

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1984

(*Minister for Aviation*)

A BILL

FOR

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

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

Short title, &c.

5 **1. (1)** This Act may be cited as the *Australian National Airlines Amendment Act 1984*.

(2) The *Australian National Airlines Act 1945*¹ is in this Act referred to as the Principal Act.

Commencement

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

Interpretation

3. (1) Section 4 of the Principal Act is amended—

(a) by omitting the definition of “Acting Commissioner”;

- (b) by omitting the definition of “approved bank” and substituting the following definition:

“‘approved bank’ means a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank declared by the Treasurer or a person authorized by the Treasurer to give approvals for the purposes of this definition to be an approved bank;”;

- (c) by omitting “and includes an Acting Commissioner” from the definition of “Commissioner”;

- (d) by omitting the definition of “interstate airline service”;

- (e) by omitting the definition of “Territorial airline service” and substituting the following definition:

“‘securities’ includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;”;

- (f) by omitting “, and includes a Commissioner acting as Chairman under section 10” from the definition of “the Chairman”;

- (g) by omitting “, and includes a Commissioner appointed under section 10 to act as the Vice-Chairman” from the definition of “the Vice-Chairman”; and

- (h) by adding at the end thereof the following sub-section:

“(2) In this Act, a reference to dealing with securities shall be read as including a reference to—

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

(2) A bank that was, immediately before the commencement of this section, an approved bank for the purposes of the Principal Act shall, after that commencement, be deemed to be an approved bank for the purposes of the Principal Act as amended by this Act as if the Treasurer had declared that bank to be an approved bank pursuant to the definition of “approved bank” in section 4 of the Principal Act as amended by this Act.

Composition of Commission

4. Section 7 of the Principal Act is amended by omitting from sub-section (1) “7” and substituting “not less than 7 and not more than 9”.

5. (1) Section 10 of the Principal Act is repealed and the following sections are substituted:

Acting Chairman and Vice-Chairman

5 “10. (1) Where the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the functions and duties of his office, or there is a vacancy in the office of Chairman, the Vice-Chairman shall act as Chairman during the absence or inability or until the filling of the vacancy, as the case may be, and while so acting has and may exercise all the powers, and shall perform all the functions and duties, of the Chairman.

10 “(2) A reference in sub-section (1) to the Vice-Chairman shall, if a Commissioner is acting as Vice-Chairman, be read as including a reference to the Commissioner so acting.

“(3) The Commission may appoint a Commissioner to act as Vice-Chairman—

15 (a) during a vacancy in the office of Vice-Chairman; or

(b) during any period, or during all periods, when the Vice-Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the functions and duties of his office,

20 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(4) An appointment of a Commissioner under sub-section (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

25 “(5) The Commission may terminate an appointment of a Commissioner under sub-section (3) at any time.

30 “(6) Where a Commissioner is acting as Vice-Chairman pursuant to an appointment made in accordance with paragraph (3) (b) and the office of Vice-Chairman becomes vacant while that Commissioner is so acting, then, subject to sub-section (4), that Commissioner may continue so to act until the Commission otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(7) The appointment of a Commissioner to act as Vice-Chairman ceases to have effect if he ceases to be a Commissioner.

35 “(8) While a Commissioner is acting as Vice-Chairman, he has and may exercise all the powers, and shall perform all the functions and duties, of the Vice-Chairman under this Act.

“(9) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for him to act had not arisen or had ceased.

40 “(10) The validity of anything done by a person purporting to act pursuant to an appointment made under sub-section (3) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is

a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Acting Commissioners

“10A. (1) The Minister may appoint a person to act as a Commissioner— 5

- (a) during a vacancy in an office of Commissioner; or
- (b) during any period, or during all periods, when a Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions and duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months. 10

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(3) The Minister may— 15

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a Commissioner; and
- (b) terminate such an appointment at any time.

“(4) Where a person is acting as a Commissioner pursuant to an appointment made under paragraph (1) (b) and that office of Commissioner becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens. 20 25

“(5) The appointment of a person to act as a Commissioner ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

“(6) While a person is acting as a Commissioner, he has and may exercise all the powers, and shall perform all the functions and duties, of a Commissioner under this Act. 30

“(7) The validity of anything done by a person purporting to act pursuant to an appointment made under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.”. 35

(2) A person who, immediately before the commencement of this Act, was acting as a Commissioner pursuant to an appointment made under sub-section 10 (1) of the Principal Act shall continue to act as a Commissioner until the 40

expiration of the period for which he was appointed under that sub-section of that Act—

- (a) as if he were acting as a Commissioner pursuant to an appointment made under sub-section 10A (1) of the Principal Act as amended by this Act; and
- (b) on the same terms and conditions on which he was acting as a Commissioner immediately before the commencement of this Act.

(3) A Commissioner who, immediately before the commencement of this Act, was acting as Vice-Chairman pursuant to an appointment made under sub-section 10 (3) of the Principal Act shall continue to act as Vice-Chairman until the expiration of the period for which he was appointed under that sub-section of that Act as if he were acting as Vice-Chairman pursuant to an appointment made under sub-section 10 (3) of the Principal Act as amended by this Act.

6. Section 13 of the Principal Act is repealed and the following section is substituted:

Resignation of Commissioners

“13. A Commissioner may resign his office by writing signed by him and delivered to the Governor-General.”.

Vacation of office

7. Section 14 of the Principal Act is amended—

- (a) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) without reasonable excuse, fails to comply with his obligations under sub-section (2) or (3),”;

- (b) by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

“(3) A disclosure under sub-section (2) shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not, unless the Commission otherwise determines—

- (a) be present during any deliberation of the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

“(3A) For the purpose of the making of a determination by the Commission under sub-section (3) in relation to a Commissioner who has made a disclosure under sub-section (2), a Commissioner who has

a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or
- (b) take part in the making by the Commission of the determination.”

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Meetings of Commission

8. Section 15 of the Principal Act is amended—

- (a) by omitting from sub-section (7) “3” and substituting “4”; and
- (b) by adding at the end thereof the following sub-section:

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“(12) In this section, a reference to the Chairman, the Vice-Chairman or a Commissioner shall be read as including a reference to a person acting as the Chairman, the Vice-Chairman or a Commissioner, as the case may be.”

9. (1) Section 16 of the Principal Act is repealed and the following section is substituted:

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Delegation

“16. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person all or any of its powers under this Act, other than this power of delegation.

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

“(3) A delegation under this section does not prevent the exercise of a power by the Commission.”

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(2) A delegation under section 16 of the Principal Act that was in force immediately before the commencement of this Act shall, subject to the Principal Act as amended by this Act, continue to have effect as if it had been made under section 16 of the Principal Act as amended by this Act.

Appointment of officers

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10. Section 17 of the Principal Act is amended by omitting sub-sections (2), (3), (4), (5), (7) and (8) and substituting the following sub-section:

“(2) The terms and conditions of employment of persons appointed under sub-section (1) (other than the terms and conditions relating to the remuneration and allowances of the general manager) are as determined by the Commission.”

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Repeal of section 17A

11. Section 17A of the Principal Act is repealed.

Powers of Commission by virtue of matters referred by State Parliaments, &c.

12. Section 19A of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-section:

5 “(2) The Commission shall not, pursuant to the powers conferred on it by sub-section (1D), transport passengers or goods for reward by air between a place in a State and another place in that State otherwise than in accordance with any law of that State applicable to that transport.”

Powers of Commission

10 13. Section 19H of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) The Commission shall not, without the approval of the Minister, exercise its powers under sub-section (1) to—

- 15 (a) arrange for, or participate in, the formation of a body corporate in a case where the Commission would have the effective control of the operations of that body corporate; or
- (b) subscribe for, or otherwise acquire, shares in a body corporate where that subscription or acquisition would result in the Commission having the effective control of the operations of that body corporate.”

Power to purchase and dispose of assets

20 14. Section 21 of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) The Commission shall not, without the approval of the Minister—

- 25 (a) acquire or dispose of any real property or lease or take on lease any real property for a consideration exceeding in amount or value \$5,000,000 or, if a higher amount is prescribed, that higher amount;
- 30 (b) enter into a contract or arrangement (not being a contract to which paragraph (a) applies) under which the Commission is to pay or receive an amount exceeding \$2,000,000 or, if a higher amount is prescribed, that higher amount; or
- 35 (c) enter into a contract giving a guarantee in respect of a borrowing or other raising of money by another person, being a contract under which the Commission may become liable to pay an amount exceeding \$2,000,000 or, if a higher amount is prescribed, that higher amount.”; and

- (b) by omitting sub-section (3) and substituting the following sub-sections:

40 “(3) The reference in paragraph (2) (b) to a contract does not include a reference to a contract for the carriage of passengers or goods by the Commission.

“(4) An approval for the purposes of paragraph (2) (a) or (b) may be given in relation to a particular transaction or in relation to transactions included in a class of transactions.”.

Directions to Commission in relation to services

15. Section 25 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections: 5

“(2) Where—

(a) the Commission establishes, alters or continues to maintain a transport service in accordance with a direction given by the Minister under sub-section (1); and 10

(b) the Commission satisfies the Minister that the transport service so established, altered or continued to be maintained, as the case may be, has operated at a loss in any financial year,

the Commission is entitled to be reimbursed by the Commonwealth to the extent of the loss. 15

“(3) The Minister shall cause a copy of any direction given by him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given by him.”.

Capital of Commission

16. Section 30 of the Principal Act is amended— 20

(a) by omitting from paragraph (a) “and”;

(b) by inserting in paragraph (b) “, before the commencement of the *Australian National Airlines Amendment Act 1984*,” after “Parliament”;

(c) by inserting after paragraph (b) the following word and paragraph: 25

“; and (c) the amounts paid to the Commission by the Minister for Finance out of moneys appropriated by the Parliament for the purposes of providing further capital for the Commission pursuant to a request made by the Commission under sub-section (2),” and 30

(d) by adding at the end thereof the following sub-section:

“(2) Where, in the opinion of the Commission, the capital of the Commission should be increased in order to enable the functions of the Commission to be conducted on an efficient, competitive and profitable basis, the Commission may, by notice in writing given to the Minister, request the Commonwealth to provide, as further capital for the Commission, an amount specified in the notice.”. 35

Repayment of capital

17. Section 30A of the Principal Act is amended—

(a) by omitting sub-section (1); and 40

(b) by omitting from sub-section (3) “sub-section (1) or”.

18. (1) Sections 31, 31A and 32 of the Principal Act are repealed and the following sections are substituted:

Borrowing from Commonwealth

5 “31. The Minister for Finance may, on behalf of the Commonwealth, out of moneys appropriated by the Parliament for the purpose, lend money to the Commission on such terms and conditions as the Minister for Finance, by instrument in writing, determines.

Borrowings otherwise than from Commonwealth

10 “32. (1) The Commission may, with the approval of the Treasurer—

- (a) borrow money otherwise than from the Commonwealth; or
- (b) raise money otherwise than by borrowing,

on such terms and conditions as are specified in the approval.

15 “(2) Without limiting the generality of sub-section (1), the Commission may, under that sub-section, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

“(3) A borrowing of money, or a raising of money otherwise than by borrowing, under sub-section (1) may be made, in whole or in part, in a currency other than Australian currency.

20 “(4) An approval may be given under sub-section (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

“(5) An approval under sub-section (1) shall be given by instrument in writing.

“(6) For the purposes of this section—

- 25 (a) the issue by the Commission of an instrument acknowledging a debt in consideration of—
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit,

30 otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Commission shall be deemed to be a raising by the Commission, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

35 (b) the obtaining of credit by the Commission otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Commission shall be deemed to be a raising by the Commission, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

Guarantees

“32A. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract—

- (a) guaranteeing the repayment by the Commission of money borrowed under paragraph 32 (1) (a) and the payment by the Commission of interest (including any interest on that interest) on money so borrowed; or 5
- (b) guaranteeing the payment by the Commission of such amounts (including any interest) that the Commission is liable to pay with respect to money raised under paragraph 32 (1) (b) as are specified in the contract. 10

“(2) The Treasurer may, by instrument in writing, determine—

- (a) that the repayment by the Commission of money borrowed under paragraph 32 (1) (a), and the payment by the Commission of interest (including any interest on that interest) on money so borrowed, are guaranteed by the Commonwealth; or 15
- (b) that the payment by the Commission of such money (including any interest) that the Commission is liable to pay with respect to money raised under paragraph 32 (1) (b) as is specified in the determination is guaranteed by the Commonwealth, 20

and, where the Treasurer makes such a determination, the repayment of that money and the payment of that interest are, or the payment of that money is, by the force of this sub-section, guaranteed by the Commonwealth.

“(3) A contract may be entered into under sub-section (1), and a determination may be made under sub-section (2), in relation to a particular transaction or in relation to transactions included in a class of transactions. 25

“(4) A contract entered into under sub-section (1) may include—

- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia; or 30
- (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract.

Commission may give security 35

“32B. The Commission may give security over the whole or any part of its assets for—

- (a) the repayment by the Commission of money borrowed by the Commission under section 31 or paragraph 32 (1) (a) and the payment by the Commission of interest (including any interest on that interest) on money so borrowed; 40

- (b) the payment by the Commission of amounts (including any interest) that the Commission is liable to pay with respect to money raised by the Commission under paragraph 32 (1) (b); or
- 5 (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract entered into under sub-section 32A (1) or a determination made under sub-section 32A (2).

Borrowings not otherwise permitted

10 “32C. The Commission shall not borrow money, or raise money otherwise than by borrowing, except in accordance with sections 31 and 32.

Guarantee of borrowings by subsidiary of Commission

“32D. (1) This section applies to a borrowing by a body corporate (in this section referred to as a ‘relevant subsidiary’), being a body corporate that—

- 15 (a) is a wholly-owned subsidiary of the Commission; and
- (b) owns or operates, or is to own or operate, aircraft,
of money, whether in Australian currency or in a currency other than Australian currency, that has been or is to be expended in connection with the purchase by that relevant subsidiary of aircraft, being aircraft having a capacity of at least 90 passengers, or of spare parts or equipment for aircraft of that kind.

20 “(2) Subject to this section, the Treasurer may, on behalf of the Commonwealth, at the request of a relevant subsidiary, enter into a contract guaranteeing that the relevant subsidiary will fulfil its obligations arising out of a borrowing to which this section applies to repay so much of the money borrowed, and to pay so much of the interest (including any interest on that interest) on that money, as are specified in the contract.

“(3) For the purposes of the protection of the financial interests of the Commonwealth, the Treasurer shall not enter into a contract under sub-section (2) in respect of a borrowing by a relevant subsidiary unless—

- 30 (a) the Treasurer is satisfied that the terms and conditions of the borrowing are reasonable;
- (b) where the borrowing consists of, or includes, the issue of instruments—the issue of those instruments, and the form of those instruments, have been approved by the Treasurer;
- 35 (c) appropriate security to the satisfaction of the Treasurer is, or is to be, given to the Commonwealth over the goods to which the borrowing relates;
- (d) undertakings to the satisfaction of the Treasurer are given by that relevant subsidiary that the goods over which security is, or is to be, taken in accordance with paragraph (c)—
 - 40 (i) will be insured and kept insured to their full insurable value against all risks against which it is customary to insure;

- (ii) will not be sold or made the subject of a mortgage or charge having priority over the security given to the Commonwealth in respect of the contract of guarantee; and
- (iii) will not be taken out of Australia for a destination that is not in Australia except after the giving of such security as the Treasurer requires; 5
- (e) undertakings to the satisfaction of the Treasurer are given by that relevant subsidiary that, so long as the whole or any part of the amounts borrowed, or of any interest on those amounts, remains unpaid— 10
 - (i) officers of the Australian Public Service will have full access at all reasonable times to the financial accounts of that relevant subsidiary when authorized in writing by the Minister for that purpose; and
 - (ii) that relevant subsidiary will do everything within its power to ensure that the officers so authorized have similar access to the financial accounts of any body, whether corporate or unincorporate, in which that relevant subsidiary has, at any time, whether directly or indirectly, a controlling interest; 15
- (f) undertakings to the satisfaction of the Treasurer are given by that relevant subsidiary that any legal costs incurred by the Commonwealth in connection with the contract of guarantee will be met by that relevant subsidiary; and 20
- (g) such other conditions as the Treasurer thinks necessary are fulfilled.

“(4) Where the Treasurer enters into a contract under sub-section (2) in respect of a borrowing, the Treasurer shall cause to be laid before each House of the Parliament, within 15 sitting days of that House after the contract is entered into, a notice specifying the amount and term of the borrowing and such other information relating to the borrowing or the guarantee as the Treasurer considers appropriate. 25 30

“(5) For the purposes of this section—

- (a) the issue by a relevant subsidiary of instruments acknowledging a debt in consideration of the payment or deposit of money, or the provision of credit; or
 - (b) the obtaining of credit by a relevant subsidiary, 35
- shall, to the extent of the amount of that money or of that credit, as the case may be, be deemed to be a borrowing by that relevant subsidiary.

“(6) A contract entered into under sub-section (2) may include—

- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia; or 40
- (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a

country other than Australia in relation to any proceedings that may be taken under the contract.

5 “(7) For the purposes of sub-section (1), a body corporate is a wholly-owned subsidiary of the Commission if that body corporate is a subsidiary of the Commission and none of the members of that body corporate is a person other than—

(a) the Commission;

(b) a nominee of the Commission;

10 (c) a subsidiary of the Commission, being a subsidiary none of the members of which is a person other than the Commission or a nominee of the Commission; or

(d) a nominee of a subsidiary referred to in paragraph (c).

15 “(8) For the purposes of sub-section (7), the question whether a body corporate is a subsidiary of the Commission shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.

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

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

“(11) A delegate is, in the exercise of a power so delegated, subject to the directions of the Treasurer.

25 “(12) A delegation under sub-section (9) does not prevent the exercise of a power by the Treasurer.

Superannuation

30 “32E. (1) In this section, ‘eligible employee’ means an employee of the Commission who is an eligible employee for the purposes of the *Superannuation Act 1976*.

35 “(2) The Commission shall, before the expiration of 4 weeks after the commencement of this section and subsequently at intervals of not more than 4 weeks, pay to trustees approved by the Minister for Finance amounts representing provision for superannuation for employees of the Commission other than eligible employees.

“(3) The Commission shall, before the expiration of 2 weeks after the commencement of this section and subsequently at intervals of not more than 2

weeks, pay to the Commonwealth, in respect of each eligible employee, an amount calculated in accordance with the formula

$$\frac{A + B}{C},$$

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where—

A is the amount of the salary for superannuation purposes of the eligible employee;

B is the amount paid by the Commission to trustees under sub-section (2) in respect of an employee of the Commission (not being an eligible employee) who is a member of the ground staff of the Commission; and

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C is so much of the amount of the salary of that member of the ground staff as is taken into account for the purpose of determining the amount to be paid by the Commission to trustees under sub-section (2) in respect of that member of the ground staff.

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“(4) Section 159 of the *Superannuation Act 1976* and section 145 of the *Superannuation Act 1922* do not apply in relation to the Commission.

Financial policy

“32F. (1) The Commission shall, not later than 30 days before the commencement of each financial year—

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(a) determine, in writing, that the financial target of the Commission for the financial year is—

(i) a specified profit;

(ii) neither a profit nor a loss; or

(iii) a specified loss; and

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(b) inform the Minister, by notice in writing, of—

(i) the financial target that it has determined for the financial year; and

(ii) the amount estimated by the Commission to be the net worth of the Commission as at the end of the financial year.

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“(2) In making a determination under sub-section (1), the Commission shall have regard to—

(a) the need to ensure that the Commonwealth receives a reasonable return on the capital of the Commission from the operations of the Commission, being a return on capital of similar proportions to the return that could be expected to be received by a shareholder in a privately-owned air transport undertaking in Australia having a similar capital structure to that of the Commission;

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(b) the need to maintain, in real terms, the net worth of the Commission;

(c) the need to increase the reserves of the Commission to enable expansion of the Commission's operations; and

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(d) such other commercial considerations as the Commission thinks fit.

“(3) The Minister may, before the expiration of 30 days after the receipt by him of a notice of a determination made by the Commission under sub-section (1) in relation to a financial year—

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- (a) determine, in writing, a different financial target for the financial year; and
 - (b) inform the Commission, by notice in writing, of the financial target that he has determined for the financial year and the reasons for his determination.

10 “(4) In performing his functions under sub-section (3), the Minister shall have regard to—

- (a) the matters specified in paragraphs (2) (a), (b) and (c); and
- (b) such other commercial considerations as the Minister thinks fit.

15 “(5) Where the Minister gives a notice to the Commission under sub-section (3), the Minister shall cause a copy of that notice and a statement of the reasons for the decision to give that notice to be laid before each House of the Parliament within 15 sitting days of that House after the giving of the notice to the Commission.

“(6) As soon as practicable after the financial target for a financial year is finalized, the Commission shall—

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- (a) having regard to the policy that the Commission is required by sub-section (7) to pursue in that financial year, prepare estimates, in such form as the Minister directs, of its revenue and expenditure for that financial year; and
 - (b) submit those estimates to the Minister.

25 “(7) The Commission shall pursue a policy in each financial year directed towards ensuring that the Commission will attain, from its operations in that financial year—

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- (a) except in a case to which paragraph (b) applies—the financial target specified by the Commission in the notice given to the Minister under sub-section (1) in relation to that financial year; or
 - (b) if the Minister has given a notice to the Commission under sub-section (3) in relation to that financial year—the financial target specified by the Minister in that notice.

35 “(8) The Commission shall, in accordance with sub-section (9), review the financial results of its operations during the current financial year and if, upon any such review, the Commission finds that the revenue and expenditure of the Commission during the preceding part of the financial year have not been as favourable to the profitable conduct of the business of the Commission as those specified in the estimates submitted to the Minister, the Commission shall
40 forthwith consider what specific measures can be taken for the purpose of enabling the business of the Commission to be conducted more profitably during the remainder of that financial year and shall inform the Minister of the measures it proposes to adopt for that purpose and the effect that it considers

the adoption of those measures will have on the financial results of its operations.

“(9) A review under sub-section (8) shall be made whenever the Minister so directs or the Commission considers that circumstances so require, but so that not more than 6 months elapses in a financial year between—

- (a) the commencement of that financial year and the commencement of the first review under sub-section (8) in that financial year; or
- (b) the commencement of a review under that sub-section and the commencement of the next such review.

“(10) For the purposes of this section, a reference to the net worth of the Commission shall be read as a reference to the sum of—

- (a) the capital of the Commission;
- (b) the reserves of the Commission; and
- (c) any retained profits of the Commission.

Payments of dividends to the Commonwealth

“32G. (1) The Commission shall, before the expiration of 4 months after the end of each financial year, by notice in writing given to the Minister, recommend—

- (a) that the Commission pay to the Commonwealth, in relation to the operations of the Commission in that financial year, a dividend of an amount specified in the notice; or
- (b) that the Commission not pay a dividend to the Commonwealth for the financial year.

“(2) In making a recommendation under sub-section (1), the Commission shall have regard to—

- (a) the matters specified in paragraphs 32F (2) (a), (b) and (c); and
- (b) such other commercial considerations as the Commission thinks fit.

“(3) The Minister shall, before the expiration of 30 days after the receipt by him of a recommendation made by the Commission under sub-section (1) in relation to a financial year, give notice in writing to the Commission—

- (a) where the recommendation is that the Commission pay a dividend to the Commonwealth for the financial year—
 - (i) approve the recommendation; or
 - (ii) direct the Commission to pay a dividend of a different specified amount to the Commonwealth for the financial year; or
- (b) where the recommendation is that the Commission not pay a dividend to the Commonwealth for the financial year—
 - (i) approve the recommendation; or
 - (ii) direct the Commission to pay a dividend of a specified amount to the Commonwealth for the financial year.

“(4) In performing his functions under sub-section (3), the Minister shall have regard to—

- (a) the matters specified in paragraphs 32F (2) (a), (b) and (c); and
- (b) such other commercial considerations as the Minister thinks fit.

5 “(5) Where the Minister gives a notice to the Commission under sub-paragraph (3) (a) (ii) or (b) (ii), the Minister shall cause a copy of that notice and a statement of the reasons for the decision to give that notice to be laid before each House of the Parliament within 15 sitting days of that House after the giving of the notice to the Commission.

10 “(6) The Commission shall, before the expiration of 8 months after the end of each financial year, or within such further time as the Minister allows, pay to the Commonwealth—

- (a) except in a case to which paragraph (b) applies—the amount of the dividend specified in the notice given by the Commission under sub-section (1) in relation to that financial year; or
- 15 (b) if the Minister has given a notice to the Commission under sub-paragraph (3) (a) (ii) or (b) (ii) in relation to that financial year—the amount of the dividend specified in that notice.

20 “(7) A payment by the Commission to the Commonwealth under this section may be made—

- (a) out of the profits of the Commission for the financial year to which the payment relates;
- (b) out of the profits of the Commission for any preceding financial year; or
- 25 (c) partly out of the profits of the Commission for the financial year referred to in paragraph (a) and partly out of the profits of the Commission for any preceding financial year.

Commission to prepare, &c., long-term reports

30 “32H. The Commission shall, before the expiration of 60 days after the commencement of each financial year, prepare and give to the Minister a report setting out the Commission’s financial and operational targets, strategies and policies for the 3 years commencing at the commencement of that financial year.”

35 (2) Section 32G of the Principal Act as amended by this Act applies in relation to the payment of dividends by the Commission in relation to the operations of the Commission in respect of the financial year that commenced on 1 July 1983 and to subsequent financial years.

40 (3) Sections 32F and 32H of the Principal Act as amended by this Act apply in relation to the financial year commencing on 1 July 1984 and to subsequent financial years.

(4) Section 32F of the Principal Act as amended by this Act applies in relation to the financial year commencing on 1 July 1984 as if “not later than 30

days before the commencement of each financial year” were omitted from sub-section 32F (1) of that Act as so amended and “not later than 1 August 1984” were substituted.

(5) Section 32H of the Principal Act as amended by this Act applies in relation to the financial year commencing on 1 July 1984 as if the reference in that section to 60 days were a reference to 90 days. 5

(6) An approval given by the Minister for Finance under section 31A of the Principal Act continues to have effect after the commencement of this Act as if it had been given under section 32E of the Principal Act as amended by this Act. 10

(7) It is declared that the power of the Australian National Airlines Commission under the *Australian National Airlines Act 1945* to borrow moneys has always included a power to borrow moneys in a currency other than Australian currency.

Application of moneys 15

19. Section 34 of the Principal Act is amended by omitting from paragraph (2) (c) “Treasurer” and substituting “Minister”.

Insurance

20. Section 37A of the Principal Act is amended—

(a) by omitting sub-sections (3) and (4) and substituting the following sub-sections: 20

“(3) Subject to sub-sections (4A) and (4C), the Commission shall credit to the prescribed account such amounts as, in the opinion of the Commission, ensure that the amount from time to time standing to the credit of the prescribed account is sufficient for the purpose of making adequate provision against risks to which this section applies so far as those risks are not covered by insurance. 25

“(4) Subject to sub-sections (4A) and (4C), the Commission shall debit to the prescribed account—

(a) where the Commission suffers loss, not fully covered by insurance, by reason of a risk to which this section applies—such amount in respect of that loss as the Commission considers appropriate having regard to the provision made under this section in lieu of insurance against that risk; 30

(b) payments to the Commonwealth of interest upon any loan made to the Commission in accordance with sub-section (5); 35

(c) any loss incurred by the Commission upon the realization of securities representing moneys standing to the credit of the prescribed account;

(d) such amounts as, in the opinion of the Commission, are appropriate to make provision for expenses or other liabilities that have been or will be incurred by the Commission in 40

maintaining the prescribed account (including liability for so much of the income tax payable by the Commission as is attributable to income received by the Commission in respect of securities representing moneys standing to the credit of the prescribed account) or otherwise in or in connection with making provision against risks to which this section applies so far as they are not covered by insurance; and

(e) if, at any time, the Commission is of the opinion that—

(i) the amount standing to the credit of the prescribed account exceeds the amount necessary for the purpose of making adequate provision against risks to which this section applies, so far as they are not covered by insurance; and

(ii) the amount standing to the credit of the prescribed account can be appropriately reduced,

such amount, not exceeding the amount of the excess referred to in sub-paragraph (i), as the Commission thinks fit.

“(4A) The Commission shall, before—

(a) crediting an amount to the prescribed account pursuant to sub-section (3); or

(b) debiting an amount to the prescribed account pursuant to sub-section (4),

give notice in writing to the Minister stating that it proposes to credit or debit, as the case may be, to the prescribed account the amount specified in the notice.

“(4B) The Minister may, before the expiration of 30 days after the receipt by him of a notice given by the Commission under sub-section (4A), direct the Commission—

(a) in a case where the Commission has given a notice to the Minister under sub-section (4A) stating that it proposes to credit an amount specified in the notice to the prescribed account—

(i) not to credit that amount to the prescribed account; or

(ii) to credit to the prescribed account such other amount as the Minister determines; and

(b) in a case where the Commission has given a notice to the Minister under sub-section (4A) stating that it proposes to debit an amount specified in the notice to the prescribed account—

(i) not to debit that amount to the prescribed account; or

(ii) to debit to the prescribed account such other amount as the Minister determines.

“(4C) The Commission shall comply with any direction given by the Minister under sub-section (4B).

“(4D) If the Minister does not give notice to the Commission in accordance with sub-section (4B) in relation to an amount that the Commission proposes to credit or debit to the prescribed account the Commission shall credit or debit, as the case may be, that amount to the prescribed account.”;

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(b) by omitting from sub-section (5) “and notwithstanding sub-section 31 (5)”;

(c) by omitting sub-section (7) and substituting the following sub-section:

“(7) An amount debited to the prescribed account pursuant to paragraph (4) (e) shall be credited to such other account maintained by the Commission as the Commission thinks fit.”; and

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(d) by omitting sub-section (9).

Profits of Commission

21. Section 38 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-section:

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“(2) The profits of the Commission for a financial year shall be applied in the first place in payment of any amount payable by the Commission under section 32G and the balance, if any, shall be applied in such manner as the Commission determines.”.

Annual report of Commission

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22. Section 40 of the Principal Act is amended—

(a) by omitting from sub-section (1) “in such form as the Minister for Finance approves”; and

(b) by inserting after sub-section (1) the following sub-sections:

“(1AA) Before furnishing the financial statements to the Minister, the Commission shall submit them to the Minister for Finance.

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“(1AB) The Minister for Finance may, before the expiration of 21 days after receiving the financial statements, direct the Commission to alter the form of those statements.

“(1AC) The Commission shall comply with any direction given by the Minister for Finance under sub-section (1AB).

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23. Section 43 of the Principal Act is repealed and the following section is substituted:

Compliance with agreement

“43. Nothing in this Act shall be taken to affect, or authorize action inconsistent with, the obligations of the Commission under, or the provisions or purposes of, the agreement referred to in section 5 of the *Airlines Agreement Act 1981*.”.

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Damage to be made good in addition to penalty

24. Section 61 of the Principal Act is amended by inserting “or in a body corporate of the kind referred to in sub-section 32D (1)” after “the Commission”.

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Repeal of section 62

25. Section 62 of the Principal Act is repealed.

NOTE

1. No. 31, 1945, as amended. For previous amendments, see No. 90, 1947; No. 102, 1952; No. 105, 1956; No. 70, 1958; No. 3, 1959; No. 71, 1961; No. 93, 1966; No. 55, 1970; No. 130, 1972; Nos. 92 and 216, 1973; No. 56, 1975; No. 91, 1976; No. 36, 1978 and No. 28, 1980.



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