



Air Services Act 1995

No. 81 of 1995

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Air Services Act 1995

No. 81 of 1995

**An Act to establish a body called Airservices Australia,
with functions relating to aviation, and for related purposes**

[Assented to 30 June 1995]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Air Services Act 1995*.

Commencement

2.(1) Subject to this section, this Act commences on:

- (a) a day to be fixed by Proclamation; or
- (b) the first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent;

whichever is earlier.

(2) If the *Commonwealth Authorities and Companies Act 1995* has not commenced before the day that applies under subsection (1) of this section, and does not commence on that day, then sections 13 and 14, subsection 16(6), the notes after subsections 17(3) and (4), paragraphs 32(2)(d) and (5)(b) and section 51 of this Act commence on the same day as that Act.

Interpretation

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

“AA” means the body called Airservices Australia that is established by this Act;

“aircraft” means any machine or craft that can derive support in the atmosphere from the reactions of the air and, in Division 4 of Part 5, includes an object that was designed or adapted for use as an aircraft but is incapable of being so used because:

- (a) a part has, or parts have, been removed from it; or
- (b) it is in a wrecked or damaged condition;

“appointed member” means a member of the Board who is appointed by the Minister under subsection 22(2);

“Australian-administered airspace” means:

- (a) the airspace over Australian territory; and
- (b) airspace that has been allocated to Australia by ICAO under the Chicago Convention and for which Australia has accepted responsibility; and
- (c) airspace administered by Australia at the request of another country;

“Australian aircraft” means an aircraft registered in Australia;

“Australian territory” means:

- (a) the territory of Australia and of every external Territory; and
- (b) the territorial sea of Australia and of every external Territory; and
- (c) the air space over any such territory or sea;

“authorised employee” means an employee authorised by AA in writing to act under the provision in which the expression occurs;

“authority of the Commonwealth” includes the following:

- (a) the Defence Force;
- (b) the Australian Customs Service;
- (c) the Australian Federal Police;
- (d) a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth or of a Territory;
- (e) the holder of an office established for a public purpose by or under a law of the Commonwealth or of a Territory;
- (f) a company in which the Commonwealth owns shares that carry more than half the voting power;

but does not include Qantas Airways Limited;

“Board” means the Board of AA;

“CASA” means the Civil Aviation Safety Authority established by the *Civil Aviation Act 1988*;

“Chairperson” means the Chairperson of the Board;

“Chicago Convention” means:

- (a) the Convention on International Civil Aviation done at Chicago on 7 December 1944, whose English text is set out in Schedule 1 to the *Air Navigation Act 1920*; and
- (b) the Protocols amending that Convention, being the Protocols referred to in subsection 3A(2) of that Act, whose English texts are set out in Schedules to that Act; and
- (c) the Annexes to that Convention relating to international standards and recommended practices, being Annexes adopted in accordance with that Convention;

“Commonwealth jurisdiction aircraft” means any aircraft that:

- (a) is being operated:
 - (i) in the course of trade and commerce with other countries or among the States; or
 - (ii) in the course of, or for the purposes of, the provision of services by a trading corporation (within the meaning of paragraph 51(xx) of the Constitution); or
 - (iii) by a foreign corporation (within the meaning of that paragraph of the Constitution); or
 - (iv) in a Territory, between Territories or between a Territory and a State; or
 - (v) in journeys to or from places that have been acquired by the Commonwealth for public purposes; or
- (b) is in the possession or under the control of the Commonwealth or an authority of the Commonwealth; or
- (c) is being used wholly or principally for a purpose of the Commonwealth;

“dealing”, in relation to securities, includes the following:

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or options in respect of securities;
- (c) entering into agreements or other arrangements relating to securities;

“Deputy Chairperson” means the Deputy Chairperson of the Board;

“employee” means a person employed under section 42;

“ICAO” means the International Civil Aviation Organization referred to in the Chicago Convention;

- “late payment penalty”** means a penalty payable under section 56;
- “member”** means a member of the Board (including the Chairperson, the Deputy Chairperson and the Chief Executive Officer);
- “money raising”** means raising money by borrowing or by any other means, whether in Australian currency, foreign currency or a mixture of both;
- “outstanding amount”**, in relation to an aircraft, means either of the following amounts that has become payable, but has not been paid or been remitted under section 58:
- (a) a service charge payable in respect of the aircraft;
 - (b) late payment penalty on any service charge in respect of the aircraft;
- “payable”** means due and payable;
- “provide”** includes maintain, operate and use;
- “Register”** means the Register maintained under section 64;
- “Registrar”** means the person who maintains the Register;
- “securities”** includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;
- “service charge”** means a charge under section 53 for services or facilities provided by AA;
- “share”** means share in the share capital of a corporation, and includes stock;
- “statutory lien”** means a lien vested in AA under section 59;
- “subsidiary”** has the meaning given by subsection (3).

(2) A reference in this Act to services and facilities provided by AA is a reference to services and facilities provided as described in subsection 11(3).

(3) The question whether a company is a subsidiary of AA is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Corporations Law.

Act binds the Crown

4. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Extension to external Territories

5. This Act extends to all the external Territories.

Extra-territorial application

6. This Act extends to acts, omissions, matters and things outside Australia (except where a contrary intention appears).

**PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF
AIRSERVICES AUSTRALIA (AA)**

Division 1—Establishment of AA

Establishment of AA

7.(1) A body called Airservices Australia is established by this subsection.

(2) AA:

- (a)** is a body corporate; and
- (b)** must have a seal; and
- (c)** may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially must take judicial notice of the imprint of AA's seal on a document and must presume that the document was duly sealed.

Division 2—AA's functions and powers

AA's functions

8.(1) AA has the following functions:

- (a)** providing facilities to permit safe navigation of aircraft within Australian-administered airspace;
- (b)** providing the following services, for the purpose of giving effect to the Chicago Convention or otherwise for purposes relating to the safety, regularity or efficiency of air navigation:
 - (i)** air traffic services;
 - (ii)** an aeronautical information service;
 - (iii)** rescue and fire fighting services;
 - (iv)** a search and rescue service;
 - (v)** an aeronautical radio navigation service;
 - (vi)** an aeronautical telecommunications service;
- (c)** cooperating with the Bureau of Air Safety Investigation in relation to the investigation of aircraft accidents and incidents;
- (d)** carrying out activities to protect the environment from the effects of, and the effects associated with, the operation of Commonwealth jurisdiction aircraft;
- (e)** any functions prescribed by the regulations in relation to the effects of, and effects associated with, the operation of Commonwealth jurisdiction aircraft;
- (f)** any functions conferred on AA under the *Air Navigation Act 1920*;
- (g)** any other functions prescribed by the regulations, being functions relating to any of the matters referred to in this subsection;

- (h) providing consultancy services and management services relating to any of the matters referred to in this subsection;
- (i) any functions incidental to any of the above functions.

(2) AA may provide its services and facilities both within and outside Australian territory.

(3) Subject to subsection 9(1) and section 16, the extent to which AA provides services and facilities is subject to AA's discretion.

(4) Any service or facility that AA has power to provide may be provided by AA under a contract.

Manner in which AA must perform its functions

9.(1) In exercising its powers and performing its functions, AA must regard the safety of air navigation as the most important consideration.

(2) Subject to subsection (1), AA must exercise its powers and perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from:

- (a) the effects of the operation and use of aircraft; and
- (b) the effects associated with the operation and use of aircraft.

(3) AA must perform its functions in a manner that is consistent with Australia's obligations under:

- (a) the Chicago Convention; and
- (b) any other agreement between Australia and any other country or countries relating to the safety of air navigation.

AA must consult and cooperate

10. In the performance of its functions and the exercise of its powers, AA must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations (including ICAO and bodies representing the aviation industry).

AA's general powers

11.(1) In addition to any other powers conferred on it by this Act, AA has, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), AA has the power to do any of the following:

- (a) enter into contracts;
- (b) acquire, hold and dispose of real and personal property;
- (c) form, or participate in the formation of, companies;
- (d) enter into partnerships;

- (e) let on hire its plant, machinery, equipment or goods not immediately required by it;
- (f) raise money, by borrowing or otherwise;
- (g) anything incidental to any of its powers.

(3) Where AA may provide a facility or service, it may do so:

- (a) itself; or
- (b) in cooperation with another person (including the Commonwealth);
or
- (c) by arranging for another person (including the Commonwealth) to do so on its behalf.

(4) AA may appoint one or more bodies to advise it about the performance of its functions.

Delegation of AA's powers by Chief Executive Officer

12.(1) The Chief Executive Officer may, in writing, delegate any of AA's powers under this Act to a member or to an employee.

(2) In exercising powers under the delegation, the delegate must comply with any directions of the Chief Executive Officer.

Division 3—Miscellaneous

Matters to be considered in preparation of corporate plan

13. When preparing a corporate plan under section 17 of the *Commonwealth Authorities and Companies Act 1995*, the members must consider the following matters:

- (a) the need for high standards of aviation safety;
- (b) the objectives and policies of the Commonwealth Government known to the Board;
- (c) any directions given by the Minister under section 16;
- (d) any payments made by the Commonwealth to AA to fund its search and rescue services;
- (e) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements;
- (f) the need to earn a reasonable rate of return on AA's assets (other than assets wholly or principally used in the provision of search and rescue services);
- (g) the expectation of the Commonwealth that AA will pay a reasonable dividend;
- (h) any other commercial considerations the Board thinks appropriate.

Minister may direct variation of corporate plan

14.(1) Within 60 days after receiving a corporate plan, the Minister may direct the members to vary the plan in respect of financial targets, and performance indicators, relating to the provision of services and facilities.

(2) A direction must be in writing and must set out its reasons.

(3) When giving a direction under subsection (1), the Minister must consider the following matters:

- (a) the matters referred to in section 13 (other than paragraph (b));
- (b) the objectives and policies of the Commonwealth Government;
- (c) any other commercial considerations the Minister thinks appropriate.

(4) The members must prepare a revised plan and give it to the Minister within 28 days of being given the direction.

Tabling of corporate plan

15. The Minister must cause a copy of the corporate plan to be laid before each House of Parliament:

- (a) within 15 sitting days after the Minister received the plan, if the Minister did not direct the members to vary the plan; or
- (b) within 15 sitting days after the Minister received a revised plan, if the Minister did direct the members to vary the plan.

Ministerial directions to AA

16.(1) The Minister may give written directions to AA relating to the performance of its functions or the exercise of its powers.

(2) Particulars of any directions given by the Minister in a financial year must be included in AA's annual report for that year.

(3) AA must comply with a direction given under subsection (1).

(4) If AA satisfies the Minister that AA has suffered financial detriment as a result of complying with a direction given by the Minister under subsection (1), AA is entitled to be reimbursed by the Commonwealth the amount that the Minister determines, in writing, to be the amount of that financial detriment. In this subsection, "**financial detriment**" includes:

- (a) incurring costs that are greater than would otherwise have been incurred; and
- (b) forgoing revenue that would otherwise have been received.

(5) Subsection (4) does not apply to a direction of the Minister requiring AA to perform a function mentioned in paragraph 8(1)(d) or (e).

(6) This section does not affect the operation of section 28 of the *Commonwealth Authorities and Companies Act 1995* in relation to AA.

Minister may give notices to AA about its strategic direction etc.

17.(1) The Minister may notify AA in writing of the Minister's views on the following matters:

- (a) the appropriate strategic direction for AA;
- (b) the manner in which AA should perform its functions.

(2) In performing its functions, AA must take account of notices given to it under subsection (1).

(3) In preparing each corporate plan, the members must take account of notices given to AA under subsection (1).

Note: Section 17 of the *Commonwealth Authorities and Companies Act 1995* imposes corporate planning requirements.

- (4) The members must include in the annual report for a financial year:
 - (a) a summary of notices given to AA under subsection (1) in that financial year; and
 - (b) a summary of action taken in that financial year by AA because of notices given to AA under subsection (1) in any financial year.

Note: Section 9 of the *Commonwealth Authorities and Companies Act 1995* imposes annual reporting requirements.

Supply of information to Minister's nominee

18.(1) The Minister may direct AA to give to a specified ministerial nominee any documents or information relating to AA's operations that the nominee requests.

(2) AA must comply with the direction.

(3) The members must include in the annual report for a financial year particulars of any directions given to AA by the Minister under this section in that financial year.

(4) In this section:

"ministerial nominee" means a person whose responsibilities or duties include advising the Minister about AA's performance and strategies.

Immunity of AA from State and Territory land use laws

19.(1) Subject to subsection (2), a land use law does not apply in relation to:

- (a) AA; or
- (b) the property or transactions of AA; or
- (c) any act or thing done by or on behalf of AA.

(2) Subsection (1) does not apply in relation to any property, transaction, act or thing that is wholly unconnected with the use of land by AA for the purpose of performing any of AA's functions referred to in paragraph 8(1)(a) and subparagraphs 8(1)(b)(i), (v) and (vi).

(3) Nothing in this section implies that a law (other than a land use law) applies in relation to:

- (a) AA; or
- (b) the property or transactions of AA; or
- (c) any act or thing done by or on behalf of AA.

(4) In this section:

“land use law” means a law of a State or Territory, to the extent that the law relates to:

- (a) the use or proposed use of land or premises; or
- (b) the environmental consequences of the use of land or premises;

“law” means a written law of a State or Territory, and includes:

- (a) subordinate legislation; and
- (b) a provision of a law.

PART 3—BOARD OF AA

Division 1—Establishment and functions

Establishment

20. There is to be a Board of AA.

Functions

21.(1) The functions of the Board are:

- (a) to decide the objectives, strategies and policies to be followed by AA; and
- (b) to ensure that AA performs its functions in a proper, efficient and effective manner.

(2) Anything that the Board does in AA’s name, or on AA’s behalf, is taken to have been done by AA.

Membership

22.(1) The Board consists of:

- (a) a Chairperson; and
- (b) a Deputy Chairperson; and
- (c) the Chief Executive Officer; and
- (d) 6 other members.

(2) The members other than the Chief Executive Officer are to be appointed by the Minister, and hold office on such terms and conditions (in respect of matters not provided by this Act) as are determined by the Minister in writing.

(3) The Chairperson may be appointed on a full-time basis or on a part-time basis.

(4) The other appointed members are to be appointed on a part-time basis.

(5) An employee may be appointed as a member under paragraph (1)(d).

Delegation by Board

23.(1) The Board may, by resolution, delegate all or any of its powers to a member or to an employee.

(2) The delegate is, in the exercise of a delegated power, subject to the directions of the Board.

(3) A delegation under this section:

(a) may be revoked by resolution of the Board (whether or not constituted by the persons who constituted the Board when the power was delegated); and

(b) continues in force in spite of a change in the membership of the Board.

(4) A certificate signed by the Chairperson stating any matter in relation to a delegation under this section is *prima facie* evidence of the matter.

(5) A document that appears to be a certificate under subsection (4) is taken to be such a certificate and to have been properly given, unless the contrary is established.

Division 2—Meetings etc.

Meetings

24.(1) The Board must hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson:

(a) may convene a meeting at any time; and

(b) must convene a meeting on receipt of a written request signed by at least 2 other members.

(3) The Minister may convene a meeting at any time.

(4) The Chairperson must preside at all meetings at which he or she is present.

(5) If the Chairperson is not present at a meeting:

(a) the Deputy Chairperson must preside; or

(b) if the Deputy Chairperson is not present—the members present must appoint one of their number to preside.

(6) At a meeting, a quorum consists of 5 members.

(7) Questions arising at a meeting are to be determined by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.

Procedure at meetings

25.(1) Subject to this Division, the Board may regulate proceedings at its meetings as it considers appropriate.

(2) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Board resolutions without meetings

26. If the Board so determines, a resolution is taken to have been passed at a meeting of the Board if:

- (a) without meeting, a majority of the members indicate agreement with the resolution in accordance with the method determined by the Board; and
- (b) that majority would have constituted a quorum at a meeting of the Board.

Division 3—Administrative provisions

Period of appointment of appointed members

27.(1) Subject to this Part, an appointed member holds office for the period, not longer than 5 years, specified in the instrument of appointment.

(2) An appointed member is eligible for re-appointment.

Remuneration and allowances of appointed members

28.(1) An appointed member is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, an appointed member is to be paid the remuneration that is prescribed by the regulations.

(2) An appointed member is to be paid the allowances that are prescribed by the regulations.

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

Outside employment

29.(1) A full-time Chairperson must not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

(2) A part-time member must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's duties.

Leave of absence

30.(1) Subject to section 87E of the *Public Service Act 1922*, a full-time Chairperson has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time 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 Minister may grant leave to a part-time Chairperson to be absent from a meeting or meetings of the Board.

(4) The Chairperson may grant leave to another member to be absent from a meeting or meetings of the Board.

Resignation of appointed members

31. An appointed member may resign from the Board by giving the Minister a written resignation.

Termination of appointment of appointed members

32.(1) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate the appointment of an appointed member if:

(a) the member 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) the member (other than a full-time Chairperson):

(i) engages in paid employment that the Minister thinks is in conflict with the proper performance of the member's duties; or

(ii) is absent, except on leave of absence granted under section 30, from 3 consecutive meetings of the Board; or

(c) the Minister thinks that the performance of the member has been unsatisfactory for a significant period of time; or

(d) the member fails, without reasonable excuse, to comply with section 21 of the *Commonwealth Authorities and Companies Act 1995*.

(3) The Minister may terminate the appointment of a full-time Chairperson if the Chairperson:

(a) engages in paid employment outside the duties of his or her office without the Minister's approval; or

(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

(4) If the Minister is of the opinion that the performance of the members or the performance of AA has been unsatisfactory for a significant period of time, the Minister may terminate the appointment of all appointed members or particular appointed members.

(5) If the Minister is of the opinion that:

(a) AA has failed to comply with section 18; or

(b) the members have failed to comply with:

(i) subsection 13(2), 15(1) or 17(5) of the *Commonwealth Authorities and Companies Act 1995*; or

(ii) paragraph 16(1)(a) or (b) of the *Commonwealth Authorities and Companies Act 1995*;

the Minister may terminate the appointment of all appointed members or particular appointed members.

Acting appointments

33.(1) The Minister may appoint the Deputy Chairperson or another member (other than the Chief Executive Officer or an employee) to act as the Chairperson:

(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 duties of the office.

(2) If the Chairperson is a part-time member, a person appointed under paragraph (1)(b) to act as the Chairperson must be appointed on a part-time basis.

(3) The Minister may appoint a member (other than the Chief Executive Officer or an employee) to act as the Deputy Chairperson:

(a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Deputy Chairperson is acting as the Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of the office of Deputy Chairperson.

(4) The Minister may appoint a person to act as a member referred to in paragraph 22(1)(d) (an **“ordinary member”**):

(a) during a vacancy in the office of an ordinary member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when an ordinary member is acting as the Chairperson or Deputy Chairperson, is absent from Australia or is, for any reason, unable to perform the duties of the office.

(5) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in or 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.

PART 4—CHIEF EXECUTIVE OFFICER, EMPLOYEES AND CONSULTANTS

Division 1—Chief Executive Officer

Appointment

34.(1) There is to be a Chief Executive Officer of AA, who is to be appointed by the Board in writing.

(2) A person appointed as Chief Executive Officer is eligible for re-appointment.

(3) The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Board in writing.

Duties

35.(1) The Chief Executive Officer is, under the Board, to manage AA.

(2) Anything that the Chief Executive Officer does in AA's name, or on AA's behalf, is taken to have been done by AA.

Remuneration and allowances

36. The Chief Executive Officer is to be paid such remuneration and allowances as the Board determines in writing.

Outside employment

37. The Chief Executive Officer must not engage in paid employment outside the duties of his or her office except with the Board's approval.

Leave of absence

38. The Board may grant leave of absence to the Chief Executive Officer on such terms and conditions as to remuneration or otherwise as the Board determines in writing.

Resignation

39. The Chief Executive Officer may resign by giving the Board a signed notice of resignation.

Termination of appointment

40. The Board may at any time terminate the appointment of the Chief Executive Officer.

Acting Chief Executive Officer

41.(1) The Board may appoint a person to act as Chief Executive Officer:

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

(2) A person, other than an employee, who is acting as Chief Executive Officer is to be paid such remuneration and allowances as the Board determines in writing.

(3) An employee who is acting as Chief Executive Officer must continue to be paid the remuneration and allowances payable to the employee as an employee but must also be paid such additional remuneration and allowances as the Board determines in writing.

(4) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in or 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.

Division 2—Employees and consultants

Employees

42. AA may employ persons on terms and conditions determined by the Board in writing.

Consultants

43. AA may engage such consultants as it thinks necessary.

PART 5—FINANCE

Division 1—General

AA's capital

44.(1) The initial capital of AA is the capital of the previous Authority immediately before the commencement of this Act less any amount determined under subsection (2).

(2) The Minister and the Minister for Finance may make a written determination that an amount representing the net value of assets transferred to CASA under section 9 of the *Civil Aviation Legislation Amendment Act 1995* is not to form part of the initial capital of AA.

(3) Interest is not payable to the Commonwealth on the capital of AA, but the capital of AA is repayable to the Commonwealth at such times, and in such amounts, as the Minister determines in writing. In making a determination, the Minister must have regard to any advice that the Board has given to the Minister in relation to AA's financial affairs.

(4) In this section:
“**previous Authority**” means the Civil Aviation Authority established under the *Civil Aviation Act 1988* and in existence immediately before the commencement of this section.

Revaluation of assets

45. The Board must ensure that AA's assets are revalued in accordance with prevailing commercial practice and in the manner (if any) agreed between the Minister for Finance and the Minister:

- (a) if the assets have not previously been revalued under this section—within 5 years after the commencement of this section; or
- (b) in any other case—within 5 years after the last day on which the assets were revalued under this section.

Payments of dividends by AA to the Commonwealth

46.(1) Within 4 months after the end of each financial year, the Board must recommend to the Minister in writing that AA:

- (a) pay a dividend of a specified amount to the Commonwealth, in relation to AA's operations in the financial year; or
- (b) not pay any dividend to the Commonwealth for the financial year.

(2) In making a recommendation, the Board must have regard to the following matters:

- (a) the matters specified in section 13;
- (b) AA's financial results for the financial year and previous financial years, and the dividends paid under this section for previous financial years.

(3) The Minister must respond in writing to the Board's recommendation, within 30 days, as follows:

- (a) if the Board recommended that a dividend be paid, the Minister must either:
 - (i) approve the recommendation; or
 - (ii) direct AA to pay a dividend of a different specified amount;or

(b) if the Board recommended that no dividend be paid, the Minister must either:

- (i) approve the recommendation; or
- (ii) direct AA to pay a dividend of a specified amount.

(4) The Minister must have regard to the following matters when acting under subsection (3):

- (a) the matters specified in section 13 (other than paragraph (b));
- (b) the objectives and policies of the Commonwealth Government;
- (c) AA's financial results for the financial year and previous financial years, and the dividends paid under this section for previous financial years;
- (d) any other commercial considerations the Minister thinks appropriate.

(5) If a dividend for a financial year is approved or directed under subsection (3), AA must pay it to the Commonwealth within 8 months after the end of that year.

(6) A payment under this section may be made out of either of the following kinds of profits, or out of a mixture of both:

- (a) AA's profits for the financial year to which the payment relates;
- (b) AA's profits for any earlier financial year or years.

Interim dividends

47.(1) Before 1 March in each financial year, the Board must recommend to the Minister in writing that AA:

- (a) pay an interim dividend of a specified amount to the Commonwealth for the financial year; or
- (b) not pay any interim dividend to the Commonwealth for the financial year.

(2) In making a recommendation, the Board must have regard to the following matters:

- (a) the matters specified in section 13;
- (b) AA's interim financial results and anticipated full-year financial results.

(3) The Minister must respond in writing to the Board's recommendation, within 45 days, either:

- (a) approving the recommendation; or
- (b) giving directions to the Board in relation to the payment of an interim dividend.

(4) The Minister must have regard to the following matters when acting under subsection (3):

- (a) the matters specified in section 13 (other than paragraph (b));
- (b) the objectives and policies of the Commonwealth Government;
- (c) AA's interim financial results and anticipated full-year financial results;
- (d) any other commercial considerations the Minister thinks appropriate.

(5) If an interim dividend is approved or directed under subsection (3), AA must pay the interim dividend to the Commonwealth by 15 June in the financial year.

(6) In this section:

“interim dividend”, in relation to a financial year, means an amount paid on account of the dividend that may become payable under section 46 for the financial year.

Borrowing by AA from the Commonwealth

48. The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to AA on terms and conditions determined in writing by the Minister for Finance.

AA may give security over its assets

49. AA may give security over the whole or part of its assets for:

- (a) the performance by AA of any obligation incurred by AA in connection with money raising by AA; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid by the Commonwealth under a guarantee relating to obligations incurred by AA.

Hedging through currency contracts etc.

50.(1) Subject to this section, AA may enter into and deal with approved contracts for hedging purposes in relation to the following:

- (a) money raising by AA;
- (b) investment of money by AA;
- (c) commodity purchases by AA;
- (d) a transaction in foreign currency.

(2) The Minister may give written guidelines to AA for the exercise of AA's power under subsection (1). AA must comply with the guidelines.

(3) Without limiting subsection (2), the guidelines may provide that:

- (a) AA is not to enter into or deal with contracts of a particular kind; or
- (b) AA is to enter into or deal with contracts of a particular kind only if the contract relates to specified matters.

(4) In this section:

“approved contract” means a contract of any of the following kinds:

- (a) a forward exchange rate contract;
- (b) a contract with respect to currency futures;
- (c) an interest rate contract;
- (d) a deferred delivery contract;
- (e) a contract with respect to financial futures;
- (f) a contract with respect to commodity futures;
- (g) a contract relating to:
 - (i) dealings known as currency swaps; or
 - (ii) dealings known as interest rate swaps; or
 - (iii) dealings known as commodity swaps;
- (h) a contract relating to 2 or more of the dealings referred to in paragraph (g);
- (i) options (including futures options);
- (j) a contract of a kind approved in writing by the Minister;

“hedging purposes” means:

- (a) reducing the risk of adverse variations in:
 - (i) the costs of money raising by AA; or
 - (ii) the revenue obtainable by AA from the investment of AA’s money; or
 - (iii) the costs of commodities purchased by AA; or
- (b) maintaining the value of:
 - (i) investments made by AA; or
 - (ii) property used as security for money raising, or proposed money raising, by AA.

Extra matters to be included in annual report

51. In their annual report under section 9 of the *Commonwealth Authorities and Companies Act 1995*, the members must include an assessment of the adverse effect (if any) that meeting the non-commercial commitments imposed on AA has had on AA’s profitability during the financial year.

Division 2—Taxation matters

Liability to taxes etc.

52.(1) AA is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

(2) AA is not liable to pay tax under any law of a State or Territory.

(3) Subsection (2) does not apply to a law of a State or Territory relating to payroll tax.

Division 3—Services charges for AA services and facilities

Board can set charges for services and facilities

53.(1) The Board may make a written determination that sets:

- (a) charges for services or facilities provided by AA; or
- (b) penalties for late payment of service charges.

(2) A service charge or late payment penalty may be set either by fixing the amount or by setting a method of calculation.

(3) A service charge must be reasonably related to the expenses incurred or to be incurred by AA in relation to the matters to which the charge relates and must not be such as to amount to taxation.

(4) A determination that sets a service charge must specify:

- (a) the persons who are liable to the charge; and
- (b) the due date for payment of the charge.

(5) A determination must be made public in such manner as the Board thinks appropriate.

(6) This section does not apply to services or facilities that AA provides under contract.

Minister's role in setting service charges and late payment penalties

54.(1) Before making a determination under section 53, the Board must give the Minister written notice of the proposed determination, specifying the following:

- (a) if the determination sets a new charge or penalty—the basis for setting the charge or penalty;
- (b) if the determination varies a charge or penalty set by earlier determination—the reason for the variation;
- (c) the day on and from which the determination is intended to operate.

(2) Within 30 days after receiving notice of the proposed determination, the Minister may give the Board a written notice approving or disapproving the proposed determination. In doing so, the Minister must have regard to the AA's duties and responsibilities under this Act.

(3) The Board cannot make a determination under section 53 unless:

- (a) the Minister has approved the determination; or
- (b) the period within which the Minister may give to the Board a notice under subsection (2) of this section has expired without the Minister having given such a notice.

Procedure if Prices Surveillance Act applies

55.(1) The Board's power to set service charges has effect subject to the *Prices Surveillance Act 1983*.

(2) If AA receives either of the following notices, AA must give the Minister a copy of the notice:

- (a) a notice under paragraph 19(1)(b) of the *Prices Surveillance Act 1983* about an inquiry into a supply of services that is the subject of a proposed determination of a service charge;
- (b) a notice under section 28 of that Act withdrawing such a notice.

(3) If AA receives a report under section 26 of the *Prices Surveillance Act 1983* on an inquiry held under that Act in relation to the supply of services by AA, it must give a copy of the report to the Minister.

(4) If AA has received a notice under paragraph 19(1)(b) of the *Prices Surveillance Act 1983* about an inquiry into the supply of services that is the subject of a proposed determination of a service charge, the period of 30 days referred to in subsection 54(2) does not begin until the Minister receives from AA:

- (a) a copy of a notice under paragraph (2)(b) of this section; or
- (b) a copy of the report under subsection (3) of this section in relation to the supply of services concerned.

(5) If the Minister receives from AA a copy of a report given to AA under section 26 of the *Prices Surveillance Act 1983* in relation to the supply of services to which a proposed determination relates, the Minister may, in a notice under subsection 54(2), disapprove the proposed determination and substitute a fresh determination.

(6) The Minister's determination has effect as if it had been made by the Board under section 53.

Penalty for late payment of service charge

56.(1) If a service charge is not paid by the due date for payment, the person liable for the charge is liable to pay to AA (in addition to the charge) the penalty specified in the relevant determination under section 53, calculated on the unpaid amount of the charge from the due date for payment, and compounded.

(2) The penalty specified in a determination under section 53 must not exceed a penalty equivalent to 1.5% of the unpaid amount of the charge for each month or part of a month during which it is unpaid, calculated from the due date for payment, and compounded.

(3) Subsection (2) does not require the penalty to be calculated on a monthly basis.

Recovery of service charge and late payment penalty

57. Any unpaid service charge or late payment penalty may be recovered by AA as a debt in a court of competent jurisdiction.

Remission of service charge and late payment penalty

58. The Board, or an employee authorised by the Board, may remit the whole or a part of a service charge or late payment penalty if:

- (a) a written application is made by the person who incurred the charge or penalty; and
- (b) the Board or the employee is satisfied that the remission is justified by exceptional circumstances or circumstances beyond the control of the person.

Division 4—Statutory lien for unpaid service charges etc.

Subdivision A—Imposition of statutory lien

Imposition of statutory lien

59.(1) If:

- (a) a service charge in respect of an aircraft is not paid in full by the due date for payment; and
- (b) any part of the charge, or any part of late payment penalty on the charge, remains unpaid;

an authorised employee may direct the Registrar to make an entry in the Register in the manner prescribed by the regulations.

- (2) When the entry is made, a statutory lien on the aircraft vests in AA.
- (3) The lien covers the following:
 - (a) the service charge or penalty;
 - (b) any penalty that becomes payable in respect of the service charge after the entry is made;
 - (c) any further outstanding amounts in respect of the aircraft.

Effect of statutory lien

60.(1) The following provisions of this Division have effect in relation to an aircraft while a statutory lien on the aircraft continues in effect.

- (2) The provisions apply:
 - (a) in spite of:
 - (i) any encumbrance in respect of the aircraft; and
 - (ii) any sale or disposition of, or dealing in, the aircraft or an interest in the aircraft; and
 - (b) whether or not AA has possession of the aircraft at any time.

(3) For the purposes of priorities amongst creditors and the purposes of the distribution of the proceeds of a sale made under section 67, the statutory lien has effect as a security interest in respect of the aircraft ranking in priority:

- (a) after any security interest (other than a floating charge) in respect of the aircraft created before the time of registration of the statutory lien, to the extent that the security interest covers a debt incurred before that time; and
- (b) before any security interest that is not covered by paragraph (a), or to the extent that it is not covered by paragraph (a).

(4) A statutory lien is not to be taken by implication to have any effect otherwise than as provided by this Act.

Limitations on scope of statutory lien

61.(1) A person prescribed by the regulations may make a written request to an authorised employee for the issue of a certificate under this section.

(2) Upon a request being made, the authorised employee must issue a certificate stating:

- (a) whether a statutory lien applies to the aircraft; and
- (b) whether or not, as at a specified date and time, any service charge or late payment penalty is payable and unpaid in respect of the aircraft; and
- (c) in respect of any such charge or penalty, the amount of it and the date upon which it became payable.

(3) Where a certificate has been issued, any statutory lien on the aircraft, whether imposed before or after the time to which the certificate relates, does not cover:

- (a) any service charge in respect of the aircraft that was payable and unpaid as at the time specified in the certificate but was not specified in the certificate; or
- (b) any late payment penalty relating to any such charge.

Cessation of statutory lien

62.(1) A statutory lien ceases to have effect in the following cases, and not otherwise:

- (a) when there is no longer any outstanding amount covered by the statutory lien;
- (b) when the aircraft is sold under section 67;
- (c) when an authorised employee directs in writing that the statutory lien ceases to have effect.

(2) When a lien ceases to have effect, the Registrar must make an entry in the Register as prescribed by the regulations.

Notice relating to statutory lien

63.(1) As soon as practicable after an entry is made in the Register under section 59 or 62, the Registrar must:

- (a) publish in the *Gazette* notice of that fact, containing such particulars as are prescribed by the regulations; and
- (b) take reasonable steps to serve copies of the notice on such persons as are prescribed by the regulations.

(2) A failure to comply with subsection (1) has no effect on the operation of section 59 or 62.

Register of statutory liens

64.(1) There is to be a Register of Statutory Liens.

(2) The Register must be maintained, and be open to public inspection, as prescribed by the regulations.

Subdivision B—Seizure and sale of aircraft

Seizure of aircraft

65.(1) This section applies if an outstanding amount covered by a statutory lien on an aircraft remains unpaid at the end of 9 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later.

(2) An authorised employee:

- (a) may at any time, seize the aircraft; and
- (b) may keep possession of the aircraft until all outstanding amounts covered by the statutory lien are paid.

(3) The authorised employee must take reasonable steps to give notice of the seizure to the following persons:

- (a) persons who, in the opinion of the authorised employee, have a security interest in the aircraft;
- (b) each person who is an owner, operator, lessee, hirer, charterer or pilot in command, of the aircraft;
- (c) any other persons prescribed by the regulations.

(4) A notice under subsection (3) must:

- (a) identify the aircraft that has been seized; and
- (b) state that the aircraft has been seized under this section; and
- (c) specify the reason for the seizure.

(5) An authorised employee is not entitled to seize an aircraft under this section if the employee fails to comply with a request by the owner, operator or pilot in command of the aircraft to produce proof that the employee is authorised to act under this section.

AA must insure seized aircraft

66.(1) Where an aircraft is to be seized under section 65, AA must insure the aircraft, and keep it insured, against the loss of, or any damage to, the aircraft during its seizure or while it is in the custody, possession or control of AA or of an employee or agent of AA.

(2) The insurance must be for the benefit of the person or persons prescribed by the regulations.

(3) If AA pays any premium on the insurance policy, AA may recover the amount of the premium, in a court of competent jurisdiction, as a debt due by the person who is liable to pay the amounts covered by the statutory lien on the aircraft.

Sale of aircraft

67.(1) This section applies if an outstanding amount covered by a statutory lien on an aircraft remains unpaid at the end of 9 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later.

(2) AA may at any time do any of the following, whether or not the aircraft has been seized under section 65:

- (a) sell the aircraft as prescribed by the regulations;
- (b) execute all documents necessary for effecting the sale;
- (c) give effective title to the aircraft free of all encumbrances, leases and contracts of hire.

(3) Before selling the aircraft, AA must take reasonable steps to give reasonable notice of the sale to the persons referred to in subsection 65(3).

Application of proceeds of sale

68. The proceeds of a sale under section 67 must be dealt with in accordance with the regulations.

Order of application of payments of outstanding amounts

69. For the purposes of sections 65 and 67, any amounts received by AA in discharge of outstanding amounts covered by a statutory lien are taken to be applied successively in the discharge of those amounts in the order in which they became payable.

Subdivision C—Interference with aircraft under statutory lien

Removal from Australian territory of aircraft under statutory lien

70.(1) A person who knows that a statutory lien is in effect in respect of an aircraft must not remove the aircraft from Australian territory without the prior approval of an authorised employee.

Penalty: Imprisonment for 3 years.

(2) For the purposes of establishing a contravention of subsection (1), a person is taken to have known that a statutory lien was in effect in respect of an aircraft if the person ought reasonably to have known that fact, having regard to:

- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention.

Dismantling etc. aircraft under statutory lien

71.(1) A person who knows that a statutory lien is in effect in respect of an aircraft must not detach any part or equipment from the aircraft unless the person has:

- (a) lawful authority; or
- (b) the prior approval of an authorised employee.

Penalty: Imprisonment for 2 years.

(2) For the purposes of establishing a contravention of subsection (1), a person is taken to have known that a statutory lien was in effect in respect of an aircraft if the person ought reasonably to have known that fact, having regard to:

- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention.

Subdivision D—Miscellaneous

Protection of AA etc. from legal actions

72.(1) No action lies against AA, or against an employee or agent of AA acting in the course of the person's employment or agency, for or in respect of any of the following:

- (a) loss of, or damage to, an aircraft during its seizure in accordance with section 65;
- (b) loss of, or damage to, an aircraft so seized while it is in the custody, possession or control of AA or of an employee or agent of AA;
- (c) any economic loss suffered by a person as a result of such a seizure.

(2) Subsection (1) does not cover loss or damage that is wilfully or negligently caused by an employee or agent of AA.

(3) In this section:
“employee” includes a member.

Review of decisions

73.(1) A person affected by a decision made under section 58, subsection 59(1), 65(2) or 67(2) or paragraph 62(1)(c) may make a written application to AA to reconsider the decision.

(2) The application must be made:

- (a) within 28 days after the day on which the decision first comes to the notice of the applicant; or
- (b) within such further period as AA allows, either before or after the end of that 28 day period.

(3) The application must set out the grounds on which the applicant is requesting reconsideration of the decision.

(4) Within 28 days after receiving the application, AA must reconsider the decision and affirm or revoke the decision, or vary the decision, as AA thinks fit.

(5) Where AA affirms, revokes or varies a decision, AA must inform the applicant in writing of the result of the reconsideration of the decision, and give its reasons.

(6) Applications may be made to the Administrative Appeals Tribunal for review of decisions that have been affirmed or varied under subsection (4).

PART 6—MISCELLANEOUS

Tabling of directions or notices of the Minister

74. Where the Minister gives a direction under section 14, 16, 18, 46 or 47 or a notice under section 17 or 54, the Minister shall cause a copy of the direction or notice to be laid before each House of the Parliament within 15 sitting days of that House after the giving of the direction or notice.

Lands Acquisition Act

75. The *Lands Acquisition Act 1989* does not apply in relation to, or prevent, any of the following:

- (a) the acquisition (including the leasing) of land by AA by agreement;
- (b) the granting of a lease of land owned by AA;
- (c) the granting of a licence to occupy, or the giving of authority to use, land owned by AA;
- (d) the disposal of land owned by AA.

Conduct by directors, servants and agents

76.(1) If, in proceedings for an offence against this Act, it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is enough to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant, or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate proves that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is enough to show:

- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual, unless the individual proves that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

- (a) an individual is convicted of an offence; and
- (b) he or she would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

he or she is not liable to be punished by imprisonment for the offence.

(6) In this section:

“director”, in relation to a body that:

- (a) is incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory; and
- (b) is constituted by one or more members;

means the member, or any of the members, constituting the body;

“engage in conduct” includes fail or refuse to engage in conduct;

“offence against this Act” includes the following:

- (a) an offence against the regulations;
- (b) an offence against section 6, 7 or 7A of the *Crimes Act 1914* that relates to an offence against this Act or the regulations;
- (c) an offence against subsection 86(1) of the *Crimes Act 1914*, because of paragraph (a) of that subsection, that relates to an offence against this Act or the regulations.

“state of mind”, in relation to a person, includes:

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

Power to make regulations

77.(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.

(2) In particular, the regulations may make provision:

- (a) specifying the functions of AA services; and
- (b) specifying the powers that are exercisable by AA, or by its employees, in connection with AA services, including the following:
 - (i) giving instructions and directions in relation to air traffic services;
 - (ii) coordinating search and rescue operations, or rescue and fire fighting operations;
 - (iii) requisitioning aircraft, water craft or land vehicles for search and rescue operations;
 - (iv) taking charge of rescue and fire fighting operations, and giving directions to persons participating in those operations; and
- (c) for compensating persons for:
 - (i) loss sustained as a result of participating in a search and rescue operation; or
 - (ii) loss sustained in respect of the requisitioning of an aircraft, water craft or land vehicle for a search and rescue operation; and
- (d) conferring immunity on AA and its employees from liability arising out of the exercise of powers under the regulations; and
- (e) for the publication of Aeronautical Information Publications (AIPs) and Notices to Airmen (NOTAMS); and
- (f) regulating the environmental effects of the operation of Commonwealth jurisdiction aircraft; and

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- (g) the supply in specified circumstances, to specified employees of AA, of records in respect of an aircraft subject to a statutory lien, being records kept under the regulations and relating to:
 - (i) the maintenance done on the aircraft and its components; and
 - (ii) the time in service of the aircraft and its components; and
- (h) enabling specified documents to be *prima facie* evidence of movements of aircraft for the purpose of establishing liability to charges; and
- (i) imposing penalties, not exceeding 50 penalty units, for a contravention of the regulations.

(3) In this section:

“AA service” means a service referred to in paragraph 8(1)(b);

“rescue and fire fighting operations” means operations in connection with a rescue and fire fighting service referred to in paragraph 8(1)(b);

“search and rescue operations” means operations in connection with a search and rescue service referred to in paragraph 8(1)(b).

[Minister's second reading speech made in—
House of Representatives on 7 June 1995
Senate on 9 June 1995]