and
 - (e) an obligation to furnish to the Minister, within such times as the Minister specifies, such information in respect of traffic as the Minister requires.

“(2) In this section, ‘imported aircraft’ means an aircraft in relation to the importation of which a person has given an undertaking in accordance with section 16 or 17.

“(3) A reference in sub-section (1) to prescribed routes, in relation to a regional operator, shall be read as including a reference to any trunk routes over which that regional operator is permitted to operate scheduled passenger services in accordance with paragraph 6 (1) (d) of the agreement referred to in section 5 of the *Airlines Agreement Act 1981*.

Consultation between regional operators and Secretary

“20. (1) The Secretary to the Department of Transport may, from time to time, convene conferences to be attended by—

- (a) representatives of the Department of Transport and a regional operator; and

(b) other persons invited by the Secretary to the Department of Transport, for the purpose of considering matters relevant to the making of estimates and determinations by the Minister under section 18 in respect of that regional operator.

“(2) The Secretary to the Department of Transport shall report to the Minister any conclusions arrived at or views expressed at a conference held in pursuance of sub-section (1), and the Minister shall, before making an estimate or determination under section 18 in relation to a regional operator, give full consideration to those conclusions or views.

Obligations applicable to cargo operators

“21. (1) This section applies to a cargo operator—

- (a) who has given an undertaking in accordance with section 17; or
- (b) who has given an undertaking, in connection with the acquisition of an aircraft, to comply with the obligations applicable in relation to a cargo operator to which this section applies;

“(2) The obligations applicable in relation to a cargo operator to which this section applies are the following:

- (a) an obligation not to use, or permit the use of, an imported aircraft owned or available for use by that cargo operator for the transport of passengers;
- (b) where the Minister directs the cargo operator to dispose, within the time specified by the Minister, of an imported aircraft—an obligation to dispose of that aircraft within the time specified by the Minister in a manner that does not involve a contravention by that cargo operator of the obligation set out in paragraph (c); and
- (c) an obligation not to dispose of an imported aircraft to a person other than—
 - (i) the Commission, the Company or Qantas Airways Limited;
 - (ii) a person who gives to the Minister, before the acquisition of the aircraft by that person, an undertaking in the form approved by the Minister not to use the aircraft in Australia;
 - (iii) a regional operator who gives to the Minister, before the acquisition of the aircraft by that regional operator, an undertaking in the form approved by the Minister to comply with the obligations applicable in relation to a regional operator to which section 18 applies; or
 - (iv) a cargo operator who gives to the Minister, before the acquisition of the aircraft by that cargo operator, an undertaking in the form approved by the Minister to comply with the obligations applicable in relation to a cargo operator to which this section applies.

“(3) In this section, ‘imported aircraft’ means an aircraft in relation to the importation of which a person has given an undertaking in accordance with section 16 or 17.”.

Airlines Equipment Amendment No. 77, 1981

Formal amendments

10. The Principal Act is amended as set out in the Schedule.

SCHEDULE			Section 10
Provision amended	Omit—	Substitute—	
Sub-section 12 (3)	“sub-section (1) of this section”	“sub-section (1)”	
Paragraph 13 (a)	“the last preceding section” (first occurring) “sub-section (3) of the last preceding section”	“section 12” “sub-section 12 (3)”	
Paragraph 13 (b)	“the last preceding section”	“section 12”	
Paragraph 13 (c)	“the last preceding section”	“section 12”	
Sub-section 14 (2)	“The Director-General”	“The Secretary to the Department of Transport”	

NOTE

1. No. 70, 1958, as amended. For previous amendments, see No. 216, 1973 (as amended by No. 20, 1974) and No. 5, 1974.