

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN SPORTS COMMISSION BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for
the Arts, Sport, the Environment, Tourism and Territories,
Senator The Hon Graham Richardson)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY
THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

AUSTRALIAN SPORTS COMMISSION BILL

OUTLINE

The purpose of this Bill is to establish the Australian Sports Commission as a Commonwealth statutory authority.

The Bill will streamline Commonwealth sports administration, by combining the functions and powers, and the establishments, of the Australian Sports Commission (created by the Australian Sports Commission Act 1985) and the Australian Institute of Sport (created by as a statutory authority under the Australian Institute of Sport Act 1986).

Effectively the Bill will bring together the two existing pieces of legislation, and draw the Commission and the Institute together into a single administrative unit.

A major feature of the Bill is that the Commission will be able to operate under the name, "Australian Institute of Sport", in the performance of certain functions.

The Bill defines the functions of the Commission, which include: program management; the co-ordination of the national sporting effort; the generation of sponsorship and other forms of fund raising for sport from the private sector; the capacity to consult widely with the sporting community, the capacity to collect and distribute information and advice on matters related to its activities; and the capacity to provide resources, services and facilities to enable elite and potential elite athletes to pursue and achieve excellence in sport.

The Bill also defines the powers and responsibilities of the Minister in respect of the Commission, in order to ensure that the Commission operates within the framework of overall Government objectives and policies, guided by a strategic plan and an annual operating plan, to be approved by the Minister. These provisions make it clear that the Commission will remain directly responsible to the Government and ensure a due and proper degree of Ministerial control and responsibility.

The Bill also makes provision for administrative and operational matters. With regard to financial management, the Bill requires the Commission to provide estimates of receipts and expenditure as requested by the Minister, and provides that the Commission is subject to the scrutiny of the Auditor-General.

Financial Impact Statement

The administrative and operational expenses relating to staff, travel, meetings and day-to-day running costs of the Commission for the remainder of 1988-89, following proclamation of the Act, will be determined annually in the budget.

NOTES ON CLAUSES**PART I - PRELIMINARY**Clause 1 - Short title

1. Provides for the Act to be cited as the Australian Sports Commission Act 1988.

Clause 2 - Commencement

2. Provides that the Act shall come into operation on a day to be fixed by Proclamation.

Clause 3 - Interpretation

3. Defines terms used in subsequent clauses of the Bill.

Clause 4 - Extension to external Territories

4. Provides for the Act to extend to all Territories.

**PART II - ESTABLISHMENT, OBJECTS, FUNCTIONS AND POWERS OF
THE COMMISSION**Clause 5 - Establishment

5. Subclause 5(1) recites that the Act will establish the Australian Sports Commission

6. Subclauses 5(2) and 5(3) provide that the Commission will have the normal incidents of corporate personality.

Clause 6 - Objects

7. Clause 6 provides that the objects of the Commission are:

- to provide leadership in the development of sport in Australia;
- to encourage increased participation and improved performance by Australians in sport;
- to provide resources, services and facilities to enable Australians to pursue and achieve excellence in sport;
- to improve the sporting abilities of Australians generally through improvement of the standard of sport coaches;

- to foster co-operation between Australia and other countries through provision of access to resources, services and facilities related to sport; and
- to encourage the private sector to contribute to the funding of sport.

Clause 7 - Functions

8. Subclause 7(1) provides that the major functions of the Commission are:

- to advise the Minister in relation to the development of sport;
- to co-ordinate activities in Australia for the development of sport;
- to develop and implement programs which promote equality of access to, and participation in, sport by all Australians;
- to develop and implement programs for the recognition and development of persons who excel, or have the potential to excel, in sport, and of persons who have achieved, or have the potential to achieve, standards of excellence as sports coaches, umpires, referees or officials essential to the conduct of sport;
- to initiate, encourage and facilitate research and development in relation to sport;
- to provide sports medicine and sports related services to persons participating in programs of the Commission;
- to establish, manage, develop and maintain facilities for the purposes of the Commission;
- to raise money through the Australian Sports Foundation or by other means for the purposes of the Commission;
- to administer and expend money appropriated by Parliament or raised by the Australian Sports Foundation or by other means;
- to collect and distribute information and provide advice on matters related to its activities; and
- to provide technical advice to the Australian Olympic Federation or other persons, bodies or associations.

9. Subclauses 7(2) to 7(5) provide, amongst other things, that these functions may be performed within or outside Australia, and in co-operation with a State or Territory or any person, association or organisation. Further provides that these functions may be performed to the extent only that they are not in excess of the functions that may be conferred on the Commission by virtue of any of the legislative powers of Parliament. In particular, they may be performed by expending money that is appropriated by Parliament, and for purposes related to the collection of statistics, to external territories, and to a Territory.

Clause 8 - Powers

10. Clause 8 provides that the major powers of the Commission are:

- to enter into contracts;
- to acquire, hold and depose of real and personal property;
- to make grants or lend money, and provide scholarships or like benefits;
- to accept gifts, benefits and devises made to the Commission and act as trustee of money or other property vested in the Commission on trust;
- to obtain commercial sponsorship for the Commission and participate in marketing arrangements involving the endorsement by the Commission of products and services associated with sport;
- to arrange the manufacture and distribution of articles or things bearing a mark, symbol or writing that is associated with the Commission; and
- to do anything incidental to any of its powers.

11. Subclauses 8(2) and 8(3) provide for the Commission:

- to charge such fees or impose such charges as are reasonable in respect of access to, or use of, its resources and facilities;
- to provide programs, services, information or advice; and
- to admit persons to events and activities conducted by the Commission. Provides that all of the Commission's powers may be exercised within or outside Australia.

Clause 9 - Commission may operate under the name Australian Institute of Sport

12. Provides that the Commission will use the name "Australian Institute of Sport" in performing certain of its functions.

Clause 10 - Australian Sports Foundation

13. Subclauses 10(1) and 10(2) require that as soon as practicable after this Act is proclaimed the Commission arrange for the name of the company known as the "Australian Sports Aid Foundation" to be changed to "Australian Sports Foundation", and that after the change of name the company is not authorised to further change its name.

14. The remaining subclause provide that the company is to raise money for the development of sport in Australia, and that except to the extent necessary for the performance of its functions in relation to the Commission, the company is not empowered to do anything that the Commission is not empowered to do.

Clause 11 - Minister may give directions

15. Empowers the Minister to give written directions to the Commission with respect to the policies and practices to be followed by the Commission in relation to the performance of its functions and the exercise of its powers, with which the Commission must comply.

Clause 12 - Access to facilities by individuals and community groups

16. Requires the Commission, to the extent that it is practicable to do so having regard to its objects and functions, to allow individuals and community groups to have access to, and make use of its resources, services and facilities.

PART III - CONSTITUTION AND MEETINGS OF THE COMMISSION

Clause 13 - Membership of Commission

17. Clause 13 defines the size and structure of the Commission and provides for all members to be appointed by the Minister. The Chairperson and Deputy Chairperson are to be appointed for terms not exceeding five years (on a full-time or part-time basis) and are to be eligible for re-appointment. Other members are to be appointed on a part-time basis for terms not exceeding three years and are also to be eligible for reappointment. An age limit applying to members of the Commission is also set. Subclause 13(8) further provides that the Minister may determine such terms and conditions of an appointment that are not inconsistent with the Act.

Clause 14 - Leave of absence

18. Provides for grants of leave of absence to the Chairperson and other members of the Commission.

Clause 15 - Resignation

19. Provides for members to resign by notifying the Minister in writing.

Clause 16 - Outside employment

20. States that either the Chairperson or Deputy Chairperson, if appointed on a full-time basis, will not engage in paid employment outside the duties of the position without the approval of the Minister. Also states that a part-time member will not engage in paid employment that in the opinion of the Minister conflicts with the proper performance of the functions of the member.

Clause 17 - Remuneration and allowances

21. Provides for the remuneration of, and payment of allowances to, Commission members, subject to the Remuneration Tribunals Act 1973.

Clause 18 - Disclosure of interests

22. Establishes procedures required to be followed by a member with a direct or indirect pecuniary interest in a matter to be considered by the Commission, and disqualifies such members from being involved in deliberations on such matters.

Clause 19 - Termination of appointment

23. Provides for the termination of appointment of a member by the Minister on specified grounds.

Clause 20 - Acting appointments

24. Provides for the appointment by the Minister of an acting Chairperson, an acting Deputy Chairperson, and acting members. Further provides that a person appointed to during a vacancy will not continue so to act for more than 12 months.

Clause 21 - Meetings of Commission

25. Enables either the Chairperson or the Minister to convene a meeting of the Commission. Further, it outlines the requirements for Commission meetings, establishes the quorum, describes the voting arrangements, and requires the Commission to keep a record of its meetings and resolutions.

Clause 22 - Committees

26. Enables the Commission to establish such committees of its members as it thinks fit, and to co-opt persons to be additional members of such committees.

PART IV - STRATEGIC PLANS AND ANNUAL OPERATIONAL PLANS**Clause 23 - Strategic plans**

27. Requires the Commission to prepare and implement strategic plans in relation to the performance of its functions, on a four-yearly basis. The intention of this provision is to ensure that the Commission operates within overall Government objectives and policies. The strategic plans will be laid before each House of Parliament.

Clause 24 - Approval and commencement of strategic plans

28. Provides that the strategic plan must be approved by the Minister, and will come into force on the day on which it is approved by the Minister, or the day of commencement of the period to which it relates, whichever is the later.

Clause 25 - Variation of strategic plans

29. The Commission may vary the strategic plan, subject to Ministerial approval.

Clause 26 - Annual operational plan

30. Requires the Commission to develop an annual operational plan for each financial year which sets out the programs the Commission proposes to carry out and the resources the Commission proposes to allocate to each program in order to give effect to the strategic plan. The plan is subject to Ministerial approval, but the Minister may request the Commission to revise the plan if of the opinion that the plan is inconsistent with the strategic plan.

Clause 27 - Compliance with plans

31. Requires the Commission to ensure the performance of its functions and the exercise of its powers in accordance with the provisions of the strategic and annual operational plans.

PART V - EXECUTIVE DIRECTOR AND DIRECTOR OF INSTITUTE**Clause 28 - Executive Director**

32. Empowers the Commission to appoint an Executive Director of the Commission, the chief executive officer of the Commission.

Clause 29 - Duties of Executive Director

33. Provides that the Executive Director will manage the affairs of the Commission subject to the direction of the Commission and in accordance with the policies determined by it.

Clause 30- Director

34. Empowers the Commission to appoint a Director of the Institute.

Clause 31 - Duties of Director

35. Provides that the Director will manage the affairs of the Institute subject to the direction of the Executive Director in accordance with the policies determined by the Commission.

Clause 32 - Tenure of Executive Director

36. Provides that the Executive Director will be appointed for a period not exceeding 5 years, but will be eligible for reappointment.

Clause 33 - Remuneration and allowances

37. Provides for the remuneration of, and payment of allowances to, the Executive Director subject to the Remuneration Tribunals Act (1973).

Clause 34 - Outside employment

38. Provides that the Executive Director will not engage in other paid employment except with the approval of the Commission.

Clause 35 - Leave of absence

39. Empowers the Chairperson to grant leave of absence to the Executive Director on such terms and conditions as are determined by the Commission.

Clause 36 - Resignation

40. Provides for the Executive Director to resign by notifying the Chairperson in writing.

Clause 37 - Disclosure of interests

41. Requires the Executive Director to declare any pecuniary interests to the Chairperson in writing.

Clause 38 - Terms and conditions of employment not provided for by Act

42. Provides that any terms and conditions for the Executive Director, in addition to those outlined in the Act, will be determined by the Commission.

Clause 39 - Acting Executive Director

43. Provides for consequential acting arrangements if the Executive Director's position becomes vacant, or the Executive Director is absent. The acting Executive Director will be appointed by the Commission. Any person appointed to act as Executive Director will not continue so to act for more than 12 months.

Clause 40 - Application of sections 32 to 39 to Director

44. Provides that Section 32 to 39 inclusive apply to the Director as if any reference in those sections to the Executive Director were a reference to the Director.

PART VI - STAFF AND CONSULTANTS

Clause 41 - Employees

45. Provides for persons to be employed by the Executive Director under terms and conditions determined by the Commission.

Clause 42 - Consultants

46. Provides for persons to be engaged by the Commission as consultants under terms and conditions determined by the Commission.

PART VII - FINANCE

Clause 43 - Appropriation of money

47. Provides that money appropriated to the Commission by Parliament is payable to the Commission, in such amounts and at such times as directed by the Minister for Finance.

Clause 44 - Estimates

48. Requires the Commission to prepare financial estimates for approval by the Minister, and that the money of the Commission is to be spent in accordance with them.

Clause 45 - Application of money

49. Sets out the basis for the application of the moneys of the Commission.

Clause 46 - Borrowing from the Commonwealth

50. Provides for the Commission to borrow, and limits the Commission to borrowing, money appropriated by Parliament for that purpose.

Clause 47 - Contracts

51. Requires the Commission to obtain Ministerial approval before entering into any contract for the purchase or sale of assets valued in excess of \$500,000, and before entering into a lease for a period of 10 years or more.

Clause 48 - Application of Division 3 of Part XI of Audit Act

52. Declares that the Commission is a public authority to which Division 3 of Part XI of the Audit Act applies, including the requirement for provision of an Annual Report on its activities to the Minister for tabling in Parliament.

Clause 49 - Investment of money

53. Empowers the Commission to invest money not immediately required for the purposes of the Commonwealth in specified ways.

Clause 50 - Commission exempt from taxation

54. Provides that the Commission is exempt from taxation.

Clause 51 - Foundation exempt from taxation

55. Provides that the Australian Sports Foundation is exempt from taxation.

PART VIII - MISCELLANEOUS

Clause 52 - Trust money

56. Establishes the obligations of the Commission in relation to moneys it receives or holds in trust.

Clause 53 - Reports to Minister

57. Provides for the Commission to present to the Minister from time to time, or as the Minister requires, information concerning the general conduct of its activities.

Clause 54 - Delegation by Commission

58. Empowers the Commission to delegate to a member of the Commission, a committee established under Clause 22, the Executive Director, the Director, or a person employed by the Commission under Clause 41 any of its powers other than:

- its power to delegate;
- its power to establish committees;
- its powers in respect of the preparation and/or variation of the Commission's strategic and annual operational plans;
- its powers of giving directions and determining policies; and
- its powers to appoint the Executive Director or Acting Executive Director of the Commission and the Director or Acting Director of the Institute, and to determine the respective terms and conditions of employment for these appointees.

Clause 55 - Delegation by Executive Director

59. Empowers the Executive Director to delegate to the Director, or a person employed by the Commission under Clause 41 all or any of the powers of the Executive Director other than the power to delegate.

Clause 56 - Delegation by Minister

60. Empowers the Minister to delegate to the Commission, a member of the Commission, or the Executive Director of the Commission all or part of the Minister's powers except:

- the power to delegate;
- the power to direct the Commission with respect to policies and practices;
- the power to appoint the Chairperson, Deputy Chairperson and members of the Commission and persons to act in those positions;
- the power to approve the purchase or sale of assets exceeding \$500,000 or the entering into of a lease for a period exceeding 10 years or more;

- the power to approve the Commission's strategic and annual operational plans and any variations to these plans; and
- the power to approve estimates.

Clause 57 - Protection from civil actions

61. Provides that neither a member of the Commission, the Executive Director nor the Director are liable for any action or other proceedings arising out of the performance in good faith of any function of the Commission.

Clause 58 - Regulations

62. Empowers the Governor-General to make regulations not inconsistent with the Act, prescribing matters required, permitted, necessary or convenient to be prescribed, in particular regulating the use of the Commission's facilities, and prohibiting and regulating the use of any emblem, logo, design, mark, symbol or name that is associated with the Commission.

PART IX - TRANSITIONAL

Clause 59 - Interpretation

63. Defines terms used in Part IX of the Bill.

Clause 60 - Repeal

64. Provides that the Australian Sports Commission Act 1985 the Australian Institute of Sport Act 1986 and the Australian Institute of Sport (Consequential Provision Act 1986 will be repealed by the Act.

Clause 61 - Application of Division 3 of Part XI of Audit Act in relation to year ending on 30 June 1989

65. Requires the Commission to prepare and present to the Minister financial statements and a single report on the operations of the previous Commission and the previous Institute for the period commencing 1 July 1988 and ending immediately before the date of commencement of the Act and the operations of the Commission during the period commencing on the day on which this Act comes into effect and ending on 30 June 1989. Also requires the Commission to give access to the Auditor-General to all financial statements, accounts and records of the previous Commission and the previous Institute, and the Commission to enable the auditing of all transactions, and provides for the submission of a related report to the Minister. Requires the Minister to table the report and financial statements together with the Auditor-General's report in each House of Parliament.

Clause 62 - Transfer of assets and liabilities

66. Provides for the transfer of all assets (including assets held in trust) of the previous Commission and the previous Institute to the Commission on the date of commencement of the Act, and requires the Commission to meet any transferred liabilities as if they were incurred by the Commission.

Clause 63 - Instruments

67. Makes transitional provisions in relation to relevant instruments subsisting immediately before the commencement of the Act.

Clause 64 - Certificates with respect to assets, liabilities and instruments

68. Empowers an authorised person to provide certified evidence in writing, of assets, liabilities and instruments transferred from the previous Commission and the previous Institute to the Commission, and for such certification to be prima facie evidence of the matter stated in the certificate.

Clause 65 - Exemption from taxation

69. Provides that any instrument certified to have been made for the purposes of this Part will not be subject to stamp duty or other tax under a law of the Commonwealth, or of a State or Territory.

Clause 66 - Legal proceedings

70. Provides that the Commission shall, on and after the date of commencement of the Act, be substituted for the previous Commission and the previous Institute as a party to any court proceedings.

Clause 67 - Transfer of funds

71. Provides that where an Act appropriates money for the purposes of the previous Commission or the previous Institute, references in that Act to the previous Commission or the previous Institute will, on and after the date of commencement of this Act, be read as references to the Commission.

Clause 68 - Continuation of appointment

72. Provides that the person holding the office of Deputy Chairman under the previous Commission Act immediately before the date of commencement of this Act, will be appointed Executive Director of the Commission under Clause 28 for a period, commencing on that day, equal to the balance of the period for which the person was appointed to the first-mentioned office.

Clause 69 - Employees of previous Institute

73. Provides that any employee of the previous Institute employed under Clause 32 of the previous Institute Act whose services had not been terminated immediately before the commencement day of this Act will be taken to be employed under Clause 41 of this Act on that day. Further provides that the Commission will be taken to have determined terms and conditions of employment for employees of the previous Institute under Clause 41(2) that are the same as those applicable to them immediately before the date of commencement of this Act.

