

1988

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN NATIONAL RAILWAYS COMMISSION

AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, the Honourable Ralph Willis, MP)

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OUTLINE

The aim of the Bill is to amend the Australian National Railways Commission Act 1983 to implement the Government's reform package for the Australian National Railways Commission as announced on 25 May 1988 by Senator Evans in his ministerial statement "Reshaping the Transport and Communications Government Business Enterprises".

The Bill provides for the expansion of the scope of business activities that the Australian National Railways Commission (AN) will be able to provide.

New planning and accountability mechanisms mean that the Commission will be clearly responsible for the performance of the enterprise. Accordingly, the grounds for termination of the appointment of Commissioners will be expanded to include ongoing under-performance.

In turn the Managing Director will be accountable to the Commission. The Managing Director is to be appointed by the Minister after receiving a recommendation from the Commission but may be removed by the Commission. The terms and conditions of employment of the Managing Director will be a matter for the Commission, although there will be consultation with the Remuneration Tribunal where appropriate.

In the future the Government will be less involved in scrutinising the activities of AN. Instead the Government will focus on planning, through corporate plans and financial targets, and accountability for results.

Day-to-day controls are to be removed in line with this approach. AN will be free to engage in such standard business practices as entering into contracts and normal investment arrangements without the requirement for prior Ministerial approval. Borrowings will also be freed from specific approval requirements, subject to continued overall Loan Council scrutiny.

The Minister may appoint an auditor for the Commission, other than the Auditor-General, after receiving a recommendation from the Commission.

The requirements for the Annual Report will be provided for in the Principal Act, rather than in the Audit Act 1901 as was previously the case.

FINANCIAL IMPACT STATEMENT

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

NOTES ON CLAUSES

Clause 1 Short title etc

Sub clause 1(1) provides for the Act to be cited as the Australian National Railways Commission Amendment Act 1988

Sub-clause 1(2) notes that the Principal Act is the Australian National Railways Commission Act 1983

Clause 2 Commencement

Provides for this Act to operate from the date of Royal Assent.

Clause 3 Repeal of section 7

Repeals section 7 of the Principal Act. AN will no longer be required to seek Ministerial approval for contracts.

Clause 4 Transport otherwise than by rail

Amends section 9 of the Principal Act to permit AN to provide transport services by modes other than rail which are incidental or supplementary to, or in association with railway services.

Clause 5 Corporate objectives etc

Amends section 22 of the Principal Act to include the requirement for AN to advise the Minister on any matter which significantly affects the outlook of the Corporate Plan.

Clause 6 Constitution of Commission

Amends section 24 of the Principal Act to provide for the Chief Executive to be a member of the Commission.

Clause 7 Termination of appointment

Inserts new subsections 32(3) and (4) to provide for an additional ground for termination of appointment of "ongoing under-performance".

Proposed subsection 32(3) - provides that where the Minister is of the opinion that the performance of the Commission has been unsatisfactory for a significant period of time, and the Minister proposes the termination of appointment of all or some of the Commissioners, the Governor-General shall terminate the appointment of all the Commissioners, or those Commissioners specified by the Minister.

Proposed subsection 32(4) - Provides that where the Minister is of the opinion that the performance of a particular Commissioner has been unsatisfactory, for a significant period of time and the Minister proposes that the appointment of the Commissioner be terminated, the Governor-General shall terminate that Commissioner's appointment.

Clause 8 Insert a new section 34A in part III of the Principal Act

Proposed section 34A - provides that sections 25 to 28 (inclusive) and section 32 do not apply to the Managing Director. These sections deal with the period of appointment, remuneration and allowances, leave of absence, resignation and termination of appointment of Commissioners. Proposed section 36D (as inserted by clause 9) covers terms and conditions of appointment of the Managing Director.

Clause 9: Substituted Division 1 of Part IV

Repeals Division 1 Part IV which relates to the General Manager of the Commission and substitutes the following Division:

Division 1 - Managing Director

Proposed section 35 - Managing Director - provides that there shall be a Managing Director of the Commission.

Proposed section 36 - Duties - provides that the Managing Director shall be the chief executive officer of the Commission; that the Managing Director act in accordance with policies determined by, and any directions given by the Commission; and that acts and things done in the name of the Commission by the Managing Director shall be taken to have been done by the Commission.

Proposed section 36A - Appointment - provides that the Minister shall appoint the Managing Director after receiving a recommendation from the Commission. Having received a recommendation, the Minister can appoint a person not recommended, although in practice it is anticipated the Minister would accept the Commission's choice. The Minister cannot appoint the Chairman, the Deputy Chairman or a Commissioner appointed under paragraph 24(1)(d) of the Principal Act, to be Managing Director and the appointment of a person as Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

Proposed section 36B - Managing Director to hold office during Commission's pleasure etc - provides that the Managing Director holds office at the Commission's pleasure for a period to be agreed (see proposed section 36D) and that the appointment is effective from the day specified in the instrument of appointment.

Proposed section 36C - Managing Director holds office on full time basis - provides that the position of Managing Director is on a full time basis.

Proposed section 36D - Terms and conditions of appointment not provided for by Act - provides that the Commission will determine the terms and conditions of the Managing Director other than that proposed in proposed sections 36B and 36C above. In practical terms it is expected that the Commission and the Managing Director will reach a contractual agreement in relation to conditions of employment. Remuneration of the Managing Director will be determined by the Commission, in consultation with the Remuneration Tribunal in its proposed advisory role.

Proposed section 36E - Disclosure of interests - provides that the Managing Director shall give, in writing, a statement of all direct and indirect pecuniary interests the Managing Director might have, or acquire, in any business or company.

Proposed section 36F - Acting Managing Director - provides that the Minister may appoint a person to act in the position of Managing Director. Under section 33A of the Acts Interpretation Act 1901 this period is limited to 12 months.

Clause 10 Application of money

Amends Section 60 of the Principal Act to remove the requirement to obtain the Treasurer's approval for investment and banking arrangements.

Clause 11 New sections 62 to 66

Repeals section 62 to 66 (inclusive) of the Principal Act which deal with borrowings other than from the Commonwealth; guarantees of borrowings by the Commonwealth; security given by the Commission for borrowings; borrowings by the Commission only permitted in accordance with the Principal Act; and application of Division 2 of part XI of the Audit Act 1901.

Proposed section 62 - Borrowings otherwise than from Commonwealth - provides that the Commission may borrow money from persons other than the Commonwealth, and that borrowings may be wholly or partly in foreign currency.

Proposed section 63 - Guarantee of borrowings - provides that the Treasurer may, on behalf of the Commonwealth, enter into a contract to guarantee borrowings undertaken by the Commission; if the Treasurer determines in writing that obligations incurred by the Commission under proposed section 62 are guaranteed, then the obligations are guaranteed by the Commonwealth; the Treasurer may, in writing, delegate powers in this proposed section to the holder of an office in the Department of the Treasury; contracts made under this proposed section may include a provision that proceedings under the contract may be taken in the courts of a foreign country, and a provision waiving the immunity of the Commonwealth from suit in the courts of a foreign country.

Proposed section 64 - Commission may give security - provides that the Commission may use its assets for security for borrowings under proposed section 62 or for the payment to the Commonwealth of amounts equal to amounts that the Commonwealth may become liable to pay under proposed section 63.

Proposed section 65 - Proper accounts to be kept - provides that the Commission shall keep proper accounts and records in accordance with generally accepted accounting principles, that payments are correctly made and authorised, and that adequate control is maintained on assets and liabilities.

Proposed section 66 - Appointment of Commission auditor - provides that the Minister shall appoint an auditor after receiving a recommendation from the Commission. This allows for an auditor, other than the Auditor-General to be appointed as the Commission auditor. The Minister may terminate the appointment of a person or firm as Commission auditor at any time.

Proposed section 66A - Audit - provides that the auditor shall inspect the Commission's accounts and records and bring to the Minister's attention any irregularity of importance. The auditor may dispense with all or part of the detailed inspection and audit of accounts and records. The proposed section also requires that the auditor report to the Minister annually; that access be provided to the auditor to the Commission's records; and that the auditor may make copies or take extracts from records. The auditor may require a person to give information necessary for the purposes of the Commission auditor's functions under the Act; and that persons or firms contravening such a requirement are guilty of an offence punishable on conviction by a fine.

Clause 12 New section 67A in Part VI

Proposed section 67A - Annual Report - provides that the Commission shall prepare an annual report together with financial statements as soon as practicable after the end of each financial year. The annual report shall include details of any directions given to the Commission by the Minister and the effects of such directions on the Commission's operations; details of the financial target set by the Commission and any different target determined by the Minister, together with the reasons for the Minister's determination; particulars of companies, partnerships or joint ventures formed; information on the Commission's dealings in shares and securities. The financial statements shall show separately the effect of any directions given by the Minister and details of income of executive officers similar to that provided by a listed corporation under the Companies Act 1981. The financial statements shall be audited prior to presentation to the Minister; and the Minister shall present the annual report and financial statements to Parliament.

Clause 13 New sections 78A and 78B

Proposed section 78A - Public Works Committee Act - exempts AN from the Public Works Committee Act 1969. AN has already been exempted by regulation but in accordance with the Government's Guidelines for Statutory Authorities and Government Business Enterprises, this proposed section includes the exemption in enabling legislation.

Proposed section 78B - Lands Acquisition Act - exempts AN from the Lands Acquisition Act 1955. By virtue of section 10 of the Acts Interpretation Act, this will apply to any act which repeals and re-enacts the Lands Acquisition Act.

Note: AN will not be empowered to obtain land through compulsory process. Any acquisition through compulsory process must be carried out through relevant Commonwealth Departments, and only if there has been no effort to acquire by agreement.

Clause 14 Consequential and minor amendments

Amends the Principal Act to include definitions arising from the Australian National Railways Commission Act 1988 and to remove minor provisions made redundant by amendments to the Acts Interpretation Act 1901.

