

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

FEDERAL AIRPORTS CORPORATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for
Transport and Communications, the Hon Kim Beazley MP)



FEDERAL AIRPORTS CORPORATION AMENDMENT BILL 1990

OUTLINE

The aim of the Bill is to amend the *Federal Airports Corporation Act 1986* to:

- . implement reforms to the Federal Airports Corporation which remove a range of detailed controls exercised by Government and enhance the accountability of the Board for performance of the Corporation;
- . remove a provision which prevents the Federal Airports Corporation engaging in anti-hijack activities.

The Government has been progressively reviewing Commonwealth business enterprises as part of its overall program of microeconomic reforms. The Bill represents the Government's reform package for the Federal Airports Corporation.

The reform package accords broadly with reform packages for other enterprises in the Transport and Communications portfolio which were announced by the Treasurer in his Economic Statement in May 1988.

The *Federal Airports Corporation Act 1986* already generally reflects the Government's policies on reform of its business enterprises. For example, the Act establishes corporate planning and financial targeting as the basis for Government oversight of the Federal Airports Corporation. However, the Bill modifies strategic controls over the Corporation along the lines of other reform packages agreed by Government and removes a range of detailed controls which the Government still exercises.

Among the reforms included in the Bill are:

- . oversight by the Prices Surveillance Authority of statutory charges proposed by the Federal Airports Corporation, with the Minister to have power to disallow charges following a report by the Prices Surveillance Authority and to set replacement charges;
- . greater recognition of the purposes of the Board of the Corporation, and greater Board accountability for the performance of the Corporation;
- . an increase in Board size from 7 to 9 members;
- . the Minister to have power to dismiss the Board on grounds expanded to include ongoing underperformance;

- . removal of a range of day-to-day controls exercised by Government, including controls over the terms and conditions of individual borrowings, the approval of individual contracts, the purchase of shares and the establishment of subsidiaries and partnerships;
- . removal of the Federal Airports Corporation's current exemption from liability for payment of Commonwealth income tax, with effect from 1 July 1991; and
- . removal of the Federal Airports Corporation's current exemption from liability for payment of Commonwealth sales tax, with effect from 1 July 1990.

In addition to presenting a package of reforms for the Federal Airports Corporation, the Bill includes provisions which will allow the Corporation to participate in arrangements to prevent or deal with hijacking or other acts of unlawful interference with civil aviation.

FINANCIAL IMPACT STATEMENT

The reforms of the Federal Airports Corporation included in the Bill are expected to enhance the efficiency of the Corporation and improve its returns to the Commonwealth.

The imposition of Commonwealth income tax on the Federal Airports Corporation from the beginning of the 1991/92 financial year is expected to result in increased revenue to the Commonwealth. The amounts cannot be accurately quantified at this time, as they depend on a number of factors including the profitability of the Corporation, the extent of tax deductions obtained and the tax rates prevailing in the 1991/92 and subsequent financial years.

Liability for payment of Commonwealth sales tax, with effect from the beginning of the 1990/1991 will result in increased revenue to the Commonwealth of an amount estimated to be between 10 and 15 million dollars per annum.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short title etc.

1. Provides for the proposed Act to be cited as the *Federal Airports Corporation Amendment Act 1990*.

Clause 2: Commencement

2. Provides for commencement of the proposed Act. The amendments to section 45 to remove the Corporation's exemption from the payment of Commonwealth sales tax will commence on 1 July 1990. The amendments to section 45 to remove the Corporation's exemption from the payment of Commonwealth income tax will commence on 1 July 1991. The amendments to section 45 to remove the provisions that enable the Minister to declare that certain stamp duties are not payable by the Corporation, and to insert the provision that this does not imply that the Corporation is liable to pay stamp duty, will be taken to have commenced on the date that the *Federal Airports Corporation Act 1986* commenced (ie 13 June 1986). Proposed sections 1,2 and 3 will commence on the date of Royal Assent. The remaining provisions will commence on a date to be proclaimed. Any of those provisions which are not proclaimed to commence within 6 months from the date of Royal Assent will commence on the first day following the 6 month period.

**PART 2 - AMENDMENTS OF THE FEDERAL AIRPORTS
CORPORATION ACT 1986**

Clause 3: Principal Act

3. Provides that, for purposes of Part 2 of the proposed Act, "Principal Act" means the *Federal Airports Corporation Act 1986*.

Clause 4: Interpretation

4. Inserts new definitions of "Board", "Corporate plan" and "financial plan" into section 3 of the Principal Act and omits the definitions of "appoint" and "Department".

Clause 5: Extent of functions of Corporation

5. Amends section 8 of the Principal Act to remove the requirement for the Corporation to co-operate with, and provide assistance to, the Department and the Civil Aviation Authority to the extent required by them. The omission of the underlined words will mean that the Corporation will still be required to

co-operate with, and provide assistance to, the Department and the Civil Aviation Authority in relation to matters dealt with by them at Federal airports, but unreasonable demands can not be made on the Corporation.

6. Amends the extent of functions of the Corporation by omitting anti-hijack services from the list of activities which the functions of the Corporation do not extend to. This amendment will allow the Corporation to participate in security committees established at airports.

Clause 6: Powers of Corporation

7. Amends section 9 of the Principal Act to remove the requirement that the Corporation obtain the approval of the Minister to enter into a contract involving the payment by the Corporation of an amount exceeding \$5m.

**Clause 7: Limitation on the formation of companies etc.
Limitation on the formation of partnerships etc.**

8. Substitutes the existing sections 10 and 11 with new sections 10 and 11 to:

- (a) remove the requirement that the Corporation obtain the approval of the Minister before it subscribes for or purchases shares, debentures or securities, joins in the formation of a subsidiary of the Corporation, or enters into a partnership;
- (b) retain the requirement that the Corporation must advise the Minister in writing before joining in the formation of a subsidiary of the Corporation, subscribing for, or purchasing shares in a company which would become a subsidiary of the Corporation, or entering into a partnership;
- (c) retain the existing provisions that the Corporation must ensure that its subsidiaries and, where possible, partnerships of which it is a member, do not do anything that the Corporation cannot do.

Clause 8: Heading to Part III

9. Makes a minor change necessary as a result of defining the Board.

Clause 9: The Board

10. Inserts a new section 12A into the Principal Act to recognise the Board of the Corporation.

11. Inserts new section 12B into the Principal Act to define the purposes of the Board as being to decide the objectives, strategies and policies to be followed by the Corporation, and to ensure that the Corporation performs its functions in a proper, efficient and economical manner.

12. Anything done by the Board in the name of, or on behalf of, the Corporation shall be taken to have been done by the Corporation.

Clause 10: Constitution of the Board

13. Amends section 13 of the Principal Act to:

- (a) increase the size of the Board from seven to nine members and provides for the Chief Executive Officer (appointed in accordance with proposed subsection 13(3)) to be a member of the Board; and
- (b) substitute the reference to "Corporation" with "Board" which is necessary following recognition of the Board as a discrete body.

14. Provides that the current members of the Corporation are to continue as members of the Board and that the Chief Executive Officer does not become a member of the Board until a person is appointed as Chief Executive Officer after the commencement of the amendments to section 13.

Clause 11: Period of appointment of members

15. Amends section 14 of the Principal Act to remove the prohibition on a person who has attained the age of 65 holding the office of Chairperson on a full-time basis.

Clause 12: Remuneration and allowances of members

16. Amends section 16 of the Principal Act to remove the provision for the remuneration of the Chief Executive Officer to be determined by the Remuneration Tribunal. Transitional provisions provide that a determination relating to remuneration of members and regulations relating to allowances made before the commencement of the proposed amendment continue to apply.

Clause 13: Resignation

17. Amends section 18 of the Principal Act to provide for resignations to be made in writing to the Minister instead of the Governor-General.

Clause 14: Termination of appointments

18. Amends section 19 of the Principal Act to provide that the Minister (instead of the Governor-General) may terminate the appointment of a Board member (other than the Chief Executive Officer). This clause also expands the grounds on which the Minister may terminate the appointment of a Board member (other than the Chief Executive Officer) to include circumstances in which the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

19. Adds new subsections 19(2A) and (B) to the Principal Act to provide that if the Minister is of the opinion that the performance of the Board or the Corporation has been unsatisfactory for a significant period of time, the Minister may terminate the appointment of all members or specified members. Again, this provision does not apply to the Chief Executive Officer.

Clause 15: Meetings of Board

20. Amends subsection 21(6) of the Principal Act to increase the number required for a quorum from 4 to 5 members, following the increase in Board size to 9 members as provided for by the proposed amendment to section 13.

Clause 16: Acting appointments

21. Amends section 22 of the Principal Act by omitting "13(1)(c)" from subsection (3) and substituting "13(1)(d)". This amendment is consequential upon proposed amendments to subsection 13(1).

Clause 17: Reimbursement for financial detriment suffered as a result of declarations

22. Inserts new section 27A into the Principal Act to provide that, where the Corporation suffers financial detriment as a result of a declaration by the Minister under section 25, 26 or 27 (relating to new Federal airports and variations and closure of Federal airports), then the Minister may determine in writing the amount of the financial detriment suffered by the Corporation which is to be reimbursed by the Commonwealth. This excludes declarations, the financial detriment resulting from which has been taken into account in the financial targets included in the Corporation's financial plan for the period.

Clause 18: Corporate plan

23. Provides that the Corporation's corporate plans are to cover periods of three, four or five financial years, rather than periods of three years as at present.

Clause 19: Financial targets and performance indicators

24. Amends section 39 of the Principal Act to provide for financial targets to take into account any financial detriment suffered by the Corporation as a result of a declaration by the Minister under section 25, 26 or 27 (relating to Federal airports) other than financial detriments for which the Corporation has been reimbursed under section 27A.

Clause 20: Minister may vary financial plan

25. Amends section 40 of the Principal Act to substitute the existing subsection 40(1) with a new subsection 40(1) to provide that the Minister may direct the Board to vary the financial

targets of the Corporation, the performance indicators adopted by the Board, or both. The new subsection varies from the subsection to be repealed only by the inclusion of references to the Board.

26. Amends the list of matters to which the Minister shall have regard in varying the Corporation's financial plan to include any financial detriments resulting from declarations by the Minister under section 25, 26 or 27 (relating to Federal airports) for which the Corporation has not been reimbursed.

Clause 21: Board to notify Minister of significant events etc.

27. Inserts new section 40A into the Principal Act to provide that, if the Board forms the opinion that matters have arisen that may prevent, or significantly affect, achievement of the objectives of the Corporation and its subsidiaries under the corporate plan, or that may prevent, or significantly affect, achievement of the Corporation's financial targets under the financial plan, then the Board must as soon as practicable notify the Minister of its opinion and the reasons for its opinion.

Clause 22: Revaluation of assets

28. Inserts new section 44A into the Principal Act to require the revaluation of the Corporation's assets at least once every five years.

Clause 23: Exemption from taxation

29. Amends section 45 of the Principal Act to remove the Corporation's exemption from the payment of sales tax and income tax imposed by the Commonwealth. By virtue of clause 2, the exemption from payment of sales tax will be removed from 1 July 1990 and the exemption from payment of income tax will be removed from 1 July 1991.

30. Also amends section 45 to repeal subsections 45(2) and (3) which enable the Minister to declare that certain stamp duties are not payable by the Corporation. Inserts new subsection 45(2) to provide that repeal of subsections 45(2) and (3) does not imply that the Corporation is liable to pay stamp duty, or a similar tax, under a law of the Commonwealth, of a State, or of a Territory.

Clause 24: Borrowings otherwise than from Commonwealth

31. Amends section 48 of the Principal Act to remove the requirement that the Corporation obtain the approval of the Treasurer for the borrowing of monies otherwise than from the Commonwealth.

Clause 25: Repeal of section 51

32. Repeals section 51 of the Principal Act which limits the Corporation's power to borrow or raise money to loans from the Commonwealth in accordance with terms and conditions approved by

the Minister for Finance or loans from other than the Commonwealth in accordance with terms and conditions determined by the Treasurer.

Clause 26: Guarantee of borrowings by subsidiary of Corporation

33. Amends section 52 of the Principal Act to remove the requirement that the Treasurer be satisfied about, or approve, various matters related to borrowings by wholly-owned subsidiaries of the Corporation before the Treasurer may guarantee the repayment of the borrowings, and interest thereon.

Clause 27: Delegation by Treasurer

34. Amends section 63 of the Principal Act to make a minor amendment to the Treasurer's powers of delegation consequential upon proposed amendments to sections 10 and 48.

Clause 28: Bank accounts, investment, accounts and audit

35. Repeals section 54 of the Principal Act which applies Division 2 of Part XI of the Audit Act to the Corporation, and adds replacement provisions relating to banking, investment, accounts and audit.

36. Inserts new section 54 into the Principal Act to allow the Corporation to open and maintain accounts with banks, and requiring the Corporation to maintain at least one such account, and to pay all money received into a bank account.

37. Inserts new section 54A into the Principal Act to provide that money of the Corporation not immediately required be invested in Government guaranteed securities, on deposit with a bank, or otherwise consistent with sound commercial practice.

38. Inserts new section 54B into the Principal Act to require the Corporation to cause proper accounts and records to be kept.

39. Inserts new section 54C into the Principal Act to provide for the Auditor-General to audit the accounts and records of the Corporation, and the records of the Corporation's assets, and to report the results to the Minister and to the Board. The new section inserts penalty provisions for persons who refuse to comply with requirements to give information in their possession, or who knowingly give false information and provides that a person is not excused on the grounds that the information may tend to incriminate the person.

Clause 29: Audit of subsidiaries

40. Amends section 55 of the Principal Act by omitting existing subsections (7) and (8), and inserting new provisions requiring provision of information to the Auditor-General as required for the audit of subsidiaries. Provides penalty provisions for persons who refuse to comply.

Clause 30: Aeronautical charges

41. Amends section 56 of the Principal Act to provide that determinations of statutory charges proposed by the Board are to be subject to examination by the Prices Surveillance Authority. The Minister will have a maximum period of 30 days within which to approve or disapprove a proposed determination, and may set a replacement determination. If the Prices Surveillance Authority conducts an inquiry into a proposed determination, then the Minister's 30 day period will commence when he or she receives a copy of its report.

42. These provisions are intended to enhance the effectiveness of the Minister's present power to approve or disapprove charges, by providing the Minister with the opportunity to consider any report of the Prices Surveillance Authority before making his or her decision and by enabling the Minister to set charges to replace those which are unacceptable.

Clause 31: Chief Executive Officer

43. Amends section 58 of the Principal Act to:

- (a) provide that the Chief Executive Officer shall be appointed by the Minister, after the Minister has received a recommendation from the Board; and
- (b) provide that the Chief Executive Officer holds office on terms and conditions determined by the Board, rather than by the Corporation as at present.

Clause 32: Duties of Chief Executive Officer

44. Inserts new section 58A into the Principal Act to provide that the Chief Executive Officer is, under the Board, to manage the Corporation, and that all things done by the Chief Executive Officer on behalf of the Corporation are taken to have been done by the Corporation.

45. Inserts new section 58B to provide for the Chief Executive Officer to hold office during the Board's pleasure.

Clause 33: Remuneration and allowances of Chief Executive Officer

46. Repeals section 60 of the Principal Act and substitutes a new section 60 to provide that the Chief Executive Officer is to be paid such remuneration and allowances as the Board determines, in writing, from time to time. The existing section 40 provides for the Remuneration Tribunal to determine remuneration of the Chief Executive Officer. While the amendment takes the responsibility for determining the remuneration from the Tribunal, the Remuneration Tribunal Act provides a mechanism for the Board and the Tribunal to consult on executive remuneration.

Clause 34: Transitional - existing appointee as Chief Executive Officer

47. Inserts a savings provision into the Principal Act in relation to the current Chief Executive Officer's appointment.

48. Also inserts savings provisions into the Principal Act to ensure the continuity of the current provisions which apply to the Chief Executive Officer's terms and conditions of appointment, leave, resignation and termination of employment so that they continue in force until an appointment is made to the office following commencement of the proposed amendments. It is intended that the position be widely advertised and subsequently filled before the new provisions, which give greater autonomy to the Board in setting remuneration, are to apply.

Clause 35: Repeal of section 65

49. Repeals section 65 of the Principal Act which requires the Minister for Finance's approval for the Corporation to establish a superannuation scheme to provide superannuation benefits to its employees and the Chief Executive Officer. Subclause 35(2) provides that the repeal of section 65 does not imply that the Corporation does not have the power, subject to Part XA of the *Superannuation Act 1976*, to establish a superannuation scheme or schemes to provide superannuation benefits to its employees and to the Chief Executive Officer.

Clause 36: Annual report

50. Inserts new section 65 into the Principal Act which provides for the Corporation, as soon as practicable after the end of its financial year, to give the Minister a report with financial statements for that year.

51. The Corporation's annual report is to include an evaluation of performance against the objectives included in the Corporation's corporate plan and the financial targets and performance indicators included in the financial plan. It is also to include an assessment of the adverse affect, if any, of the Corporation meeting any non-commercial commitments imposed during the financial year, and assessments of the financial performance of each Federal airport during the year.

52. Continues the requirement for the Auditor-General to audit the Corporation's financial statements and report to the Minister, and for the Minister to table the annual report, together with the Auditor-General's report, before each House within 15 sitting days.

Clause 37: Delegation by Chief Executive Officer

53. Amends section 67 of the Principal Act relating to delegation by the Corporation to provide that the Corporation's powers may be delegated by the Chief Executive Officer to a member of the Corporation, an employee of the Corporation, or a person covered by arrangements set out in subsection 61(3).

54. Provides that delegations under section 67 (other than a delegation to the Chief Executive Officer) in force before the commencement of this section continue in force.

Clause 38: Delegation by Board

55. Inserts new section 67A to provide that the Board may, by resolution, delegate all or any of its powers to specified persons.

Clause 39: Duties of Corporation

56. Amends section 68 of the Principal Act to extend to the Board the protection that nothing in the Act shall impose on the Corporation a duty that is enforceable by proceedings in a Court of law.

Clause 40: Conduct by directors, servants and agents

57. Inserts new section 71C into the Principal Act to provide details of what is necessary to establish the state of mind of a body corporate, or of a person other than a body corporate, in relation to a particular conduct (a "Corporate Mens Rea" provision). Also provides that any conduct engaged in on behalf of a body corporate by a director, servant or agent, shall be taken to have been engaged in by the body corporate, unless the body corporate took reasonable precautions to avoid the conduct.

Clause 41: By-laws

58. Removes the requirement to have the Minister's approval for the making of by-laws.

Clause 42: Amendments relating to the Board

59. Amends the Principal Act as detailed in the Schedule. The amendments are replacements of references to "Corporation" with references to "Board" which are necessary as a result of the recognition of the Board as a discrete entity.

Part 3 - Amendment of the Freedom of Information Act 1982

Clause 43: Principal Act

60. Provides that, for purposes of Part 3 of the proposed Act, "Principal Act" means the *Freedom of Information Act 1982*.

Clause 44: Schedule 2

61. Amends Part II of Schedule 2 of the Freedom of Information Act to provide that the Federal Airports Corporation be exempt under the Freedom of Information Act from disclosure in relation to documents in respect of its competitive commercial activities, and in respect of determinations of aeronautical charges under the *Federal Airports Corporation Act 1986*.

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