



Australian National Airlines Repeal Act 1981

No. 78 of 1981

An Act to repeal the *Australian National Airlines Act 1945* and for related purposes

[Assented to 18 June 1981]

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

Short title

1. This Act may be cited as the *Australian National Airlines Repeal Act 1981*.

Commencement

2. (1) Sections 1, 2, 4, 5 and 13 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation, being a day on which all of the issued share capital of the Company is beneficially owned by the Commonwealth.

Repeal

3. The Acts specified in the Schedule are repealed.

Interpretation and application

- 4. (1)** In this Act, unless the contrary intention appears—
- “Airlines Act” means the *Australian National Airlines Act 1945*;
 - “commencing day” means the day fixed under sub-section 2 (2);
 - “Commission” means the Australian National Airlines Commission established under the Airlines Act;
 - “Company” means the body corporate referred to in section 5;
 - “staff member” means a person who, immediately before the commencing day, was—
 - (a) the general manager of the Commission;
 - (b) an officer of the Commission appointed under sub-section 17 (1) of the Airlines Act; or
 - (c) a temporary or casual employee of the Commission appointed under section 18 of the Airlines Act.
- (2)** For the purposes of this Act—
- (a) the issue by a person of instruments acknowledging a debt in consideration of—
 - (i) the payment or deposit of moneys; or
 - (ii) the provision of credit,shall, to the extent of the amount of those moneys or of that credit, be deemed to be a borrowing by that person; and
 - (b) the obtaining of credit by a person shall, to the extent of the amount of that credit, be deemed to be a borrowing by that person.
- (3)** This Act extends to all the external Territories.

Company to be nominated by Minister

5. The Minister shall, by notice published in the *Gazette*, nominate a body corporate, being a body corporate that—

- (a) is incorporated (whether before or after the commencement of this section) under the law in force in the Australian Capital Territory relating to companies;
- (b) is a public company within the meaning of that law; and
- (c) is a company limited by shares, all of the issued share capital of which is beneficially owned by the Commonwealth,

as being the body corporate to which all the assets and liabilities of the Commission are to be transferred in accordance with this Act.

Transfer of assets, liabilities, &c.

- 6. (1)** Subject to this section, on the commencing day—
- (a) the rights, property or assets that, immediately before that day, were vested in the Commission are, by force of this section, vested in the Company; and

Australian National Airlines Repeal No. 78, 1981

(b) the Company becomes, by force of this section, liable to pay or discharge the debts, liabilities or obligations of the Commission that existed immediately before that day.

(2) The reference in paragraph (1) (b) to liabilities or obligations of the Commission does not include a reference to—

(a) any liabilities or obligations of the Commission to a staff member arising out of or related to his employment by, or service with, the Commission, not being liabilities or obligations of the kind referred to in sub-section (4) or (5); or

(b) any obligations of the Commission imposed by the Airlines Act.

(3) The reference in paragraph (1) (b) to debts of the Commission does not include a reference to any amounts that the Commission is liable to pay to the Commonwealth by virtue of a determination made by the Minister under sub-section 30A (1) of the Airlines Act.

(4) Sub-section (1) operates to make the Company liable to pay or discharge any debts, liabilities or obligations arising under or by virtue of the *Compensation (Commonwealth Government Employees) Act 1971* in relation to a person who, at any time before the commencing day, was—

(a) the general manager of the Commission;

(b) an officer of the Commission appointed under sub-section 17 (1) of the Airlines Act; or

(c) a temporary or casual employee of the Commission appointed under section 18 of the Airlines Act,

being debts, liabilities or obligations that—

(d) existed immediately before the commencing day; or

(e) arise on or after that day as a consequence of an event that occurred before that day,

and the Company shall, in relation to those debts, liabilities or obligations, be deemed to be the prescribed authority of the Commonwealth for the purposes of that Act in relation to such a person.

(5) Subject to any agreement made before the commencing day between the Commonwealth and the Company or the Commonwealth and the Commission, if—

(a) the Company is an approved authority for the purposes of the *Superannuation Act 1976* on the commencing day; and

(b) the Company ceases, at a later time, to be an approved authority for the purposes of that Act,

the Company is liable to pay to the Commonwealth any amounts that the Company would, under or by virtue of section 159 of that Act, have been liable to pay to the Commonwealth in respect of a staff member or a person who became an employee of the Company after the commencing day and before the time referred to in paragraph (b) as if the Company had continued to be an approved authority for the purposes of that Act.

(6) Subject to any agreement made before the commencing day between the Commonwealth and the Company or the Commonwealth and the Commission, the Company is liable to pay to the Commonwealth any amounts that the Commission would—

- (a) if it had continued in existence on and after the commencing day and had continued to be an approved authority for the purposes of the *Superannuation Act 1976*—have become liable to pay to the Commonwealth under or by virtue of section 159 of that Act in relation to a person other than a staff member; and
- (b) if it had continued in existence on and after the commencing day and had continued to be an approved authority for the purposes of the *Superannuation Act 1922*—have become liable to pay to the Commonwealth under or by virtue of section 145 of that Act in relation to a person other than a staff member.

(7) Sub-section (1) extends, so far as the powers of the Parliament permit, to—

- (a) property and assets situated outside Australia and rights existing under the law of a country other than Australia; and
- (b) debts, liabilities and obligations that arose under the law of a country other than Australia.

(8) The Company shall allot to the Commonwealth such number of shares in the capital of the Company as the Minister, by notice in writing given to the Company on or after the commencing day, directs, being shares having such nominal value as is specified in the notice.

(9) In giving a direction under sub-section (8), the Minister shall have regard to the value of the business vested in the Company in accordance with this Act.

(10) Shares allotted to the Commonwealth by the Company in pursuance of a direction of the Minister under sub-section (8) shall, for the purposes of the law in force in the Australian Capital Territory relating to companies, be deemed to have been allotted as fully paid up, and to have been allotted for valuable consideration, being a consideration other than cash.

Registration of changes in title to land

7. Where, by reason of the operation of sub-section 6 (1), any interest in land situated in a State or a Territory becomes vested in the Company, the Crown Solicitor may lodge with the Registrar-General, Registrar of Titles or other appropriate officer of the State or Territory a notice, signed by the Crown Solicitor or by an officer of the Attorney-General's Department authorized by the Crown Solicitor for the purpose, stating that that interest in land is vested in the Company by virtue of the operation of sub-section 6 (1), and the officer with whom the notice is so lodged may make such entries in his registers, and do such other things, as are necessary to reflect the operation of sub-section 6 (1) in relation to that interest in land.

Contracts, agreements and arrangements

8. (1) Subject to this section, any contract, agreement or arrangement (including the agreements referred to in section 3 of the *Airlines Agreements Act* 1952 and the agreement referred to in section 5 of the *Airlines Agreement Act* 1981) entered into by or on behalf of the Commission as a party and in force immediately before the commencing day continues in force notwithstanding the repeal of the Airlines Act but that contract, agreement or arrangement has effect, on and after the commencing day, as if—

- (a) the Company were substituted for the Commission as a party to the contract, agreement or arrangement; and
- (b) any reference in the contract, agreement or arrangement to the Commission were (except in relation to matters that occurred before that day) a reference to the Company.

(2) Sub-section (1) does not apply in relation to a contract of service or employment.

(3) Sub-section (1) extends, so far as the powers of the Parliament permit, to contracts, agreements and arrangements that are governed by the law of a country other than Australia.

Company to employ staff members

9. (1) On the commencing day, each staff member becomes, by force of this section, an employee of the Company.

(2) Subject to sub-sections (3) and (4), the terms and conditions of employment on the commencing day of a person who becomes an employee of the Company by virtue of sub-section (1) are the same as the terms and conditions on which the person was employed immediately before that day.

(3) If, in the case of a person who becomes an employee of the Company by virtue of sub-section (1)—

- (a) a term or condition that would, but for sub-section (2), be a term or condition of employment of the person on the commencing day under or by virtue of the operation of a law of a State or Territory; and
- (b) that term or condition is more favourable than a corresponding term or condition that, but for this sub-section, would be a term or condition of the employment of the person on that day by virtue of sub-section (2),

that more favourable term or condition is substituted, so far as it is capable of application, for the less favourable term or condition as a term or condition of employment of the person on that day.

(4) For the purposes of sub-section (2), terms and conditions of employment relating to superannuation shall be taken to be the same as other terms and conditions of employment relating to superannuation if the first-mentioned terms and conditions provide for payments of contributions on the same basis, and provide for the payment of benefits of the same kinds and of the

same amounts, and in the same circumstances or on the happening of the same events, as the other terms and conditions.

(5) Subject to the *Public Service Act* 1922, where a person who becomes an employee of the Company by virtue of sub-section (1) was, immediately before the commencing day—

- (a) a person to whom the repealed *Officers' Rights Declaration Act* 1928 applied; or
- (b) a person to whom Division 2 or 3 of Part IV of the *Public Service Act* 1922 applied,

then, during any relevant period, that person—

- (c) in the case of a person to whom paragraph (a) applies—shall be deemed to be a person to whom the repealed *Officers' Rights Declaration Act* 1928 applies or, upon the occurrence of a circumstance or event referred to in paragraph 44 (2) (f) of the *Public Service Amendment Act* 1978, a person to whom Division 2 or 3 of Part IV of the *Public Service Act* 1922 applies, as the case requires; and
- (d) in the case of a person to whom paragraph (b) applies—shall be deemed to be a person to whom Division 2 or 3 of Part IV of the *Public Service Act* 1922 applies.

(6) A reference in sub-section (5) to a relevant period, in relation to a person, shall be read as a reference to any period after the commencing day during which—

- (a) the person remains an employee of the Company or of a body corporate in which the Company has a controlling interest; and
- (b) the Commonwealth has a controlling interest in the Company.

(7) If a person who becomes an employee of the Company by virtue of sub-section (1) was, immediately before the commencing day, an eligible employee for the purposes of the *Superannuation Act* 1976 and that person ceases to be such an eligible employee by reason of the Company not being, on the commencing day, an approved authority for the purposes of that Act—

- (a) the person is not entitled to any benefit under that Act other than—
 - (i) a benefit of the kind referred to in sub-section 80 (1) of that Act; and
 - (ii) an amount of the kind referred to in paragraph 128 (2) (b) of that Act;
- (b) the person is not entitled to any benefit under the *Superannuation Act* 1922, other than an amount of the kind referred to in sub-section 119J (8); and
- (c) the amount of any benefit to which the person is entitled by virtue of paragraph (a) or (b) shall be paid by the Commissioner for Superannuation to the trustees of the superannuation scheme that is applicable in relation to that person in relation to his employment by the Company.

(8) For the purposes of the *Superannuation Act 1976*, an amount of the kind referred to in sub-paragraph 7 (a) (ii) and an amount of the kind referred to in paragraph 7 (b) shall be deemed to be a benefit for the purposes of sub-section 112 (2) of that Act.

(9) For the purposes of the application, at any time, of the terms and conditions of employment of a person who becomes an employee of the Company by virtue of sub-section (1), if the whole or a part of any relevant period of employment would not, under or by virtue of the operation of a law of a State or Territory, be required to be taken into account as being a period during which that person was employed by the Company in the application of those terms and conditions, the Company shall treat that relevant period of employment or that part of that relevant period of employment, as the case may be, as being a period during which that person was employed by the Company.

(10) A reference in sub-section (9) to a relevant period of employment, in relation to a person, shall be read as a reference to any period during which that person was employed, whether by the Commission or by another person, being a period that would, if that first-mentioned person had, immediately before the commencing day, ceased to be employed by the Commission, be taken into account in determining any amount payable to that first-mentioned person, or any benefit to which that first-mentioned person would be entitled, as a consequence of the termination of that employment.

(11) A staff member is not, by reason of his ceasing, by virtue of sub-section (1), to be—

- (a) the general manager of the Commission;
- (b) an officer of the Commission appointed under sub-section 17 (1) of the *Airlines Act*; or
- (c) a temporary or casual employee of the Commission appointed under section 18 of the *Airlines Act*,

entitled to any payments under section 16 or 17 of the *Long Service Leave (Commonwealth Employees) Act 1976*.

Proceedings

10. Where, immediately before the commencing day, proceedings to which the Commission was a party were pending in any court or tribunal, the Company is, by force of this section, substituted for the Commission as a party to the proceedings.

Exemption from taxation

11. Stamp duty or other tax under a law of the Commonwealth or of a State or Territory is not payable in respect of—

- (a) the vesting in the Company of any rights, property or assets of the Commission;
- (b) any steps that are necessary to be taken to reflect the operation of this Act in relation to any of those rights, property or assets; or

- (c) any documents or instruments executed for the purposes of giving effect to the operation of this Act.

Commission to continue in existence for certain purposes

12. (1) Notwithstanding the repeals effected by section 3—

- (a) the Commission continues in existence, for the purpose of discharging its obligations under this section, until a notice is published in the *Gazette* under sub-section (16); and
- (b) sections 4, 6, 7, 8, 10, 11, 12, 13, 14 and 15 of the Airlines Act continue to apply in relation to the operations of the Commission while it so continues in existence.

(2) The Commission shall take such steps as are able to be taken by the Commission to ensure that—

- (a) any property or assets of the Commission that are situated outside Australia and any rights of the Commission existing under the law of a country other than Australia become vested in the Company; and
- (b) where the Commission is liable to pay or discharge any debts, liabilities or obligations under the law of a country other than Australia, the Company becomes liable to pay or discharge those debts, liabilities or obligations.

(3) During the period during which the Commission continues in existence as mentioned in sub-section (1), the Commission shall—

- (a) hold so much of the property, assets and rights referred to in sub-section (2) as has not become vested in the Company on trust for the Company; and
- (b) pay or discharge such of the debts, liabilities or obligations referred to in sub-section (2) as have not become liable to be paid or discharged by the Company as they fall to be paid or discharged.

(4) The Commission shall take such steps as are able to be taken by the Commission to ensure that the Company becomes a party to any contract, agreement or arrangement entered into by or on behalf of the Commission as a party and in force immediately before the commencing day, being a contract, agreement or arrangement that is in force and is governed by the law of a country other than Australia.

(5) Where, immediately before the commencing day, the Commission was the holder of any shares in the capital of a body corporate or any units in a unit trust, the Commission shall execute such documents or instruments as may be necessary to ensure that the Company becomes the holder of those shares or of those units, as the case may be.

(6) Notwithstanding the repeals effected by section 3, section 40 of the Airlines Act continues to apply in relation to the Commission after the commencing day in respect of—

- (a) any financial year commencing after the day on which this Act receives the Royal Assent and ending on or before the commencing

day, being a financial year in respect of which the Commission had not, before the commencing day, furnished a report of its operations to the Minister under section 40 of the Airlines Act; and

- (b) if the commencing day is not 30 June in any year—the period commencing on the 1 July next preceding the commencing day and ending on the commencing day.

(7) For the purposes of paragraph (6) (b), section 40 of the Airlines Act applies in relation to the Commission after the commencing day in respect of the period referred to in that paragraph as if—

- (a) sub-section (1) of that section of that Act were omitted and the following sub-section substituted:

“(1) The Commission shall, as soon as practicable after the end of the period referred to in paragraph 12 (6) (b) of the *Australian National Airlines Repeal Act* 1981, prepare and furnish to the Minister a report of its operations during that period, together with financial statements in respect of that period in such form as the Minister for Finance approves.”; and

- (b) “the year” were omitted from paragraph 40 (2) (c) of the Airlines Act and “the period referred to in sub-section (1)” were substituted.

(8) The Minister may, after the commencing day—

- (a) by notice in writing given to the Commission, direct the Commission to pay to the Commonwealth, out of the profits of the Commission for a financial year, being profits in relation to which no determination had, before the commencing day, been made by the Minister under sub-section 30A (1) of the Airlines Act, such amount as the Minister determines; and
- (b) if the commencing day is not 30 June in any year—by notice in writing given to the Commission, direct the Commission to pay to the Commonwealth out of the profits of the Commission for the period commencing on the 1 July next preceding the commencing day and ending on the commencing day such amount as the Minister determines,

and, where the Minister makes such a determination, the Commission shall pay the amount determined by the Minister to the Commonwealth.

(9) In making a determination under sub-section (8), the Minister shall have regard to any advice that the Commission has furnished to the Minister in relation to the financial affairs of the Commission in respect of a period ending before the commencing day.

(10) Where—

- (a) the Minister had, before the commencing day, made a determination under sub-section 30A (1) of the Airlines Act that the Commission should pay an amount to the Commonwealth out of the profits of the Commission for a financial year; and

- (b) the Commission had not, before the commencing day, paid that amount to the Commonwealth,

the Commission shall pay that amount to the Commonwealth.

(11) The Company shall, at the request of the Commission, make available to the Commission such staff, and provide the Commission with such moneys, as may be necessary from time to time to enable the Commission to discharge its obligations under this section.

(12) The Company shall, during the period during which the Commission continues in existence as mentioned in sub-section (1), pay to the Commissioners of the Commission in respect of the performance of their duties under this section such remuneration and allowances (if any) as the Minister, by notice in writing given to the Company from time to time, directs.

(13) For the purposes of discharging its obligations under this section, the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member of the staff of the Company made available to the Commission in accordance with sub-section (11) any of its powers, other than this power of delegation.

(14) A power so delegated, when exercised by the delegate, shall, for the purposes of this section, be deemed to have been exercised by the Commission.

(15) A delegation under sub-section (13) does not prevent the exercise of a power by the Commission.

(16) The Minister may, if he is satisfied that the Commission has discharged its obligations under this section, by notice published in the *Gazette*, declare that the Commission shall cease to exist and, upon the publication of such a notice, the Commission ceases to exist.

Guarantees

13. (1) This section applies to—

- (a) an agreement entered into by the Company for the borrowing of moneys, whether in Australian currency or in a currency other than Australian currency, being an agreement that, in the opinion of the Minister, is entered into in substitution for an agreement for the borrowing of moneys that was, before the commencing day, entered into by the Commission; and
- (b) an agreement for the borrowing of moneys to which the Company becomes, by virtue of section 8, the party liable to repay the moneys.

(2) Subject to this section, the Treasurer may, on behalf of the Commonwealth, at the request of the Company, give a guarantee in respect of the liability of the Company arising out of an agreement to which this section applies to repay so much of the moneys borrowed and to pay so much of the interest (including any interest on that interest) on those moneys as the Treasurer determines.

(3) For the purpose of the protection of the financial interests of the Commonwealth, the Treasurer shall not give a guarantee under sub-section (2) in respect of a borrowing unless—

- (a) the Treasurer is satisfied that the terms and conditions of the borrowing are reasonable;
- (b) where the borrowing consists of, or includes, the issue of instruments—the issue of those instruments, and the form of those instruments, have been approved by the Treasurer;
- (c) in the case of an agreement for the borrowing of moneys of the kind referred to in paragraph (1) (a)—
 - (i) appropriate security to the satisfaction of the Treasurer is, or is to be, given to the Commonwealth over the goods to which the borrowing relates; and
 - (ii) the agreement provides that the goods over which security is, or is to be, taken in accordance with sub-paragraph (i)—
 - (A) will be insured, and kept insured to their full insurable value, against all risks against which it is customary to insure;
 - (B) will not be sold or made the subject of a mortgage or charge having priority over the security given to the Commonwealth in respect of the guarantee; and
 - (C) will not be taken out of Australia for a destination that is not in Australia or a Territory except after the giving of such security as the Treasurer requires;
- (d) undertakings to the satisfaction of the Treasurer are given by the Company that, so long as the whole or any part of the amounts borrowed, or of any interest on those amounts, remains unpaid—
 - (i) officers of the Australian Public Service will have full access at all reasonable times to the financial accounts of the Company when authorized in writing by the Minister for that purpose; and
 - (ii) the Company will do everything within its power to ensure that the officers so authorized have similar access to the financial accounts of any body, whether corporate or unincorporate, in which the Company has, at any time, whether directly or indirectly, a controlling interest;
- (e) undertakings to the satisfaction of the Treasurer are given by the Company that any legal costs incurred by the Commonwealth in connection with the giving of the guarantee will be met by the Company; and
- (f) such other conditions as the Treasurer thinks necessary are fulfilled.

(4) Where the Treasurer gives a guarantee under sub-section (2) in respect of liability arising out of a borrowing, he shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after the guarantee is given, a notice specifying the amount and term of the borrowing

and such other information relating to the borrowing or the guarantee as the Treasurer considers appropriate.

(5) The power of the Treasurer to give a guarantee under this section includes—

- (a) a power to agree, on behalf of the Commonwealth, that proceedings under the guarantee may be taken in a court of a country other than Australia; and
- (b) a power to waive, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in a court of a country other than Australia in relation to any proceedings that may be taken under the guarantee in such a court.

(6) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Department of the Treasury any of his powers or functions under this section, other than this power of delegation.

(7) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this section, be deemed to have been exercised or performed by the Treasurer.

(8) A delegate is, in the exercise or performance of a power or function so delegated, subject to the directions of the Treasurer.

(9) A delegation under sub-section (6) does not prevent the exercise of a power or the performance of a function by the Treasurer.

Application of Income Tax Assessment Act 1936

14. (1) In this section, “Assessment Act” means the *Income Tax Assessment Act 1936*.

(2) The provisions of the Assessment Act apply in relation to the Company in relation to any property that becomes vested in the Company under this Act as if the repeals made by section 3 had not been effected and as if the Company were the Commission.

(3) The provisions of the Assessment Act apply in relation to the Company in relation to any loss that the Commission was deemed to have incurred by virtue of section 80 of that Act as if—

- (a) the repeals effected by section 3 had not been effected;
- (b) the Company were the Commission; and
- (c) the Commission had, at all times before the commencing day, a share capital the whole of which was, at all times before the commencing day, beneficially owned by the Commonwealth.

(4) For the purposes of the application of the Assessment Act in relation to the Company or in relation to any body corporate or unit trust in which the Company becomes, under this Act, the beneficial owner of shares or units, as the case may be, any shares in the capital of a body corporate or any units in a unit trust that were beneficially owned by the Commission immediately before the commencing day shall be deemed to have been beneficially owned by the

Company for the same period as those shares or units had been beneficially owned by the Commission.

(5) Sections 63, 63A, 63B and 63C of the Assessment Act apply in relation to the Company in relation to any debts written off as bad debts by the Commission before the commencing day and any debts written off as bad debts by the Company on or after the commencing day as if—

- (a) the repeals effected by section 3 had not been effected;
- (b) the Company were the Commission; and
- (c) the Commission had, at all times before the commencing day, a share capital the whole of which was, at all times before the commencing day, beneficially owned by the Commonwealth.

(6) Expenditure incurred by the Commission before the commencing day in respect of which a deduction would, in accordance with the Assessment Act, be allowable to the Commission on or after the commencing day if the Commission had continued in existence on and after that day shall be allowable as a deduction to the Company in accordance with that Act in the same manner as it would have been so allowable to the Commission if the Commission had so continued in existence.

(7) Part V of the Assessment Act applies in relation to the Company in relation to any return of income of the Commission and in relation to any assessment of the income of the Commission as if the repeals effected by section 3 had not been effected and as if the Company were the Commission.

Compensation

15. (1) If the operation of this Act results in the acquisition of property from a person, being an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution, the Commonwealth is liable to pay to that person such compensation as is determined by agreement between the Commonwealth and that person or, in the absence of agreement, by action brought by that person against the Commonwealth in the Supreme Court of a State or Territory.

(2) The Supreme Courts of the States have jurisdiction, and the Supreme Courts of the Territories have jurisdiction to the extent that the Constitution permits, with respect to matters arising under this section.

SCHEDULE

Section 3

ACTS REPEALED

Australian National Airlines Act 1945
Australian National Airlines Act 1947
Australian National Airlines Act 1952
Australian National Airlines Act 1956
Australian National Airlines Act 1959
Australian National Airlines Act 1961
Australian National Airlines Act 1970
Australian National Airlines Act 1972
Australian National Airlines Act 1973
Australian National Airlines Amendment Act 1980