

1987

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE

AUSTRALIAN AIRLINES (CONVERSION TO PUBLIC COMPANY) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Gareth Evans, Q.C.)

OUTLINE

The aim of the Bill is to:

- . establish the airline as a public company;
- . provide for re-organisation of the airline into a more appropriate structure prior to incorporation; and
- . remove statutory controls on the airline's operations.

Establishment as a Public Company

The legislation will establish the airline as a company by providing for the Commission to be deemed to be a company incorporated in the ACT under the Companies Act 1981 on a day to be proclaimed. It is expected that the commencing day of the Company (ie the transition day) will be 31 March 1988.

Under the deeming approach, there is no change in the corporate entity and there is therefore no need:

- to transfer assets and liabilities from the Commission to a new body corporate;
- for novation of overseas contracts of the Commission, because there would be no new party to those contracts;
- to transfer any tax losses or the benefit of Capital Gains Tax exemptions for pre-20 September 1985 assets to a new corporation; or
- for any change to existing Commonwealth loan guarantees, which would remain in place.

Continuity of the corporate entity also means that all contracts, agreements and arrangements entered into by or on behalf of the Commission and which are in force immediately before transition including the 1981 Airlines Agreement, will apply to the deemed Company.

The deeming approach therefore avoids the administrative costs and time which would be involved in resolving these matters under alternative legislative approaches.

All the shares in the deemed company will be held either directly by the Commonwealth, or by a Commonwealth owned holding company.

The Bill provides that on transition, each staff member of the Commission will become an employee of the Company on the same terms and conditions as applied to his or her employment by the Commission. Entitlements such as long service and recreation leave, and eligibility for sick leave, will be preserved. There will be no entitlement to any payments in lieu of leave entitlements. The legislation enables the Company to become a 'prescribed authority' for purposes of the Compensation (Commonwealth Government Employees) Act 1971. Those staff who have rights under the repealed Officers Rights Declaration Act 1928, or Part IV of the Public Service Act 1922 will retain those rights.

On transition the company will become an "approved authority" for the purposes of the Superannuation Act 1976 and the existing provisions covering superannuation for staff who are members of the Commonwealth Superannuation Scheme (some 950 employees) will be maintained.

Re-organisation

The legislation provides for a re-organisation of the Commission prior to deeming. This will allow the Commission to establish a group structure which offers maximum operating flexibility. Although the final group structure has not been decided, it is expected to consist of a holding company, fully owned by the Commonwealth, and a number of operating subsidiaries. The Bill provides alternative ways in which this can be achieved.

For example the deemed company could assume the role of holding company following transfers of assets and staff to the appropriate subsidiaries. Alternatively, a new holding company could be incorporated by the Commonwealth and the deemed company would then become a subsidiary of this holding company which would undertake the major airline operations in the new group structure.

The Bill provides for transfers of assets and liabilities from the Commission to other companies within the group, as part of this re-organisation, and for any related transfer of shares, to be exempted from Commonwealth, State, and Territory taxes and duties, on the basis that there will be no change in beneficial ownership by the Commonwealth. The Bill restricts these exemptions to transfers related directly to the re-organisation which take place within the period between Royal Assent and the transition to the new Company.

The Bill will also ensure that the group re-organisation will be "tax neutral", with the overall taxation position of the group companies being the same as would otherwise have applied to the Commission and its existing subsidiaries.

In relation to staff transfers associated with the re-organisation, amendment of the appropriate provisions of applicable legislation enables new companies created before transition as part of the group re-organisation to also be covered by the provisions of the Compensation (Commonwealth Government Employees) Act 1971 and the Long Service Leave (Commonwealth Employees) Act 1976. Where existing employees of the Commission are contributors to the Commonwealth Superannuation Scheme or have rights relating to Public Service employment under the repealed Offices Rights Declaration Act 1928 and Part IV of the Public Service Act 1922, those rights and entitlements will also be preserved irrespective of transfer to any company in the group.

Controls

The legislation provides for removal of existing statutory controls on the airline which are embodied in the Australian National Airlines (ANA) Act 1945, through deletion of substantive sections of that Act. The removal of these statutory controls will occur at the time of deeming the airline to be a company. Any controls which the Government decides should remain over the airline will be specified in either the Memorandum and Articles of the new Company or in the Guidelines to Directors.

Other

The Bill provides for the retention of section 19A of the Australian National Airlines Act 1945 which is necessary to enable the Commonwealth to hold shares in a company operating intra-state air services in those States to which that section applies (currently Queensland, Tasmania and New South Wales). Legislation adopting section 19A has also recently been enacted by the Western Australian Parliament and is currently awaiting Royal Assent.

The Bill also ensures that a group company will be able to carry on business in all States and Territories under names which have been protected in accordance with provisions of the Bill.

FINANCIAL IMPACT STATEMENT

The Bill does not involve additional expenditure by the Commonwealth or additional revenue to the Commonwealth.

The Bill provides for exemption from Commonwealth, State and Territory taxes on transfer of assets as part of the proposed re-organisation of the airline, recognising there has been no change in the Commonwealth's beneficial ownership.

NOTES ON CLAUSES

PART I : PRELIMINARY

Clause 1: provides for the citation of the Act.

Clause 2: sub-clause (1) provides for the Act to come into operation on the day on which it receives Royal Assent.

Sub-clause (2) provides for deeming of the Company (clause 15) in the name of Australian Airlines Ltd (clause 16); repeal of most substantive Sections of the Australian National Airlines (ANA) Act (sub-clause 52(2)); application of Superannuation Acts (clause 60) and amendments of other Acts (sub-clause 69(2)) to come into effect on a day to be fixed by Proclamation.

Sub-clause (3) provides for sections of the ANA Act relating to capital to be repealed (sub-clause 52(1)) on the day after the transferring body issues shares in accordance with sub-clause 11(3).

Sub-clause (4) provides for sections 5 to 18 inclusive of the ANA Act to be repealed (sub-clause 52(3)) immediately after the deemed registration of the transferring body under the Companies Act (clause 15).

Clause 3: extends the Act to all external Territories.

Clause 4: provides for the Act to have effect despite anything in the ANA Act.

PART II : INTERPRETATION

Clause 5: defines terms used in the Act including group company, holding company, transition and re-organisation. Transition is the term which refers to the Commission becoming a company.

- Clause 6: provides for the Minister to nominate a company, all the shares in which are beneficially owned by the Commonwealth, to be the holding company for the group, as part of the re-organisation.
- Clause 7: for the purposes of re-organisation, defines "new group companies" to be bodies corporate which become part of the group between 1 January 1988 and the transition date.
- Clause 8: for the purposes of protection of company and business names, the clause specifies circumstances which establish whether a body is operating under a particular name in a State or Territory (see also clause 23).
- Clause 9: provides for the question of whether a body is a subsidiary to be resolved in the same manner as in the Companies Act 1981.

PART III : CAPITAL STRUCTURE OF THE AUSTRALIAN AIRLINES GROUP

- Clause 10: for the purpose of facilitating the re-organisation sub-clause (1) provides for the transferring body (Commission), before its transition to a company, to have share capital equal to the level of capital subscribed by the Commonwealth to the Commission (currently \$130M).
- Clause 11: sub-clauses (1), (2) and (3) provide for the transferring body (Commission) to issue fully paid up shares equal to its share capital, in accordance with the Minister's direction, to the Commonwealth or if applicable to the holding company created as part of the re-organisation.
- Sub-clauses (4) and (5) provide for this issue of shares to discharge the Commission's obligation under sub-section 30A(2) of the ANA Act to repay the capital subscribed by the Commonwealth.
- Clause 12: provides that if shares in the transferring body (Commission) are issued to the holding company, the holding company is to issue shares to the Commonwealth equal to the nominal value of the shares so issued.

- Clause 13: provides for the transferring body (Commission) during the re-organisation to be able to alter its share capital.
- Clause 14: this clause provides that if, as part of the re-organisation, a new holding company has been created and the transferring body (Commission) has issued paid up shares to the holding company in accordance with the Minister's direction (see sub-clause 11(3)), the Commission may transfer property, including shares in subsidiary companies, to the holding company. It also specifies that in these circumstances the Commission's share capital will be reduced by cancelling paid up shares issued to the holding company equivalent in value to the property transferred from the Commission to the holding Company.

PART IV : CONVERSION OF AUSTRALIAN AIRLINES TO PUBLIC COMPANY

- Clause 15: provides for the Commission to be converted to a public company by deeming the transferring body (Commission) to be eligible to apply for registration as a company, and deeming such an application to have been made and granted, thereby enabling the Commission to become a company registered in the ACT under the Companies Act 1981 with the name Australian Airlines Ltd.
- Clause 16: provides for the transferring body's (Commission's) name to be changed to Australian Airlines Ltd as if the change of name was effected under the Companies Act.
- Clause 17: provides for the Memorandum and Articles of Association of the deemed company, which are to be lodged with the Corporate Affairs Commission prior to transition, to be the Memorandum and Articles of the company and to apply from the transition as if they had been registered under the Companies Act 1981.
- Clause 18: provides for members holding shares in the transferring body (Commission) to also be members holding shares in the Company on transition.

- Clause 19: provides that if there is no group holding company, the Commonwealth may be the sole member (shareholder) of the deemed company. The effect of this sub-clause in combination with section 82 of the Companies Act is to dispense with the requirement that there must be at least 5 shareholders.
- Clause 20: provides for accounts and records kept under section 35 of the ANA Act to be deemed to be accounting records of the transferring body (the company) for the purposes of the Companies Act.
- Clause 21: provides that reports and financial statements prepared by the Commission in accordance with section 40 of the ANA Act are deemed to be profit and loss accounts of the transferring body (the company).
- Clause 22: provides that nothing in this Act affects, or is affected by, section 25B of the Acts Interpretation Act concerning the continued existence of a body whose name or constitution is altered by an Act of Parliament, as it applies in relation to the transferring body.

PART V : USE OF CERTAIN NAMES

- Clause 23 and 24: provide that a company or business name protected under the Bill (see clauses 25 and 26 below) may be used in a State and Territory, even if that name is not registered in the State or Territory.
- Clause 25 and 26: provide for protection of group company and business names from use by other persons, except where there are pre-existing rights to that use.
- Clause 27 and 28: allow use and registration of other names by the group.

PART VI : STAFF MATTERS

- Clause 29: provides for the general manager, officers and temporary and casual employees of the Commission immediately before the transition to be employed by the deemed company on the same terms and conditions on which they were employed immediately before the transition.

- Clause 30: provides that contracts of employment and periods of employment of staff members of the transferring body (Commission) are not broken by the operation of the Act, and accrued rights are not affected.
- Clause 31: a procedural clause clarifying that clauses 29 and 30 are inserted only for the avoidance of doubt.
- Clause 32: confirms that terms and conditions of each staff member's employment after transition may be varied in the same way as could be done by the Commission immediately before the transition under sections 17 or 18 of the ANA Act.
- Clause 33: provides for staff members of the Commission who have mobility rights under Part IV of the Public Service Act 1922 to continue to have those rights.

PART VII: TAXATION MATTERS

Division 1 - Exemption from Certain Taxes

- Clause 34 and 35: provide for exemption during the re-organisation from Commonwealth, State and Territory taxes for issues of shares; transfers of property and liabilities; the transferring body's (Commission's) deemed registration as a company; and change of name to Australian Airlines Ltd at transition.
- Clause 36: provides for certification by the Minister or person nominated by the Minister that specified transactions were made or instruments executed in relation to an exempt matter (see clause 34).

Division 2 - Application of Various Tax Act Provisions

- Clause 37: deems the transferring body (Commission) for the purposes of the Tax Act to have had, at all times before issuing of shares under sub-clause 11(3), a share capital, all the issued shares in which were beneficially owned by the Commonwealth.
- Clause 38: provides for the holding company to be dormant, within the meaning of the Companies Act, throughout the period beginning when it was incorporated and ending immediately before the shares are so issued.

Clause 39: provide for 'grandfathering' for tax purposes of
and 40 property transferred from the transferring body
(Commission) to new group companies by having such
transfers disregarded for the purposes of sections
25A and 26AAA of the Tax Act, and by deeming the
group Company to be and to have been the body which
owned the property immediately before the transfer.
Provide for similar 'grandfathering' for tax purposes
of any shares issued by the group company to the
transferring body, and for shares issued by the
transferring body to the holding company, in
consideration for the transfers.

**Division 3 - Investment Allowance Not Affected by Certain
Transactions**

Clause 41: interprets expressions in this Division to have the
same meaning as in the relevant Division of Part III
of the Tax Act.

Clause 42: disables the provision of the Tax Act which applies
to loss of investment allowance on disposal of
property within twelve months of first use or
installation ready for use in circumstances where
the property is disposed of from the transferring
body (Commission) to a new group company during the
re-organisation within that twelve month period.

Clause 43 provide that companies leasing property to the
and 44: transferring body (Commission) will not lose the
investment allowance on such property if the property
is transferred to a new group company as part of the
re-organisation, by deeming the new lease with the
new group company to be a continuation of the old
lease with the transferring body.

Division 4 - Application of Capital Gains Tax Provisions

Clauses 45 interpret the expressions in this Division to have
to 51: the same meaning as the relevant sections of the Tax
Act. Provide that shares issued to the
transferring body in consideration for pre-
20 September 1985 and post-19 September 1985 assets
which the transferring body (Commission) disposes

of to a group company as part of the re-organisation are deemed respectively to be pre-and post-September 1985 shares in respect of capital gains tax provisions relating to any later disposal of those shares. Makes similar provision for "grandfathering" of shares issued from the transferring body (Commission) to the holding company, if applicable.

PART VIII - AMENDMENTS OF THE AIRLINES ACT

Clause 52: sets out the sections of the ANA Act which are to be repealed.

Sub-Clause 52(1) which repeals sections 30 and 30A of the ANA Act comes into operation on the day after the issue of shares in the transferring body (Commission) to the Commonwealth or the holding company as applicable (see sub-clause 11(3)).

Sub-clause 52(2) which repeals all provisions of the ANA Act, except for sections 1, 5-18, 19A, 30 and 30A comes into operation on a day to be proclaimed (which will be the day of transition from the Commission to public company).

Sub-clause 52(3) which repeals sections 5-18 of the ANA Act comes into operation immediately after the deemed registration under the Companies Act (see clause 15).

Clause 53: provides for section 19A of the ANA Act to be amended by adding provisions which have the effect of making a reference to the Commission in sub-sections 19A(1D) and (2) to be a reference to a group company. The effect of this clause is to allow Australian Airlines Ltd and other group companies to operate intra-state air services in those States in which the Commission is able to operate intra-state air services.

Clause 54: provides for the adoption by State legislation enacted after the commencement of this clause, of sub-clause (2) which then would allow a group company to operate intra-state air services in that State, in accordance with sub-clause (4).

- Clause 55: provides for section 4 of the ANA Act (definition of terms) to continue to have effect for purposes of interpreting the continuing provisions of that Act.
- Clause 56: provides that judicial notice will continue to be taken of the seal of the Commission applied in relation to any document or notice prior to the transition.
- Clause 57: provides that the 2 year limit for commencement of action against the Commission in respect of any matter arising under the ANA Act will continue to apply in relation to such matter notwithstanding the repeal of provisions of the Act.
- Clause 58: provides for repeal of Regulations under the ANA Act.

PART IX : MISCELLANEOUS

- Clause 59: provides for compliance with the Airlines Agreement by specifically not authorising any action inconsistent with the transferring body's (Commission's) obligations under the Airlines Agreement Act 1981.
- Clause 60: provides that in respect of the Commonwealth Superannuation Scheme (CSS) the transferring body (Commission/Company) is not required to make employer contributions under the Superannuation Act 1976 in respect of a period of service before 1 July 1987. The effect of this provision is to ensure that the transferring body meets the full cost of employer contributions under the CSS from 1 July 1987 as provided for in the Australian National Airlines Amendment Act 1987.
- Clause 61: provides for a transfer of Commonwealth loan guarantees to a group company where the group company assumes a liability of the Commission in respect of a loan, as part of the group re-organisation.
- Clause 62: provides for compensation to be paid if the operation of the Act results in acquisition of property otherwise than on just terms.
- Clause 63: provides for the Governor-General to make regulations not inconsistent with the Act.

PART X : AMENDMENTS OF THE COMPENSATION (COMMONWEALTH GOVERNMENT EMPLOYEES) ACT 1971

- Clause 64: defines the Compensation (Commonwealth Government Employees) Act 1971 to be the 'Principal Act' for this Part.

Clause 65: amends the Principal Act, by substituting provisions which allow a company in which the Commonwealth has a controlling interest to be declared by regulations to be a prescribed authority for the purposes of the Principal Act.

Clause 66: provides that, where a company ceases to be a prescribed authority of the Commonwealth by ceasing to be declared under clause 65, the body continues to be liable to discharge workers compensation obligations which arose while it was a prescribed authority.

PART XI : AMENDMENT OF THE LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) ACT 1976

Clause 67: defines the Long Service Leave (Commonwealth Employees) Act 1976 to be the Principal Act for this Part.

Clause 68: amends the Principal Act by adding provisions which allow a company, which is incorporated under a law of a State and is a trading or financial corporation, to be declared by regulation to be a body to which the Commonwealth long service leave provisions apply. The Principal Act already provides for bodies incorporated under a law of the Commonwealth or Territory to be so declared.

PART XII : AMENDMENTS, AND REPEALS, OF OTHER ACTS

Clause 69: provides for consequential amendments of other Acts, viz:

Airlines Agreement Act 1981
Airlines Equipment Act 1958
Australian National Airlines Amendment Act 1987
Independent Air Fares Committee Act 1981
Civil Aviation (Carriers' Liability) Act 1959
Conciliation and Arbitration Act 1904
Freedom of Information Act 1982
Fringe Benefits Tax Assessment Act 1986
Sales Tax Assessment Act (No1) 1930

Clause 70: provides for repeal of outdated legislation.



