



# International Air Services Commission Act 1992

No. 103 of 1992

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## An Act to establish the International Air Services Commission, and for related purposes

[Assented to 30 June 1992]

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title

- 5     1. This Act may be cited as the *International Air Services Commission Act 1992*.

#### Commencement

2. This Act commences on 1 July 1992.

#### Object of Act

- 10    3. The object of this Act is to enhance international air services by fostering:
- (a) greater economic efficiency in the airline industry, and increased competition between Australian carriers; and

- (b) increased responsiveness by airlines to the needs of consumers, including an increased range of choices and benefits; and
- (c) Australian tourism and trade; and
- (d) the maintenance of Australian carriers capable of competing effectively with airlines of foreign countries. 5

**Interpretation**

4.(1) In this Act, unless the contrary intention appears:

**“Australian carrier”**, in relation to particular capacity, means a person who:

- (a) conducts, or proposes to conduct, an international airline service to and from Australia; and 10
- (b) under the bilateral arrangement to which the capacity relates, may be permitted to carry passengers or freight, or both passengers and freight, under that arrangement as an airline designated by Australia; 15

**“available capacity”** has the meaning given in subsection 5(1);

**“bilateral arrangement”** means an agreement or arrangement between Australia and another country under which the carriage by air of passengers or freight, or both passengers and freight, between the 2 countries is permitted; 20

**“capacity”** means an amount (however calculated or described) of carriage of passengers or freight, or both passengers and freight, that Australian carriers are permitted, under a bilateral arrangement between Australia and another country, to carry by air between the 2 countries;

**“Chairperson”** means the Chairperson of the Commission; 25

**“Commission”** means the International Air Services Commission established by section 6;

**“determination”** means a determination made by the Commission under section 7 or 8 concerning the allocation of capacity;

**“interim determination”** means a determination that includes a statement, under paragraph 15(2)(b), 19(1)(b) or 54(4)(a), to the effect that it is an interim determination; 30

**“member”** means a member of the Commission;

**“new capacity”** has the meaning given in subsection 5(3);

**“operational decision”**, in relation to particular capacity, means a decision (including the granting of any licence or the giving of any approval) under the *Air Navigation Act 1920*, or the regulations made under that Act, that must be made if an Australian carrier is to be permitted to operate an international airline service using that capacity; 35

**“renewal”** means renewal of a determination under section 8; 40

**“review”** means review of a determination under section 10;

**“shelf capacity”** has the meaning given in subsection 5(4);

“transfer application” means an application, by an Australian carrier to whom a determination allocates capacity, for one or both of the following:

- 5 (a) a variation of the determination in a way that allocates, or has the effect of allocating, that capacity to another Australian carrier;
- (b) a variation of the determination that varies, or has the effect of varying, one or more conditions of a kind referred to in paragraph 15(2)(d), (e) or (f).

10 (2) A reference in this Act to an allocation of capacity is a reference to a finding, included in a determination, that a specified Australian carrier should be permitted to use that capacity.

15 (3) A reference in this Act to the benefit to the public in relation to an allocation of capacity is a reference to the benefit to the public that would occur if the Australian carrier to whom the capacity is allocated were permitted to use that capacity.

20 (4) A reference in this Act to use of capacity is a reference to the operation of an international air service to provide the carriage of passengers or freight, or both passengers and freight, to which the capacity relates.

(5) For the purposes of this Act, capacity is taken to be fully used if the capacity is used, by the Australian carrier to whom a determination allocates the capacity, to operate the maximum number of flights permitted by the determination in using that capacity.

25 **Available capacity, new capacity and shelf capacity**

5.1) Subject to subsection (2), capacity is taken to be available capacity for the purposes of this Act if operational decisions are not in force in relation to that capacity.

30 (2) If the Commission makes a determination, the capacity to which it relates is taken not to be available capacity during the period beginning when the determination is made and ending when the Secretary advises the Commission under section 50 in relation to the capacity.

35 (3) For the purposes of this Act, capacity is taken to be new capacity if it is available capacity in relation to which the Commission has not previously:

- (a) made a determination concerning its allocation; or
- (b) considered making, but decided not to make, such a determination.

40 (4) For the purposes of this Act, capacity is taken to be shelf capacity if it is available capacity that is not new capacity.

**PART 2—KEY PROVISIONS**

**The International Air Services Commission**

- 6.(1)** The International Air Services Commission is established.
- (2)** The functions of the Commission are:
- (a)** to make determinations under sections 7 and 8; and 5
  - (b)** to conduct reviews of those determinations; and
  - (c)** to provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations.
- (3)** In performing its functions, the Commission must: 10
- (a)** comply with any policy statements made by the Minister under section 11; and
  - (b)** have regard to Australia's international obligations concerning the operation of international air services.
- (4)** The Commission has the power to do everything necessary or convenient to be done for or in connection with the performance of its functions. 15

Note: Part 4 is about the Commission's procedure. Part 5 is about the membership of the Commission.

**Determinations allocating capacity**

- 7.(1)** The Commission may make a determination allocating available capacity. 20
- (2)** The determination:
- (a)** must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public; and
  - (b)** if more than one application was made under this Division relating to the allocation—must make the allocation that the Commission is satisfied, having regard to the applications made, would be of the greatest benefit to the public. 25
- (3)** In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statements made by the Minister under section 11. 30

Note: Division 1 of Part 3 is about making determinations. Part 4 is about the Commission's procedure.

**Renewal of determinations**

- 8.(1)** The Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. 35
- (2)** The fresh determination:

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- (a) must make the same allocation of capacity as the original determination unless:
- (i) the Commission is satisfied that that allocation is no longer of benefit to the public; or
  - 5 (ii) the original determination is an interim determination; and
- (b) comes into force immediately after the end of the period during which the original determination was in force.

10 (3) If the fresh determination does not make the same allocation of capacity as the original determination, it must not make a different allocation of capacity unless the Commission is satisfied that that allocation would be of benefit to the public.

15 (4) In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in any policy statements made by the Minister under section 11.

Note: Division 2 of Part 3 is about renewing determinations. Part 4 is about the Commission's procedure.

**Effect of determinations on the making of operational decisions**

9.(1) The Secretary must not make an operational decision in relation to available capacity that is inconsistent with a determination relating to the allocation of that capacity.

20 (2) The Secretary must not make an operational decision in relation to capacity that comes into existence on or after 1 July 1992 unless:

- (a) a determination is in force relating to the allocation of that capacity; or
- 25 (b) the capacity relates to a non-scheduled flight within the meaning of the *Air Navigation Act 1920*.

(3) Nothing in this Act obliges the Secretary to make an operational decision implementing a determination.

Note: Section 50 imposes notification requirements on the Secretary.

**Review of determinations**

30 10.(1) The Commission may, at any time, conduct a review of a determination if it believes that there may be grounds for varying, suspending or revoking the determination.

35 (2) The Commission must conduct a review of a determination if an Australian carrier to whom the determination allocates capacity applies to the Commission under section 21 for the determination to be varied.

Note: Division 3 of Part 3 is about reviewing determinations. Part 4 is about the Commission's procedure.

**Policy statements**

11.(1) The Minister may, by instrument in writing, make policy statements about the way in which the Commission is to perform its functions.

(2) In particular, the policy statements may set out: 5

(a) the criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity; and

(b) how the Commission is to fix the periods during which determinations are to be in force; and

(c) matters relating to the Commission's consideration of whether determinations should be interim determinations; and 10

(d) matters relating to the inclusion of conditions in determinations and the variation or revocation of such conditions.

(3) Without limiting the criteria that, under paragraph (2)(a), may be set out in the policy statements, the policy statements may set out criteria that relate to the matters referred to in section 3. 15

(4) A policy statement:

(a) must not deal with the making of a particular determination or decision by the Commission; and

(b) is invalid to the extent that it purports to deal with such a matter. 20

(5) The policy statements are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**PART 3—ALLOCATION OF AVAILABLE CAPACITY**

***Division 1—Determinations allocating capacity*** 25

Note: This Division is about making determinations under section 7.

**Applications relating to new capacity**

12.(1) Before making a determination allocating new capacity, the Commission must, by notice, invite:

(a) applications for a determination allocating the capacity; and

(b) submissions about the allocation of the capacity. 30

Note: Section 52 is about publication of notices.

(2) Without limiting the matters that may be included in the notice, the notice must:

(a) set out the matters that the regulations require to be set out in the notice; and

(b) specify the period within which applications are required to be made; and 35

(c) may include guidance as to:

- (i) any matters that the Commission considers to be particularly important in making its determination in relation to that new capacity; and
- 5 (ii) the weight that the Commission is likely to give to such matters.

(3) Any person may apply to the Commission for a determination allocating the capacity.

**Applications relating to shelf capacity**

10 **13.(1)** The Commission must not make a determination allocating shelf capacity unless a person has applied to the Commission for a determination allocating the capacity.

(2) On receiving the application, the Commission must, by notice, invite:

- 15 (a) other applications for a determination allocating the capacity; and
- (b) submissions about the allocation of the capacity.

Note: Section 52 is about publication of notices.

(3) Without limiting the matters that may be included in the notice, the notice must:

- 20 (a) set out the matters that the regulations require to be set out in the notice; and
- (b) specify the period within which other applications are required to be made.

25 (4) Any other person may apply to the Commission for a determination allocating the capacity.

**Requirements of applications**

**14.(1)** An application under this Division:

- (a) must be in writing; and
- 30 (b) must be delivered at the address specified in the regulations as the Commission's address for receiving applications; and
- (c) in the case of an application under subsection 12(3) or 13(4)— must be so delivered within the period referred to in paragraph 12(2)(b) or 13(3)(b), as the case requires; and
- 35 (d) must comply with the requirements of form and content referred to in subsection (2).

(2) The regulations may impose requirements as to the form and content of such applications.

(3) The Commission may reject an application without considering it further if it does not comply with subsection (1).

**Content of determinations**

**15.(1)** A determination may include such terms and conditions as the Commission thinks fit.

- (2) Without limiting subsection (1), the determination:
- (a) must specify the period, under subsection (3), during which the determination is to be in force; and 5
  - (b) may include a statement to the effect that the determination is an interim determination; and
  - (c) must include a condition that the capacity be fully used, except so far as: 10
    - (i) the determination provides otherwise in relation to a specified period commencing when the determination comes into force; or
    - (ii) the regulations otherwise permit; and
  - (d) must include a condition that, except to the extent permitted by the condition referred to in paragraph (e), the available capacity in question is only to be used by the one or more Australian carriers to whom the capacity is allocated; and 15
  - (e) must include a condition stating the extent (if any) to which any such carrier may use that capacity by providing international air services jointly with another Australian carrier or any other person; and 20
  - (f) must include a condition stating the extent to which changes in the ownership or control of any such carrier are permitted while the determination is in force. 25
- (3) The period referred to in paragraph (2)(a) is:
- (a) if the policy statements made by the Minister under section 11 set out how the period is to be fixed—the period as so fixed; or
  - (b) in any other case:
    - (i) if the determination is an interim determination—3 years; or 30
    - (ii) if the determination is not an interim determination—5 years.

**Notification of determinations**

**16.** As soon as practicable after making the determination, the Commission must issue a notice that contains a copy of the determination and its reasons for the determination. 35

Note: Section 52 is about publication of notices.



***Division 2—Renewal of determinations***

Note: This Division is about renewing determinations under section 8.

**Consideration of renewals**

5     **17.(1)** The Commission must start its consideration of the renewal of a determination (other than an interim determination) at least 12 months before the end of the period during which the determination is in force.

**(2)** Before starting its consideration, the Commission must, by notice, invite submissions about the renewal.

Note: Section 52 is about publication of notices.

10    **(3)** Any person may make submissions to the Commission about the renewal.

**Renewal of interim determinations**

**18.(1)** The Commission must start its consideration of the renewal of an interim determination as soon as practicable after the determination is made.

15    **(2)** Sections 12 and 14 apply in relation to the renewal of an interim determination in the same way they apply in relation to the making of a determination under section 7 allocating available capacity.

20    **(3)** If no applications are made under subsection 12(3) (as it applies by virtue of subsection (2) of this section) in relation to the interim determination, the Commission must issue a notice stating that:

**(a)** no such applications were made; and

**(b)** the determination is no longer to be treated as an interim determination.

Note: Section 52 is about publication of notices.

25    **(4)** If such a notice is issued, this Act (including paragraph 15(3)(b) or 19(2)(b), as the case requires) has effect in relation to the determination as if it is no longer an interim determination.

**Content of determinations**

**19.(1)** A determination under section 8:

30    **(a)** must specify the period, under subsection (2), during which the determination is to be in force; and

**(b)** may include a statement to the effect that the determination is an interim determination; and

**(c)** subject to subsection (3), must include the same terms and conditions as the original determination to which it relates.

35    **(2)** The period referred to in paragraph (1)(a) is:

**(a)** if the policy statements made by the Minister under section 11 set out how the period is to be fixed—the period as so fixed; or

**(b)** in any other case:

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- (i) if the determination is an interim determination—3 years;  
or
- (ii) if the determination is not an interim determination—  
5 years.

(3) In including terms and conditions in the determination, the Commission may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made. 5

**Notification of renewals** 10

20. As soon as practicable after making the determination, the Commission must issue a notice that contains a copy of the determination and its reasons for the determination.

Note: Section 52 is about publication of notices.

***Division 3—Review of determinations***

Note: This Division is about reviewing determinations under section 10.

**Applications for variation of determinations** 15

21.(1) An Australian carrier to whom a determination allocates capacity may, at any time, apply to the Commission for the determination to be varied.

- (2) The application:
  - (a) must be in writing; and 20
  - (b) must specify the variation being requested; and
  - (c) must be delivered at the address specified in the regulations as the Commission's address for receiving applications; and
  - (d) must comply with the requirements of form and content referred to in subsection (3). 25

(3) The regulations may impose requirements as to the form and content of applications.

**Submissions about reviews**

22.(1) Before conducting a review under section 10, the Commission must, by notice, invite submissions about the review of the determination. 30

Note: Section 52 is about publication of notices.

(2) Any person may make submissions to the Commission about the review of the determination.

**Decisions on review for cause**

23.(1) Subject to subsection (2), the Commission must, having conducted a review under subsection 10(1) in relation to a determination, make a decision: 35

- (a) confirming the determination; or
- (b) varying the determination; or
- (c) suspending the determination; or
- (d) revoking the determination.

- 5       (2) The Commission may only make a decision varying, suspending  
or revoking the determination if it is satisfied that:
- (a) a term or condition of the determination has been breached; or
  - (b) due to a change of circumstances, it is inevitable that a breach  
of such a term or condition will occur; or
  - 10       (c) an Australian carrier that, under the determination, is to use  
capacity to which the determination relates no longer intends  
to use fully that capacity.

- 15       (3) The Commission must not make a decision varying the  
determination in a way that varies, or has the effect of varying, an  
allocation of capacity unless the Commission is satisfied that the  
allocation, as so varied, would be of benefit to the public.

#### **Decisions on applications for variation**

- 20       24.(1) Subject to subsection (2), the Commission must, having  
conducted a review to decide an application (other than a transfer  
application) for a determination to be varied, make a decision:
- (a) confirming the determination; or
  - (b) varying the determination in a way that gives effect to the  
variation requested in the application.

- 25       (2) The Commission must not make a decision varying the  
application in a way that varies, or has the effect of varying, an  
allocation of capacity unless the Commission is satisfied that the  
allocation, as so varied, would be of benefit to the public.

#### **Decisions on transfer applications**

- 30       25.(1) Subject to subsection (2), the Commission must, having  
conducted a review to decide a transfer application, make a decision  
varying the determination concerned in a way that gives effect to the  
variation requested in the transfer application.

- 35       (2) The Commission must not make a decision varying the  
determination in a way that varies, or has the effect of varying, an  
allocation of capacity if the Commission is satisfied that the allocation,  
as so varied, would not be of benefit to the public.

#### **Assessments of public benefit**

- 40       26. In assessing the benefit to the public of a variation of an  
allocation of capacity, the Commission must apply the criteria set out  
for that purpose in any policy statements made by the Minister under  
section 11.

**Notification of decisions**

27. As soon as practicable after making a decision on a review of a determination, the Commission must issue a notice that contains a copy of the decision and its reasons for the decision.

Note: Section 52 is about publication of notices.

**PART 4—THE COMMISSION'S PROCEDURE** 5

*Division 1—General*

**Commission to act informally etc.**

28. In performing its functions, the Commission:
- (a) must act with as little formality as possible; and
  - (b) must act as quickly as is appropriate given the requirements of this Part and the need properly to consider a matter before it; and 10
  - (c) may decide a matter before it without holding a hearing; and
  - (d) is not bound by the rules of evidence; and
  - (e) may inform itself on anything relevant to a matter before it in any way it thinks fit; and 15
  - (f) may receive information or submissions orally or by written statements; and
  - (g) may, in respect of a matter before it, consult such persons as it thinks fit. 20

**Absence of member from Commission**

29. If, during the period during which the Commission is considering a matter before it, a member:

- (a) ceases to be such a member; or
- (b) for any other reason is unable to take any further part in the Commission's consideration of the matter; 25

the Commission's consideration of the matter is not to be affected in any way by the member's absence or by any change in the Commission's membership as a result of that absence.

*Division 2—Hearings* 30

**Application of Division**

30. This Division applies to any hearing held by the Commission in relation to the consideration of a matter before it.

**Evidence on oath etc.**

31. The Commission may take evidence at the hearing on oath or affirmation, and any member may administer an oath or affirmation for that purpose. 35

**Representation**

32.(1) If a party to the proceedings is a body corporate, the party may be represented at the hearing by an employee or an officer of the body corporate or, if the Commission permits, by another person.

- 5 (2) A party to the proceedings (other than a party referred to in subsection (1)) may, if the Commission permits, be represented at the hearing by another person.

**Hearings to be public except in special circumstances**

10 33.(1) Subject to subsection (2), the hearing is to be conducted in public.

(2) If the Commission is satisfied that:

- (a) it is desirable because of the confidential nature of any evidence or matter; or  
(b) it is, for any other reason, in the public interest;

15 the Commission may:

- (c) decide that a hearing or part of a hearing take place in private and decide which persons may be present; or  
(d) give directions prohibiting or restricting publication or disclosure:  
20 (i) of evidence given at a hearing, whether in public or in private; or  
(ii) of any matters contained in documents received in evidence or otherwise obtained by the Commission.

25 (3) A person must not knowingly or recklessly contravene a direction under paragraph (2)(d).

Penalty: \$5,000.

**Summons to give evidence**

34. The Commission may summon a person to appear at the hearing:

- 30 (a) to give evidence to the Commission; and  
(b) to produce such documents as are referred to in the summons.

**Failure of witness to attend**

35. A person summoned to appear as a witness before the Commission must not, without reasonable excuse:

- 35 (a) fail to attend as required by the summons; or  
(b) fail to appear and report from day to day unless excused or released from further attendance by a member of the Commission.

Penalty: \$3,000.

**False information**

36. A person appearing as a witness before the Commission must not knowingly provide false or misleading information to the Commission.

Penalty: Imprisonment for 12 months. 5

**Refusal to provide information etc.**

37. A person summoned to appear as a witness before the Commission must not, without reasonable excuse, refuse or fail:

- (a) to answer a question or provide information as required by a member of the Commission; or 10
- (b) to produce a document as required by a summons served under section 34.

Penalty: \$5,000.

**Allowances to witnesses**

38. A person summoned to appear as a witness before the Commission is entitled to be paid: 15

- (a) if the witness was summoned on the application of a party to the proceedings—by that party; or
- (b) in any other case—by the Commonwealth;

such allowances for travelling and other expenses in relation to his or her attendance as are prescribed. 20

**PART 5—MEMBERSHIP OF THE COMMISSION**

**Constitution of Commission**

39. The Commission consists of the following members:

- (a) a Chairperson; 25
- (b) 2 other members.

**Appointment of members**

40.(1) The members of the Commission are to be appointed by the Governor-General.

(2) A member may be appointed on a full-time or a part-time basis. 30

(3) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines.

**Qualification of members**

41. The Governor-General must not appoint a person to the Commission unless the Governor-General is satisfied that the person is suitably qualified for appointment because of substantial experience or expertise in one or more of the following fields: 35

- (a) law;
- (b) commerce;
- (c) business;
- (d) economics;
- 5 (e) public administration.

**Term of appointment**

42.(1) A member is to be appointed for the period, not exceeding 5 years, as specified in the instrument of appointment.

(2) A member is eligible for re-appointment.

10 **Remuneration and allowances**

43.(1) The members are to be paid such remuneration as the Remuneration Tribunal determines.

(2) The members are to be paid such allowances as are prescribed.

15 (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**Leave of absence**

44.(1) Subject to section 87E of the *Public Service Act 1922*, if a member is appointed on a full-time basis, the member has such recreation leave entitlements as the Remuneration Tribunal determines.

20 (2) The Minister may grant the Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

(3) The Chairperson may grant leave of absence to any other member on such terms and conditions as the Chairperson determines.

25 **Resignation**

45. A member may resign from office by writing signed and delivered to the Governor-General.

**Termination of appointment**

30 46.(1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) The Governor-General may terminate the appointment of a member if the member:

- 35 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

- (c) fails, without reasonable excuse, to comply with his or her obligations under section 47.

**Disclosure of interests**

**47.(1)** If a member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to proceedings conducted by the Commission: 5

- (a) the member must disclose the interests to the Chairperson and to any parties to the proceedings; and
- (b) except with the consent of the Chairperson and the parties (if any), the member must not take part in the proceedings. 10

**(2)** If the Chairperson:

- (a) becomes aware that another member has, in relation to the proceedings, an interest of a kind referred to in subsection (1); and 15
- (b) considers that the member should not take part, or should not continue to take part in the proceedings;

the Chairperson must direct the member accordingly.

**Acting appointments**

**48.(1)** The Minister may appoint a person to act as Chairperson: 20

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia, or is for any other reason unable to perform the functions of the office. 25

**(2)** The Minister may appoint a person other than the Chairperson to act as a member:

- (a) during a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when that member is absent from Australia or is, for any reason, unable to perform the duties of the office. 30

**(3)** Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen; or 35
- (b) there is a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901* for acting appointments.



**PART 6—MISCELLANEOUS**

**Register of available capacity**

49.(1) The Secretary must cause a register of all available capacity to be prepared and kept up to date.

5 (2) The register must record, in respect of each item of available capacity, whether the capacity is new capacity or shelf capacity.

(3) The Secretary must take all reasonable steps to ensure that the register is available for inspection by any person without charge.

**Secretary to notify Commission of making etc. of operational decisions**

10 50. If:

(a) the Secretary makes, or decides not to make, an operational decision relating to particular available capacity; and

(b) a determination of the Commission allocating that capacity is in force;

15 the Secretary must notify the Commission in writing of the making of, or the decision not to make, the operational decision.

**Protection of members etc.**

20 51.(1) A member has, in the performance of his or her duty as a member, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner or other person appearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

25 (3) A person summoned to attend before or appearing before the Commission as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

**Publication of notices**

30 52. Notices issued under subsection 12(1) or 13(2), section 16, subsection 17(2) or 18(3), section 20, subsection 22(1) or section 27 must be published:

(a) in the way provided for in the regulations; or

(b) if the regulations do not so provide—in the way the Commission thinks appropriate.

35 **Annual report**

53.(1) The Commission must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of its operations during the financial year.

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(2) The Minister must cause a copy of each such report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received the report.

**Pre-existing capacity**

54.(1) In this section: 5

“pre-existing capacity” means capacity that came into existence before the commencement of this Act.

(2) The Minister may, by instrument in writing, declare that this Act applies to the pre-existing capacity specified in the instrument as if, immediately after the commencement of this Act, the Commission had made a determination in the terms set out in the instrument. 10

(3) Subject to subsection (5), this Act (other than section 7 and Division 1 of Part 3) has effect in relation to that capacity as if the Commission had made a determination accordingly.

(4) The terms set out in the instrument as the terms and conditions of the determination: 15

(a) subject to subsection (5), may include a statement to the effect that the determination is an interim determination; and

(b) must specify as the period during which the determination is to be in force: 20

(i) if the determination is an interim determination—the period of 3 years starting on 1 July 1992; or

(ii) if the determination is not an interim determination—the period of 5 years starting on 1 July 1992.

(5) A statement may not be included under paragraph (4)(a) in relation to capacity in relation to which operational decisions were in force on 26 February 1992. 25

(6) Instruments under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Regulations** 30

55.(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. 35

(2) In particular, the Governor-General may make regulations providing for procedures to be followed by the Commission in

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performing its functions, including time limits within which such procedures must be completed.

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[*Minister's second reading speech made in—  
Senate on 4 June 1992  
House of Representatives on 24 June 1992*]