

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

AIRPORTS (TRANSITIONAL) BILL 1995

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

A BILL

FOR

An Act relating to the privatisation of airports, and other matters

The Parliament of Australia enacts:

PART 1—INTRODUCTION

Short title

1. This Act may be cited as the *Airports (Transitional) Act 1995*.

5 Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Simplified outline**3. The following is a simplified outline of this Act:**

This Act provides for the privatisation of certain airports.

Airport land and other airport assets will be transferred from the Federal Airports Corporation (FAC) to the Commonwealth.

The Commonwealth will grant an airport lease to a company. The company is called an *airport-lessee company*.

Immediately after the grant of the airport lease, the Commonwealth will transfer or lease certain assets to the airport-lessee company.

- Certain employees, assets, contracts and liabilities of the FAC will be transferred to the airport-lessee company.

Definitions

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

airport has the same meaning as in the *Airports Act 1995*.

airport lease has the same meaning as in the *Airports Act 1995*.

5 *airport-lessee company* has the same meaning as in the *Airports Act 1995*.

airport site has the same meaning as in the *Airports Act 1995*.

asset means:

(a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; and

10 (b) any right, privilege or immunity, including a contingent or prospective one.

company means a body corporate.

employee includes apprentice.

FAC means the Federal Airports Corporation.

15 *land registration official*, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

leased, in relation to assets other than land, means let on hire (whether or not described as a lease) under an agreement other than a hire-purchase agreement.

20 *liability* means a liability or duty, including a contingent or prospective one.

sale time, in relation to an airport-lessee company, has the meaning given by section 6.

share, in relation to a company, means a share in the company's share capital.

25 *transferred employee* means a person whose employment is transferred in accordance with a declaration under section 53.

transfer time, in relation to an employee, has the meaning given by section 53.

voting share has the same meaning as in the Corporations Law.

Sydney West Airport

30 5. For the purposes of this Act, Sydney West Airport is taken to be an airport at a particular time even if, at that time, it is:

(a) merely intended to be developed for use as an airport; or

(b) being developed for use as an airport.

Sale time for Commonwealth-owned company

35 6.(1) This section applies to:

(a) an airport-lessee company that was granted an airport lease under section 20; or

- (b) an airport-lessee company that was granted an airport lease under section 21, where, at any time before the grant of the lease, a majority of the voting shares in the company were held by:

- (i) the Commonwealth; or
- (ii) a nominee of the Commonwealth.

5

(2) If, in the opinion of the Minister for Finance, a particular time is the first time after the commencement of this section on which a majority of the voting shares in the company are acquired by a person, or persons, other than:

- (a) the Commonwealth; or
- (b) a nominee of the Commonwealth;

10

the Minister for Finance must, by notice in the *Gazette*, declare the time to be the *sale time* for the company.

- (3) The declaration has effect accordingly.

(4) The notice must be published within 21 days after the time concerned.

15

Crown to be bound

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

20

(2) This Act does not make the Crown liable to be prosecuted for an offence.

External Territories

8. This Act extends to all the external Territories.

Extra-territorial operation

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9. This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

PART 2—TRANSFERS FROM THE FAC TO THE COMMONWEALTH

Simplified outline

10. The following is a simplified outline of this Part:

- Airport land and certain other assets and liabilities will be transferred from the FAC to the Commonwealth.
- If airport land is transferred to the Commonwealth, the airport will cease to be a Federal airport for the purposes of the *Federal Airports Corporation Act 1986*.
- Land transfers may be registered by State/Territory land registration officials.
- If the Commonwealth has a lease of any transferred land, the Commonwealth's interest under the lease does not merge in the greater estate or interest that becomes vested in the Commonwealth under this Part.
- The *Lands Acquisition Act 1989* does not apply to anything done under this Part.

5 Transfer of FAC land to the Commonwealth

11.(1) This section applies to land:

- (a) in which the FAC has any right, title or interest; and
- (b) that is held by the FAC as mentioned in section 29 of the *Federal Airports Corporation Act 1986*.

10 (2) The Minister for Transport may, by notice published in the *Gazette*, declare that the FAC's right, title and interest in specified land vests in the Commonwealth without any conveyance, transfer or assignment.

(3) A declaration has effect accordingly.

15 (4) If the FAC's right, title or interest arises out of a lease, all obligations and benefits of the FAC under the lease pass to the Commonwealth, whether or not the obligations or benefits touch and concern the land.

Note: This section only provides for the transfer of the FAC's rights, title and interests. Accordingly, it does not affect the continued existence of existing leases or other existing interests.

Transfer of other FAC assets to the Commonwealth

20 12.(1) This section applies to an asset of the FAC, other than land that is held by the FAC as mentioned in section 29 of the *Federal Airports Corporation Act 1986*.

(2) The Minister for Transport may, by notice in the *Gazette*, make any or all of the following declarations:

25 (a) a declaration that a specified asset vests in the Commonwealth without any conveyance, transfer or assignment;

- (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the Commonwealth as if a reference in the instrument to the FAC were a reference to the Commonwealth;
 - (c) a declaration that the Commonwealth becomes the FAC's successor in law in relation to a specified asset immediately after the asset vests in the Commonwealth. 5
- (3) A declaration has effect accordingly.

Transfer of FAC liabilities to the Commonwealth

13.(1) This section applies to a liability of the FAC (other than a liability under a contract). 10

(2) The Minister for Transport may, by notice in the *Gazette*, make any or all of the following declarations:

- (a) a declaration that a specified liability ceases to be a liability of the FAC and becomes a liability of the Commonwealth; 15
- (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the Commonwealth as if a reference in the instrument to the FAC were a reference to the Commonwealth;
- (c) a declaration that the Commonwealth becomes the FAC's successor in law in relation to a specified liability immediately after the liability becomes a liability of the Commonwealth. 20

(3) A declaration under this section has effect accordingly.

Transferred airport ceases to be a Federal airport for purposes of the FAC Act

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14.(1) This section applies if the FAC's right, title and interest in particular land vests in the Commonwealth under this Part.

(2) If that land is, or is part of, a Federal airport (within the meaning of the *Federal Airports Corporation Act 1986*), that airport ceases to be a Federal airport for the purposes of that Act. 30

(3) If that land is, or is part of, a Federal airport development site (within the meaning of the *Federal Airports Corporation Act 1986*), that site ceases to be such a site for the purposes of that Act.

Transfers of FAC land may be registered

15.(1) This section applies if:

35

- (a) any right, title and interest in particular land vests in the Commonwealth under this Part; and
- (b) there is lodged with a land registration official a certificate that:

- (i) is signed by an authorised person; and
- (ii) identifies the land, whether by reference to a map or otherwise; and
- (iii) states that the right, title and interest has become vested in the Commonwealth under this Part.

Note: *Authorised person* is defined by subsection (4).

(2) The land registration official may:

- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

(3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.

(4) In this section:

authorised person means:

- (a) the Minister for Finance; or
- (b) a person authorised by the Minister for Finance, in writing, for the purposes of this section.

FAC land leased to the Commonwealth

16.(1) This section applies to land:

- (a) in which the FAC had any right, title or interest; and
- (b) that was leased to the Commonwealth.

(2) If the FAC's right, title and interest in the land vests in the Commonwealth under this Part, the Commonwealth's interest under the lease does not merge in the greater estate or interest that becomes vested in the Commonwealth under this Part.

Note: This means, in effect, that the Commonwealth will be treated as if it had leased the land to itself. When an airport lease is granted, the lease to the Commonwealth will become a sublease of the airport lease.

Lands Acquisition Act does not apply to this Part

17. The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

PART 3—ORIGINAL GRANTS OF AIRPORT LEASES TO COMPANIES

Simplified outline

18. The following is a simplified outline of this Part:

- The Commonwealth will grant an airport lease to a company. The company is called an *airport-lessee company*.
- Immediately after the grant of the airport lease, the Commonwealth will transfer or lease certain assets to the airport-lessee company.
- The Commonwealth may transfer certain liabilities to the airport-lessee company.
- Airport leases are granted subject to existing leases and other interests.
- The existence of this Act may be noted on title registers.
- The *Lands Acquisition Act 1989* does not apply to anything done under this Part.

5 **Scope of Part**

19. This Part applies to the following airports:

- (a) Sydney (Kingsford-Smith) Airport;
- (b) Sydney West Airport;
- (c) Melbourne (Tullamarine) Airport;
- 10 (d) Brisbane Airport;
- (e) Perth Airport;
- (f) an airport specified in the regulations, where the airport site is owned by the Commonwealth.

Commonwealth may grant airport lease to a

15 **Commonwealth-owned company**

20.(1) The Commonwealth may grant an airport lease under this section.

(2) The Commonwealth must not grant an airport lease under this section unless the lessee is a company all of whose shares are beneficially owned by the Commonwealth.

20 (3) If a purported lease contravenes subsection (2), it is of no effect.

Note: In addition to the requirements of subsection (2), a grant must comply with the rules in Part 2 of the *Airports Act 1995*.

Commonwealth may grant airport lease to a company that is not owned by the Commonwealth

25 21.(1) The Commonwealth may grant an airport lease under this section.

(2) The Commonwealth must not grant an airport lease under this section unless the lessee is a company none of whose shares are beneficially owned by the Commonwealth.

(3) If a purported lease contravenes subsection (2), it is of no effect.

Note: In addition to the requirements of subsection (2), a grant must comply with the rules in Part 2 of the *Airports Act 1995*.

Transfer or lease of assets to company

22.(1) This section applies to an asset that has vested in the Commonwealth under section 12. 5

(2) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified asset vests in the company immediately after the grant without any conveyance, transfer or assignment. 10

(3) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified instrument relating to a specified asset continues to have effect after the asset vests in the company as if a reference in the instrument to the FAC or the Commonwealth were a reference to the company. 15

(4) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, the company becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the company. 20

(5) A declaration under this section has effect accordingly.

(6) The Commonwealth may lease an asset to a company that was granted an airport lease under section 20 or 21. 25

Transfer of liability to company

23.(1) This section applies to a liability that has become a liability of the Commonwealth under section 13.

(2) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, then, immediately after the grant, a specified liability ceases to be a liability of the Commonwealth and becomes a liability of the company. 30

(3) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the company as if a reference in the instrument to the FAC or the Commonwealth were a reference to the company. 35

5 (4) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, the company becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the company.

(5) A declaration under this section has effect accordingly.

Airport lease granted subject to existing interests in the land

10 24.(1) An airport lease is granted under section 20 or 21 subject to all existing leases in relation to the land concerned. Unless the Minister otherwise determines, all obligations and benefits of the Commonwealth under such an existing lease pass to the airport-lessee company, whether or not the obligations or benefits touch and concern the land.

Note 1: Existing leases become subleases.

15 Note 2: This subsection relates to the obligations and benefits of the Commonwealth as lessor. Section 16 deals with a case where the Commonwealth is the lessee under an existing lease.

(2) An airport lease is granted under section 20 or 21 subject to all other existing interests in the land concerned.

Entries in title registers

20 25.(1) This section applies if an airport lease is granted under section 20 or 21.

(2) A land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for the purposes of drawing the attention of persons to the existence of this Act.

25 **Lands Acquisition Act does not apply to this Part**

26. The *Lands Acquisition Act 1989* does not apply to anything done under this Part.

PART 4—TRANSFER OF THE FAC'S ASSETS OR CONTRACTS TO AIRPORT-LESSEE COMPANIES

Simplified outline

27. The following is a simplified outline of this Part:

- If an airport lease is granted to a company, certain FAC assets or contracts may be transferred to the company.

5 Transfer of assets

28.(1) This section applies to an asset of the FAC.

10 (2) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified asset vests in the company immediately after the grant without any conveyance, transfer or assignment.

15 (3) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified instrument relating to a specified asset continues to have effect after the asset vests in the company as if a reference in the instrument to the FAC were a reference to the company.

20 (4) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, the company becomes the FAC's successor in law in relation to a specified asset immediately after the asset vests in the company.

(5) A declaration under this section has effect accordingly.

25 (6) Any consideration payable for the transfer of an asset under this section is payable to the Commonwealth instead of to the FAC.

Transfer of contractual rights and obligations

29.(1) This section applies to a contract (other than a contract of employment) to which the FAC is a party.

30 (2) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, the FAC's rights and obligations under a specified contract:

- (a) cease to be rights and obligations of the FAC immediately after the grant; and

(b) become rights and obligations of the company immediately after the grant.

(3) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified written contract continues to have effect after the grant as if a reference in the contract to the FAC were a reference to the company.

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(4) A declaration under this section has effect accordingly.

(5) This section does not, by implication, limit section 28.

(6) Any consideration payable for the transfer of an asset under this section is payable to the Commonwealth instead of to the FAC.

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PART 5—TRANSFER OF THE FAC'S LIABILITIES TO AIRPORT-LESSEE COMPANIES

Simplified outline

30. The following is a simplified outline of this Part:

- If an airport lease is granted to a company, certain FAC liabilities may be transferred to the company.

5 Transfer of liabilities

31.(1) This section applies to a liability of the FAC (other than a liability under a contract).

10 **(2)** The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified liability:

- (a) ceases to be a liability of the FAC immediately after the grant; and
- (b) becomes a liability of the company immediately after the grant.

15 **(3)** The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified instrument creating a specified liability continues to have effect after the grant as if a reference in the instrument to the FAC were a reference to the company.

20 **(4)** The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, the company becomes the FAC's successor in law in relation to a specified liability immediately after the liability becomes a liability of the company.

25 **(5)** A declaration under this section has effect accordingly.

PART 6—TREATMENT OF SALE OF SHARES IN AN AIRPORT-LESSEE COMPANY OWNED BY THE COMMONWEALTH

Simplified outline

5 **32.** The following is a simplified outline of this Part:

- This Part applies to an airport-lessee company owned by the Commonwealth.
- Before the Commonwealth disposes of its shares in an airport-lessee company, the Minister for Finance may determine that:
 - (a) the FAC should be paid capital; and
 - (b) the FAC should pay the Commonwealth an amount by way of return of capital.
- If the Commonwealth disposes of its shares in an airport-lessee company:
 - (a) the Commonwealth will pay the FAC an amount equal to the consideration it receives for those shares; and
 - (b) the FAC will pay the Commonwealth an equivalent amount by way of return of capital; and
 - (c) the Minister for Finance may determine that the FAC should be paid capital.

When this Part applies

33. This Part applies to an airport-lessee company if the company was granted an airport lease under section 20.

Commonwealth may pay the FAC an amount before disposal of shares

10 **34.(1)** This section applies in relation to an airport-lessee company during the period:

- (a) beginning when the company was granted an airport lease under section 20; and
- 15 (b) ending at the company's sale time.

(2) The Minister for Finance may determine in writing that the FAC should be paid a specified amount of capital. The determination must specify a company as the *nominated company* in relation to the payment.

20 (3) The Minister for Finance may authorise the payment by the Commonwealth to the FAC of the amount specified under subsection (2).

(4) If, because of subsection (2), an amount (the *capital amount*) is payable to the FAC, the Minister for Finance may determine in writing that the FAC must pay a specified amount to the Commonwealth, so long as the specified amount does not exceed the capital amount.

(5) The amount payable because of subsection (2) may be set-off against the amount payable under subsection (4).

(6) The amount payable under subsection (4) is payable by way of return of capital to the Commonwealth.

Commonwealth must pay the FAC an amount equal to consideration for disposal of shares 5

35.(1) This section applies if the Commonwealth disposes of all its shares in an airport-lessee company that was granted an airport lease under section 20.

(2) When the consideration for those shares becomes payable, the Commonwealth must pay the FAC an amount equal to that consideration, reduced by the amount (if any) payable because of subsection 34(2), where the company was the nominated company in relation to the payment made because of that subsection. 10

(3) The amount payable under subsection (2) is payable by way of the provision of capital for the FAC. 15

(4) If the Commonwealth pays an amount to the FAC under subsection (2), the FAC must pay the Commonwealth an amount equal to that amount.

(5) The amount payable under subsection (2) may be set-off against the amount payable under subsection (4). 20

(6) The amount payable under subsection (4) is payable by way of return of capital to the Commonwealth.

Capital for the FAC following disposal of shares

36.(1) This section applies if: 25

- (a) the Commonwealth disposes of all its shares in an airport-lessee company that was granted an airport lease under section 20; and
- (b) the Minister for Finance determines in writing that the FAC should be paid a specified amount of capital.

(2) The Minister for Finance may authorise the payment by the Commonwealth to the FAC of the specified amount. 30

Appropriation of Consolidated Revenue Fund

37. The Consolidated Revenue Fund is appropriated for the purposes of this Part.

**PART 7—TREATMENT OF CONSIDERATION PAYABLE BY
AN AIRPORT-LESSEE COMPANY THAT IS NOT OWNED BY
THE COMMONWEALTH**

Simplified outline

5 **38.** The following is a simplified outline of this Part:

- This Part applies to an airport-lessee company if the company is not owned by the Commonwealth.
- If consideration becomes payable by the company to the Commonwealth for the grant of the airport lease and the transfer or lease of any airport assets:
 - (a) the Commonwealth will pay the FAC an amount equal to the consideration; and
 - (b) the FAC will pay the Commonwealth an equivalent amount by way of return of capital; and
 - (c) the Minister for Finance may determine that the FAC should be paid capital.

When this Part applies

39. This Part applies to an airport-lessee company if the company was granted an airport lease under section 21.

Commonwealth must pay the FAC an amount equal to consideration

10 **40.(1)** This section applies if an airport-lessee company pays, or is liable to pay, consideration to the Commonwealth for:

- (a) the grant of the airport lease; and
- (b) the transfer or lease of any assets under section 22; and
- (c) the transfer of any assets under section 28 or 29.

15 **(2)** When that consideration becomes payable, the Commonwealth must pay the FAC an amount equal to that consideration.

(3) The amount payable under subsection (2) is payable by way of the provision of capital for the FAC.

20 **(4)** If the Commonwealth pays an amount to the FAC under subsection (2), the FAC must pay the Commonwealth an amount equal to that amount.

(5) The amount payable under subsection (2) may be set-off against the amount payable under subsection (4).

25 **(6)** The amount payable under subsection (4) is payable by way of return of capital to the Commonwealth.

Capital for the FAC after consideration becomes payable

41.(1) This section applies if:

(a) an airport-lessee company pays, or is liable to pay, to the Commonwealth an amount of consideration for:

(i) the grant of the airport lease; and

5

(ii) the transfer or lease of any assets under section 22; and

(iii) the transfer of any assets under section 28 or 29; and

(b) the Minister for Finance determines in writing that the FAC should be paid a specified amount of capital.

(2) The Minister for Finance may authorise the payment by the Commonwealth to the FAC of the specified amount.

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Appropriation of Consolidated Revenue Fund

42. The Consolidated Revenue Fund is appropriated for the purposes of this Part.

PART 8—SPECIAL TAX RULES

Division 1—Simplified outline

Simplified outline

43. The following is a simplified outline of this Part:

- Certain transactions under this Act are exempt from stamp duty and other taxes.
- The income tax law is modified in its application to transactions under this Act.

Division 2—Exemption from stamp duty and other taxes**Exemption from stamp duty and other taxes**

44.(1) In this section:

exempt matter means:

- (a) the grant of an airport lease by the Commonwealth under section 20; 5
or
- (b) an agreement relating to a grant mentioned in paragraph (a); or
- (c) the transfer of an asset under section 22, 28 or 29 to a company that
was granted an airport lease under section 20; or
- (d) the grant of a lease of an asset under section 22 to a company that was 10
granted an airport lease under section 20; or
- (e) an agreement relating to a grant mentioned in paragraph (d).

(2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

- (a) an exempt matter; or 15
- (b) anything done (including a transaction entered into or an instrument
or document made, executed, lodged or given) because of, or for a
purpose connected with or arising out of, an exempt matter.

Division 3—Special income tax rules**Special depreciation rules for fixtures**

45.(1) This section applies if:

(a) a company is granted an airport lease of particular land under section 20 or 21; and

(b) at the time of the grant, a unit of property is affixed to the land.

(2) If:

(a) immediately before the time of the grant:

(i) the property was affixed to a particular part of the land; and

(ii) that part of the land was leased to another entity; and

(iii) under section 54AA of the *Income Tax Assessment Act 1936*, the provisions of that Act relating to depreciation applied to the property and to the other entity as if the other entity were the owner of the property; and

(b) on the grant, the lease mentioned in subparagraph (a)(ii) became a sublease;

then, so long as the other entity continues to hold the sublease, section 54AA of the *Income Tax Assessment Act 1936* has effect, in relation to the property, as if:

(c) the sublease were a Crown lease; and

(d) the other entity were the lessee under the Crown lease.

(3) If subsection (2) does not apply to the property, section 54AA of the *Income Tax Assessment Act 1936* has effect, in relation to the property, as if:

(a) the company had acquired the airport lease from a prior holder of the lease; and

(b) the prior holder had acquired or constructed the property and affixed the property to the land; and

(c) a reference in that section to the consideration paid or given by the company for the acquisition of the lease were a reference to the consideration given by the company for the grant of the lease.

(4) In this section:

entity means any of the following:

(a) a company;

(b) a partnership;

(c) a person in a capacity of trustee;

(d) any other person.

Acquisition of depreciated property from the Commonwealth

46.(1) This section applies to a unit of property that was transferred from the Commonwealth to a company under section 22.

(2) Section 60 of the *Income Tax Assessment Act 1936* has effect as if the company had acquired the property from the FAC instead of from the Commonwealth.

(3) The Minister for Finance may make a written determination that the provisions of the *Income Tax Assessment Act 1936* relating to depreciation have effect as if the depreciated value of the asset at the time of the transfer were equal to the amount specified in the determination. 5

(4) The determination has effect accordingly.

(5) The FAC must give the Minister for Finance such information as the Minister for Finance requires about the application of section 59 of the *Income Tax Assessment Act 1936* to the property and to the FAC. 10

Consideration received by the FAC for transfer of assets to the Commonwealth

47.(1) This section applies to an asset that was transferred from the FAC to the Commonwealth under section 11 or 12. 15

(2) The Minister for Finance may make a written determination that the *Income Tax Assessment Act 1936* has effect as if:

(a) the FAC had received consideration from the Commonwealth in respect of the transfer of a specified asset; and

(b) that consideration was equal to the amount specified in the determination. 20

(3) The determination has effect accordingly.

(4) The FAC must give the Minister for Finance such information as the Minister for Finance requires about the application of section 59 of the *Income Tax Assessment Act 1936* to the asset and to the FAC. 25

Airport-lessee company to be building owner for the purposes of Division 10C of Part III of the *Income Tax Assessment Act 1936*

48.(1) For the purposes of Division 10C of Part III of the *Income Tax Assessment Act 1936*, if:

(a) there is an amount of qualifying hotel expenditure or qualifying apartment expenditure in respect of an eligible building; and 30

(b) the eligible building is situated on land leased under an airport lease; and

(c) immediately before the land was transferred from the FAC to the Commonwealth under Part 2 of this Act, the FAC was the owner of the building for the purposes of Division 10C of Part III of the *Income Tax Assessment Act 1936*; 35

then, so long as the airport-lessee company concerned continues to hold the airport lease, the airport-lessee company is taken to be the owner of the building. 40

(2) In this section:

eligible building has the same meaning as in Division 10C of Part III of the *Income Tax Assessment Act 1936*.

5 **qualifying apartment expenditure** has the same meaning as in Division 10C of Part III of the *Income Tax Assessment Act 1936*.

qualifying hotel expenditure has the same meaning as in Division 10C of Part III of the *Income Tax Assessment Act 1936*.

Airport-lessee company to be building owner for the purposes of Division 10D of Part III of the *Income Tax Assessment Act 1936*

10 **49.(1)** For the purposes of Division 10D of Part III of the *Income Tax Assessment Act 1936*, if:

(a) there is an amount of qualifying expenditure in respect of an eligible building; and

15 (b) the eligible building is situated on land leased under an airport lease; and

(c) immediately before the land was transferred from the FAC to the Commonwealth under Part 2 of this Act, the FAC was the owner of the building for the purposes of Division 10D of Part III of the *Income Tax Assessment Act 1936*;

20 then, so long as the airport-lessee company concerned continues to hold the airport lease, the airport-lessee company is taken to be the owner of the building.

(2) In this section:

25 **eligible building** has the same meaning as in Division 10D of Part III of the *Income Tax Assessment Act 1936*.

qualifying expenditure has the same meaning as in Division 10D of Part III of the *Income Tax Assessment Act 1936*.

Modification of depreciation and capital gains tax provisions

50.(1) This section applies if:

30 (a) a company is granted an airport lease under section 20; and

(b) the company's sale time does not occur within 7 days after the grant.

(2) The regulations may provide that:

(a) the provisions of the *Income Tax Assessment Act 1936* relating to depreciation; and

35 (b) Part IIIA of that Act;

apply in relation to:

(c) the airport lease; and

(d) assets transferred or leased to the company under section 22, 28 or 29;

40 subject to such modifications as are specified in the regulations.

(3) In this section:
modifications includes additions, omissions and substitutions.

Transfer of development allowance benefits

51.(1) This section applies if:

- (a) an airport lease is granted to a company under section 20 or 21; and 5
- (b) immediately before the airport was transferred to the Commonwealth under Part 2, the FAC was carrying out, or proposed to carry out, a project (within the meaning of the *Development Allowance Authority Act 1992*) at the airport.

(2) The *Development Allowance Authority Act 1992* has effect, in relation to the project, to the FAC and to the company, as if section 49 of that Act were repealed and the following section were substituted: 10

“49. If:

- (a) either of the following applies to the FAC (the *transferor*):
 - (i) plant expenditure is registered in the name of the FAC; 15
 - (ii) the FAC holds a certificate in relation to plant expenditure; and
- (b) the FAC has ceased, or proposes to cease, to carry out the project concerned; and
- (c) the company (the *transferee*) has taken over, or proposes to take over, the completion of the project (with or without modification); 20
 - and
- (d) either:
 - (i) the company has incurred, or proposes to incur, plant expenditure in carrying out the completion of the project (with or without modification); or 25
 - (ii) both:
 - (A) the company has incurred, or proposes to incur, expenditure in acquiring from the Commonwealth a unit of plant that was new in the hands of the FAC; and
 - (B) the acquisition has taken place, or will take place, in the course of the company’s takeover, or proposed takeover, of the completion of the project (with or without modification); 30

the company may apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.”. 35

**PART 9—TRANSFER OF STAFF FROM THE FAC TO
AIRPORT-LESSEE COMPANIES**

Division 1—Simplified outline

Simplified outline

5 **52.** The following is a simplified outline of this Part:

- If an airport lease is granted to a company, certain employees of the FAC will be transferred to the company.
- A transferred employee will have terms and conditions of employment that are similar to those he or she had before the transfer.
- Those terms and conditions can be varied in accordance with relevant awards etc.
- Before being transferred, employees will be given statements setting out particulars of accrued benefits.
- Special provision is made for:
 - (a) mobility rights; and
 - (b) long service leave; and
 - (c) superannuation; and
 - (d) the application of the *Safety, Rehabilitation and Compensation Act 1988*.

Division 2—Transfer of staff**Transfer of staff from the FAC**

53.(1) This section applies to an employee of the FAC.

(2) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 20 or 21 on a specified day, a specified employee:

- (a) ceases to be employed by the FAC immediately after the grant; and
- (b) is taken to have been engaged by the company as an employee of the company immediately after the grant.

(3) The Minister for Finance may, by notice in the *Gazette*, declare that, in the event that a specified company is granted an airport lease for a specified airport under section 21 on a specified day, a specified employee:

- (a) ceases to be employed by the FAC at a time ascertained in accordance with the notice; and
- (b) is taken to have been engaged by the company as an employee of the company immediately after that time.

(4) A declaration under this section has effect accordingly.

(5) If subsection (2) applies to an employee, the employee's *transfer time* occurs immediately after the grant.

(6) If subsection (3) applies to an employee, the employee's *transfer time* occurs immediately after the time ascertained in accordance with the notice.

Division 3—Terms and conditions**Terms and conditions of transferred employees**

54.(1) A person who is a transferred employee is taken:

- (a) to have been engaged by the company concerned on the same terms and conditions as those that applied to the person, immediately before the employee's transfer time, as an employee of the FAC; and
- (b) to have accrued an entitlement to benefits, in connection with that engagement by the company concerned, that is equivalent to the entitlement that the person had accrued, as an employee of the FAC, immediately before the employee's transfer time.

(2) The service of a transferred employee as an employee of the company concerned is taken, for all purposes, to have been continuous with the service of the employee, immediately before the employee's transfer time, as an employee of the FAC.

(3) A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the FAC as a result of this Part.

(4) A reference in paragraph (1)(a) to terms and conditions is a reference to terms and conditions that are set out in:

- (a) a written contract of employment; or
- (b) an award (as defined by section 4 of the *Industrial Relations Act 1988*).

(5) This section has effect subject to this Part.

Variation of terms and conditions of employment

55.(1) This Division does not prevent the terms and conditions of a transferred employee's employment after the employee's transfer time from being varied:

- (a) in accordance with those terms and conditions; or
- (b) by or under a law, award, determination or agreement.

(2) In this section:
vary, in relation to terms and conditions, includes:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

Statement of accrued benefits

56.(1) Before the employment of an employee of the FAC is transferred under section 53, the FAC must give the employee a written statement setting out particulars of the benefits to which the employee has accrued an entitlement.

(2) In any proceedings arising out of paragraph 54(1)(b), the statement is *prima facie* evidence of the matters set out in the statement.

(3) A failure by the FAC to comply with subsection (1) does not affect the validity of the transfer of the employment of the employee.

Division 4—Mobility rights

Cessation of mobility rights

5 **57.(1)** If Division 2 or 3 of Part IV of the *Public Service Act 1922* applied to an employee of the FAC immediately before the employee's transfer time, then that Division ceases to apply to the employee at that time.

(2) If Division 4 of Part IV of the *Public Service Act 1922* applied to an employee of the FAC immediately before the employee's transfer time, then:

 (a) the *Officers' Rights Declaration Act 1928*; and

10 (b) Division 4 of Part IV of the *Public Service Act 1922*;
 cease to apply to the employee at that time.

Division 5—Long service leave**Long service leave rules set out in Schedule 1**

58. Schedule 1 has effect.

Division 6—Superannuation

Superannuation rules set out in Schedule 2

59. Schedule 2 has effect.

Division 7—Safety, Rehabilitation and Compensation Act 1988

***Safety, Rehabilitation and Compensation Act 1988 rules set out in
Schedule 3***

60. Schedule 3 has effect.

PART 10—FAC'S DEBTS

Division 1—Simplified outline

Simplified outline

61. The following is a simplified outline of this Part:

- The Treasurer may call up a loan made by the Commonwealth to the FAC.
- The Commonwealth may take over the FAC's obligations under a loan made to the FAC by a person other than the Commonwealth.
- The Commonwealth may give the FAC money to enable the FAC to discharge a loan made to the FAC by a person other than the Commonwealth.

Division 2—Loans by the Commonwealth**Scope of Division**

62. This Division applies to a loan to the FAC that was made by the Commonwealth.

Treasurer may declare that loan is due and payable

5

63.(1) The Treasurer may, by notice in the *Gazette*, declare that the principal amount of a specified loan, together with any accrued interest, becomes due and payable at a specified time.

(2) The declaration has effect accordingly.

Commonwealth may pay the FAC an amount equal to the amount owing

10

64.(1) If an amount becomes due and payable to the Commonwealth because of section 63, the Minister for Finance may determine that the Commonwealth is liable to pay the FAC an amount equal to that amount.

(2) The determination has effect accordingly.

15

(3) The amount payable under subsection (1) may be set-off against the amount that became due and payable because of section 63.

(4) The amount payable under subsection (1) becomes part of the capital of the FAC.

Appropriation of Consolidated Revenue Fund

20

65. The Consolidated Revenue Fund is appropriated for the purposes of this Division.

Division 3—Loans by persons other than the Commonwealth

Scope of Division

66. This Division applies to a loan to the FAC that was made by a person other than the Commonwealth.

5 Loans to the FAC may become loans to the Commonwealth

67.(1) The Treasurer may, by notice in the *Gazette*, declare that, at a specified time, the FAC's obligations under a specified loan:

- (a) cease to be obligations of the FAC; and
- (b) become obligations of the Commonwealth.

10 (2) The declaration has effect accordingly.

(3) The Treasurer may authorise the payment of money by the Commonwealth to discharge obligations to which the declaration applies.

Commonwealth may pay the FAC an amount to enable the FAC to discharge loan

15 68.(1) The Minister for Finance may, by notice in the *Gazette*, determine that there is to be paid to the FAC, at a specified time, an amount equal to the outstanding amount of a specified loan.

(2) The determination has effect accordingly.

20 (3) The amount is payable to the FAC subject to a condition that the amount is to be used by the FAC to discharge the loan.

(4) In this section:

outstanding amount, in relation to a loan and in relation to a particular time, means the principal amount of the loan, together with any accrued interest, outstanding at that time.

25 Appropriation of Consolidated Revenue Fund

69. The Consolidated Revenue Fund is appropriated for the purposes of this Division.

PART 11—PROSECUTIONS**Simplified outline**

70. The following is a simplified outline of this Part:

- If the Commonwealth sells its shares in an airport-lessee company, the Director of Public Prosecutions can continue to deal with matters that occurred when the company was owned by the Commonwealth.

Continuing application of the *Director of Public***5 *Prosecutions Act 1983***

71.(1) This section applies to an airport-lessee company if the company was granted an airport lease under section 20.

10 (2) If the *Director of Public Prosecutions Act 1983* ceases to apply to particular acts, omissions or proceedings in connection with an airport-lessee company at the company's sale time because the company ceases to be an authority of the Commonwealth for the purposes of that Act at that time, then, despite that cessation, that Act continues to apply in relation to:

- 15 (a) acts or omissions that occurred in relation to the company before the company's sale time; and
- (b) civil remedies in respect of relevant matters relating to acts or omissions referred to in paragraph (a).

(3) In this section:

20 ***relevant matter*** has the same meaning as in the *Director of Public Prosecutions Act 1983*.

PART 12—AIRPORT-LESSEE COMPANY NOT TO BE AN AGENCY OF THE COMMONWEALTH ETC.

Simplified outline

72. The following is a simplified outline of this Part:

- If a Commonwealth-owned company is granted an airport lease, the company is not treated as an agency of the Commonwealth.

5 Airport-lessee company not to be an agency of the Commonwealth etc.

73.(1) This section applies to an airport-lessee company if the company was granted an airport lease under section 20.

10 (2) The airport-lessee company is not taken, for the purposes of a law, to be:

- (a) a Commonwealth authority; or
 - (b) established for a public purpose or for a purpose of the Commonwealth; or
 - (c) a public authority or an agency or instrumentality of the Crown;
- 15 unless a law expressly provides otherwise.**

(3) In this section:

law means:

- (a) an Act of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument made under such an Act.

PART 13—MISCELLANEOUS**Simplified outline**

74. The following is a simplified outline of this Part:

- In order to provide a constitutional safety-net, compensation is payable in the event that the operation of this Act results in the acquisition of property otherwise than on just terms.

Commonwealth records may only be transferred or otherwise dealt with in accordance with the provisions of the *Archives Act 1983*.

This Act does not authorise the imposition of taxation.

Regulations may be made for the purposes of this Act.

Compensation—constitutional safety-net

5 75.(1) If:

- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

10 (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

15 (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

20 *just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

Commonwealth records

25 76. This Act does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.

Act does not authorise the imposition of taxation

77. This Act does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

Regulations

30 78. 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.

**PART 14—AMENDMENTS OF THE FEDERAL AIRPORTS
CORPORATION ACT 1986**

Amendments

5 **79.** The *Federal Airports Corporation Act 1986* is amended as set out
in Schedule 4.

SCHEDULE 1

Section 58

LONG SERVICE LEAVE

Scope of Schedule

1.(1) This Schedule applies in relation to an airport-lessee company if the company was granted an airport lease under section 20 or 21.

(2) This Schedule applies to an employee of an airport-lessee company if the employee was transferred to the company under section 53.

Definitions

2.(1) Unless the contrary intention appears, expressions used in this Schedule that are also used in the Long Service Leave Act have the same meaning as in that Act.

(2) In this Schedule:

combined service period, in relation to an employee, means the total of:

- (a) the period that was, immediately before the employee's transfer time, the employee's period of service for the purposes of the Long Service Leave Act; and
- (b) the period starting at the employee's transfer time during which the employee continues to be an employee of the company.

future long service leave rights, in relation to an employee, means any long service leave rights the employee acquires under an award, determination, industrial agreement or law (other than this Act) after the employee's transfer time in relation to service after that time.

law means:

- (a) a law of the Commonwealth, a State or a Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

Long Service Leave Act has the meaning given by clause 3.

References to Long Service Leave Act

3. For the purposes of the application of this Schedule to a particular employee, a reference in this Schedule to the Long Service Leave Act is a reference to the *Long Service Leave (Commonwealth Employees) Act 1976* as in force immediately before the employee's transfer time.

SCHEDULE 1—continued**Long service leave for employees with less than 10 years service****SUMMARY OF CLAUSE**

This clause provides that, in certain circumstances, an airport-lessee company may grant long service leave to an employee whose period of service for the purposes of the Long Service Leave Act was less than 10 years.

4.(1) This clause applies in relation to an employee if, at the employee's transfer time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) This clause does not apply in relation to an employee who dies while in the employment of an airport-lessee company. Clause 6 covers such employees.

(3) If the employee continues to be employed by an airport-lessee company after the employee's transfer time until his or her combined service period is at least 10 years, the company may grant the employee long service leave on full salary for a period up to the employee's long service leave credit under subclause 7(1).

(4) If:

(a) the employee stops being an employee of an airport-lessee company on or after reaching the minimum retirement age, or because of retrenchment; and

(b) the employee's combined service period at the time when he or she stops being an employee of the company is at least one year;

the company may grant the employee long service leave on full salary for a period of up to the employee's long service leave credit under subclause 7(1).

(5) If a period of long service leave may be granted to an employee under subclause (3) or (4), the company may, if the employee asks in writing, grant the employee long service leave on half salary for a period that is not more than twice the first-mentioned period.

(6) Long service leave granted in the circumstances set out in subclause (4) is to be taken so as to end immediately before the employee stops being an employee.

(7) For the purposes of this clause, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:

(a) that section applied to the employee; and

SCHEDULE 1—continued

- (b) for the expression “section 16 or 17” in that section there were substituted the expression “clause 4 of Schedule 1 to the *Airports (Transitional) Act 1995*”.

Payments in lieu of long service leave for employees with less than 10 years service

SUMMARY OF CLAUSE

This clause provides that, in certain circumstances, an airport-lessee company must pay an amount in respect of long service leave to an employee who has not used all of his or her long service leave credit by taking long service leave under clause 4.

5.(1) This clause applies in relation to an employee if, at the employee’s transfer time, the employee’s period of service for the purposes of the Long Service Leave Act was less than 10 years.

(2) This clause does not apply in relation to an employee who dies while in the employment of an airport-lessee company. Clause 6 covers such employees.

(3) Subject to subclause (6), if the employee stops being an employee of an airport-lessee company on or after the day on which his or her combined service period reaches 10 years, the company must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subclause 7(2).

(4) Subject to subclause (6), if:

(a) at a particular time, the employee stops being an employee of an airport-lessee company on or after reaching the minimum retiring age, or because of retrenchment; and

(b) at that time, the employee’s combined service period is at least one year;

the company must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subclause 7(2).

(5) Subject to subclause (6), if:

(a) the employee stops being an employee of an airport-lessee company; and

(b) the company is satisfied that the employee left the company because of ill-health that justified his or her so leaving; and

SCHEDULE 1—continued

- (c) when the employee left, his or her combined service period was at least one year;

the company must pay him or her an amount equal to full salary in respect of his or her long service leave credit under subclause 7(2).

(6) An employee may, by written notice given to an airport-lessee company before the employee stops being an employee of the company:

- (a) request the company not to make a payment to the employee under this clause; or
- (b) request the company to make a payment under subclause (3), (4) or (5) of a stated amount that is less than the amount that would otherwise be payable under that subclause.

(7) The company must comply with a request made under subclause (6).

(8) For the purposes of this clause, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression “sections 16 and 17” in that section there were substituted the expression “clause 5 of Schedule 1 to the *Airports (Transitional) Act 1995*”.

Payments on the death of an employee**SUMMARY OF CLAUSE**

This clause applies in relation to an employee if, at the employee's transfer time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years.

6.(1) If, after the employee's transfer time, the employee dies and immediately before his or her death:

- (a) the employee was an employee of an airport-lessee company; and
- (b) the employee's combined service period was at least one year; and
- (c) the employee had one or more dependants;

the company must make a payment to a dependant or to 2 or more dependants of the employee.

(2) The total amount of the payment or payments is the amount that would have been payable to the employee under clause 5 if, on the day of his or her death, the employee had stopped being an employee of the company on or after reaching the minimum retiring age.

SCHEDULE 1—continued

(3) If subclause (1) applies, section 23 of the Long Service Leave Act has effect as if:

- (a) that section applied to an employee of an airport-lessee company; and
- (b) a reference in that section to the approving authority were a reference to the company; and
- (c) for the expression “this Act” in that section there were substituted the expression “clause 6 of Schedule 1 to the *Airports (Transitional) Act 1995*”; and
- (d) for the expression “subsection 16(7) or 17(5)” in that section there were substituted the expression “clause 6 of Schedule 1 to the *Airports (Transitional) Act 1995*”.

Employee’s long service leave credit for the purposes of clauses 4 and 5

7.(1) For the purposes of clause 4, an employee’s long service leave credit is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:

- (a) starting when the employee started his or her period of service; and
- (b) ending at the employee’s transfer time;

if the employee had been retrenched at the employee’s transfer time.

(2) For the purposes of clause 5, an employee’s long service leave credit is the employee’s long service leave credit worked out under subclause (1) of this clause, reduced by any long service leave credit used under clause 4.

Schedule not to affect an employee’s future long service leave rights

8. To avoid doubt, it is declared that this Schedule does not affect an employee’s future long service leave rights.

Saving—Long Service Leave Act

9.(1) This clause applies to an employee who, immediately before the employee’s transfer time, was an employee of the FAC whose period of service under the Long Service Leave Act was at least 10 years.

(2) Even though the employee ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee’s accrued rights under that Act continue if the employee becomes an employee of an airport-lessee company at the employee’s transfer time. However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.

SCHEDULE 1—continued

(3) The Long Service Leave Act has effect after the employee's transfer time as if the company were an approving authority for the purposes of that Act.

SCHEDULE 2

Section 59

SUPERANNUATION

PART 1—WHEN THIS SCHEDULE APPLIES

When this Schedule applies

1. This Schedule applies to an airport-lessee company if:
 - (a) the company was granted an airport lease under section 20; or
 - (b) the company was granted an airport lease under section 21 and, at any time before the grant of the lease, a majority of the voting shares in the company were held by:
 - (i) the Commonwealth; or
 - (ii) a nominee of the Commonwealth.

SCHEDULE 2—continued**PART 2—SUPERANNUATION SCHEMES*****Division 1—Transfer of staff from the FAC*****Commonwealth-owned airport-lessee companies**

2. For the purposes of this Division, an airport-lessee company is ***Commonwealth-owned*** at a particular time if, and only if, that time is before the company's sale time.

Deferred benefits under the Defence Force Retirement and Death Benefits Act 1973

3.(1) This clause applies in relation to an employee of a Commonwealth-owned airport-lessee company (the ***current company***) if:

- (a) the employee was transferred to the current company, or any other company, under section 53; and
- (b) immediately before the employee's transfer time, the employee was a person to whom deferred benefits were applicable under section 78 of the *Defence Force Retirement and Death Benefits Act 1973*; and
- (c) either:
 - (i) since the employee's transfer time, the employee has been continuously employed by the current company; or
 - (ii) throughout the period beginning at the employee's transfer time and ending immediately before the time when the employee last became an employee of the current company, each employer of the employee was a Commonwealth-owned airport-lessee company.

(2) For the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*, the employee is taken to continue in public employment until:

- (a) the employee ceases to be employed by the current company; or
- (b) the sale time for the current company;

whichever comes first.

(3) Subclause (2) is subject to Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

(4) This clause does not prevent Division 2 of this Part from applying to the employee.

Note: Division 2 deals with the employee's position after the sale time for the current company.

Period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*

4.(1) This clause applies in relation to an employee of a Commonwealth-owned airport-lessee company (the ***current company***) if:

SCHEDULE 2—continued

- (a) the employee was transferred to the current company, or any other company, under section 53; and
 - (b) immediately before the employee's transfer time, a particular period of employment of the employee by the FAC was a period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.
- (2) The period of employment continues to be a period of eligible employment for the purposes of that Division.

Division 2—Sale of airport-lessee companies owned by the Commonwealth

Deferred benefits under the *Defence Force Retirement and Death Benefits Act 1973*

5.(1) This clause applies in relation to an airport-lessee company if, immediately before the company's sale time, an employee of the company was a person to whom deferred benefits were applicable under section 78 of the *Defence Force Retirement and Death Benefits Act 1973*.

(2) For the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*, the employee is taken to continue in public employment, after the company's sale time, while the employee continues to be employed by the company.

(3) This clause is subject to Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

Period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*

6.(1) This clause applies in relation to an airport-lessee company if, immediately before the company's sale time, a particular period of employment of a person by the company was a period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

(2) If employment by the company ceases to be eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973* at the company's sale time, then, despite that cessation, the period of employment continues to be a period of eligible employment for the purposes of that Division.

SCHEDULE 2—continued***Division 3—Transfer of staff to airport-lessee companies that are not owned by the Commonwealth******Deferred benefits under the Defence Force Retirement and Death Benefits Act 1973***

7.(1) This clause applies in relation to an employee of an airport-lessee company if:

- (a) the employee was transferred to the company under section 53; and
- (b) the employee's transfer time occurred immediately after the company's sale time; and
- (c) immediately before the employee's transfer time, the employee was a person to whom deferred benefits were applicable under section 78 of the *Defence Force Retirement and Death Benefits Act 1973*.

(2) For the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*, the employee is taken to continue in public employment, after the employee's transfer time, while the employee continues to be employed by the company.

(3) This clause is subject to Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

Period of eligible employment for the purposes of Division 3 of Part IX of the Defence Force Retirement and Death Benefits Act 1973

8.(1) This clause applies in relation to an employee of an airport-lessee company if:

- (a) the employee was transferred to the company under section 53; and
- (b) the employee's transfer time occurred immediately after the company's sale time; and
- (c) immediately before the employee's transfer time, a particular period of employment of the employee was a period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

(2) For the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*, a particular period of employment that begins at the employee's transfer time continues to be a period of eligible employment for the purposes of that Division, so long as the period of employment is a period of employment by the company.

SCHEDULE 2—continued

**PART 3—THE CRIMES (SUPERANNUATION BENEFITS)
ACT 1989**

**Continuing application of the *Crimes (Superannuation Benefits)*
Act 1989**

Continuing application of Act

9.(1) Subject to subclause (2), if a person who was an employee of an airport-lessee company before the company's sale time committed a corruption offence while such an employee, then, after the company's sale time, the *Crimes (Superannuation Benefits) Act 1989* continues to apply in relation to the person in respect of the offence as if the company continued to be a Commonwealth authority.

Limitation on superannuation orders

(2) A superannuation order may not be made under the *Crimes (Superannuation Benefits) Act 1989* in relation to employer contributions or benefits paid or payable to a superannuation scheme by an airport-lessee company after the company's sale time.

Superannuation schemes

(3) A superannuation scheme in relation to which employer contributions or benefits are paid or payable by an airport-lessee company after the company's sale time is not a superannuation scheme for the purposes of the application of the *Crimes (Superannuation Benefits) Act 1989* to a corruption offence committed by a person after the company's sale time.

Paragraph 19(3)(d) orders

(4) Despite paragraph 19(3)(d) of the *Crimes (Superannuation Benefits) Act 1989*, for the purposes of the application of that Act to an airport-lessee company, an order made under that paragraph after the company's sale time may only specify that an amount paid into the Consolidated Revenue Fund before the company's sale time by or on behalf of the company belongs to the Commonwealth.

Paragraph 19(4)(b) orders

(5) If:

(a) a person who was an employee of an airport-lessee company before the company's sale time committed a corruption offence while such an employee; and

(b) the person was paid benefits before or after the company's sale time out of the Consolidated Revenue Fund;

then, despite paragraph 19(4)(b) of the *Crimes (Superannuation Benefits) Act 1989*, for the purposes of the application of that Act to the corruption

SCHEDULE 2—continued

offence, an order made under that paragraph after the company's sale time may only specify that an amount equal to the total benefits paid out of the Consolidated Revenue Fund be paid to the Commonwealth.

Interpretation

(6) Unless the contrary intention appears, an expression used in this clause that is also used in the *Crimes (Superannuation Benefits) Act 1989* has the same meaning in this clause as it has in that Act.

SCHEDULE 2—continued

PART 4—THE SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) ACT 1990

An airport-lessee company is not to be an eligible or relevant body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*

Eligible body notice

10.(1) A notice published in the *Gazette* before an airport-lessee company's sale time that declares the company to be an eligible body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* has effect, after the company's sale time, as if the notice did not contain a reference to the company.

Relevant body notice

(2) A notice published in the *Gazette* before an airport-lessee company's sale time that declares the company to be a relevant body for the purposes of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* has effect, after the company's sale time, as if the notice did not contain a reference to the company.

Amendment or revocation of notice

(3) Subclauses (1) and (2) do not prevent a declaration affected by either of those subclauses from being amended or revoked by the Minister.

Definition

(4) In this clause:

Minister has the same meaning as in the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

$$w^2$$

$$w^2 = 1$$

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$$w^2$$

$$w^2$$

$$w^2 = 1$$

$$w^2$$

$$w^2 = 1$$

$$w^2 = 1$$

$$w^2$$

SCHEDULE 3

Section 60

SAFETY, REHABILITATION AND COMPENSATION ACT 1988

Definitions

1. Unless the contrary intention appears, expressions used in this Schedule that are also used in the *Safety, Rehabilitation and Compensation Act 1988* have the same meanings as in that Act.

SRC Act continues to apply to transferred employees

2.(1) This clause applies to a transferred employee.

(2) The *Safety, Rehabilitation and Compensation Act 1988* continues to apply, after the employee's transfer time, in relation to:

- (a) injuries suffered by the employee before the employee's transfer time; and
- (b) loss of, or damage to, property incurred by the employee before the employee's transfer time.

Commonwealth liable to meet certain SRC Act liabilities and is taken to be the employer in certain circumstances under the SRC Act

3.(1) This clause applies to a transferred employee.

(2) After the employee's transfer time, the Commonwealth:

- (a) is liable to pay the liabilities of the FAC under section 128A of the *Safety, Rehabilitation and Compensation Act 1988*, in so far as they relate to the employee; and
- (b) is taken to have been the employee's employer before the employee's transfer time for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*.

(3) Paragraph (2)(b) has effect subject to clauses 5 and 6.

Airport-lessee company to co-operate with the Commonwealth

4. After the employee's transfer time, the airport-lessee company concerned must provide such reasonable co-operation and assistance as the Commonwealth requires to enable the Commonwealth to fulfil its obligations under sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 40 of the SRC Act

5. After the employee's transfer time, the airport-lessee company concerned is taken to be the relevant employer of the employee for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*.

SCHEDULE 3—continued**Section 71 of the SRC Act**

6. After the employee's transfer time, the airport-lessee company concerned is taken to be a Commonwealth authority for the purposes of section 71 of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 108C of the SRC Act

7. This Act does not prevent section 108C of the *Safety, Rehabilitation and Compensation Act 1988* from applying to an airport-lessee company.

SCHEDULE 4

Section 79

**AMENDMENTS OF THE FEDERAL AIRPORTS CORPORATION
ACT 1986**

1. After paragraph 6(b):

Insert:

“(ba) on its own initiative or when requested in writing by a Minister to do so, to assist the Commonwealth and other persons in connection with the implementation of the *Airports (Transitional) Act 1995*; and”.

2. After subsection 7(2):

Insert:

“(2A) Subsection (2) does not apply to the function conferred by paragraph 6(ba).”.

3. Before paragraph 42(1A)(a):

Insert:

“(aa) the direction is given after the commencement of the *Airports (Transitional) Act 1995*; or”.

