



# **Australian Airlines (Conversion to Public Company) Act 1988**

**No. 6 of 1988**

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# **Australian Airlines (Conversion to Public Company) Act 1988**

**No. 6 of 1988**

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**An Act relating to the conversion of the Australian National Airlines Commission to a public company, to repeal all but certain provisions of the *Australian National Airlines Act 1945*, and for other purposes**

*[Assented to 9 March 1988]*

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

## **PART I—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Australian Airlines (Conversion to Public Company) Act 1988*.

### **Commencement**

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 15 and 16, subsection 52 (2), sections 55, 57 and 60 and subsection 69 (2) shall come into operation on a day to be fixed by Proclamation.

(3) Subsection 52 (1) shall come into operation on the day after subsection 11 (3) is complied with.

(4) Subsection 52 (3) shall come into operation immediately after the commencement of section 15.

### **Extension to Territories**

3. This Act extends to all external Territories.

### **This Act has effect despite Airlines Act**

4. Except as expressly provided in this Act, this Act has effect despite anything in the Airlines Act.

## **PART II—INTERPRETATION**

### **Interpretation**

5. In this Act, unless the contrary intention appears:

“Airlines Act” means the *Australian National Airlines Act 1945*;

“amount” includes a nil amount;

“articles” means articles of association;

“Australian Capital Territory” includes the Jervis Bay Territory;

“authorised person” means:

- (a) the Minister; or
- (b) a person who is declared, by writing signed by the Minister, to be an authorised person for the purposes of section 36;

“continuing provision” means:

- (a) section 19A of the Airlines Act; or
- (b) a repealed provision of, or of regulations under, the Airlines Act, as that provision continues, by virtue of this or any other Act, to have effect;

“employment”, in relation to a staff member, means employment by, or service with, the transferring body;

“group company” means:

- (a) if the transferring body is a wholly-owned subsidiary of the holding company:
  - (i) the holding company; or
  - (ii) a wholly-owned subsidiary of the holding company; or
- (b) in any other case:
  - (i) the transferring body; or
  - (ii) a wholly-owned subsidiary of the transferring body;

“holding company” means the body corporate (if any) nominated under section 6;

“liability” includes a debt or obligation;

- “memorandum” means memorandum of association;
- “new group company” has the meaning given by section 7;
- “operate”, in relation to a name, has the meaning given by section 8;
- “property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and, without limiting the generality of the foregoing, includes any asset within the meaning of Part IIIA of the Tax Act;
- “protected body” means a group company that is a trading corporation, or a financial corporation, within the meaning of paragraph 51 (20) of the Constitution;
- “protected business name” means any of the following names:
- (a) “Australian Airlines”;
  - (b) “Australian Cargo”;
  - (c) such other names (if any) as are prescribed for the purposes of this definition;
- “protected company name” means any of the following names:
- (a) “Australian Airlines Limited”;
  - (b) a name consisting only of the words “Australian Cargo” and words or abbreviations included in the name in order to comply with a law in force in a State or Territory;
  - (c) such other names (if any) as are prescribed for the purposes of this definition;
- “protected name” means a protected business name or a protected company name;
- “protection time”, in relation to a protected name, means the time immediately before:
- (a) in the case of a name prescribed for the purposes of the definition of “protected business name” or “protected company name”—the name first became so prescribed; or
  - (b) in any other case—1 August 1986, being the day from which the Australian National Airlines Regulations took effect;
- “registered”, in relation to a name, includes reserved;
- “reorganisation” means the period beginning on the day after this Act receives the Royal Assent and ending immediately before the transition;
- “share”, in relation to a body corporate, means a share in the share capital of the body corporate;
- “staff member” means a person who, immediately before the transition, was:
- (a) the general manager of the transferring body;
  - (b) an officer of the transferring body appointed under subsection 17 (1) of the Airlines Act; or

- (c) a temporary or casual employee of the transferring body appointed under section 18 of the Airlines Act;
- “subsidiary” has the meaning given by section 9;
- “Tax Act” means the *Income Tax Assessment Act 1936*;
- “transfer” includes a sale, conveyance or assignment;
- “transferring body” means the body corporate that, before the commencement of this section, existed, by virtue of section 6 of the Airlines Act, under the name “Australian National Airlines Commission”;
- “transition” means the commencement of section 15;
- “wholly-owned subsidiary”, in relation to a body corporate (in this definition called the “holding body”), means a body corporate:
  - (a) that is a subsidiary of the holding body;
  - (b) none of whose members is a person other than:
    - (i) the holding body;
    - (ii) a body corporate that is, by virtue of any other application or applications of this definition, a wholly-owned subsidiary of the holding body; or
    - (iii) a nominee of the holding body or of a body of a kind referred to in subparagraph (ii); and
  - (c) no share in which is beneficially owned by a person other than:
    - (i) the holding body; or
    - (ii) a body of a kind referred to in subparagraph (b) (ii).

**Minister may nominate holding company**

6. During the reorganisation, the Minister may nominate in writing as the holding company for the purposes of this Act a body corporate:

- (a) that is incorporated (whether before, at or after the commencement of this section) under the *Companies Act 1981*;
- (b) that is a public company, and a company limited by shares, within the meaning of that Act; and
- (c) all the shares in which are beneficially owned by the Commonwealth.

**New group companies**

7. For the purposes of this Act, a body corporate (other than the transferring body) is a new group company at a particular time (in this section called the “relevant time”) if, and only if:

- (a) the body corporate became a group company after 31 December 1987 and was still a group company at the relevant time; and
- (b) at no time before 1 January 1988 was the body corporate a subsidiary of the transferring body.

### **Operating under a name**

8. A reference in this Act to a body operating in a State or Territory under a particular name includes a reference to the body engaging in conduct that, for the purposes of a law in force in that State or Territory, constitutes:

- (a) in any case—using the name in the State or Territory;
- (b) if the name is the body's name—establishing a place of business, or carrying on business, within the State or Territory; or
- (c) if paragraph (b) does not apply—carrying on business under the name in the State or Territory.

### **Subsidiaries**

9. For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate 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*.

## **PART III—CAPITAL STRUCTURE OF THE AUSTRALIAN AIRLINES GROUP**

### **Share capital of transferring body**

10. (1) As from the commencement of this section, the transferring body shall have a share capital.

(2) Subject to sections 13 and 14, the amount of the share capital shall be equal to the amount that subsection 11 (1) requires to be applied as mentioned in that subsection.

(3) Subject to section 13, the share capital shall be divided into shares of 50 cents each.

(4) As from the transition, this section has effect subject to the *Companies Act 1981*.

### **Issue of shares in transferring body**

11. (1) As soon as practicable after the commencement of this section, the transferring body shall apply the capital it has by virtue of section 30 of the Airlines Act in paying up in full shares in the body.

(2) If the amount of the capital referred to in subsection (1) is not a multiple of 50 cents, that subsection applies as if that amount were reduced to the nearest multiple of 50 cents.

(3) As soon as practicable after complying with subsection (1), the transferring body shall issue the shares paid up in full under that subsection:

- (a) to the Commonwealth;
- (b) to nominees of the Commonwealth; or
- (c) to the holding company;

as the Minister directs in writing.



(4) The issue of shares under subsection (3) discharges in full the transferring body's obligations to repay to the Commonwealth the capital referred to in subsection (1).

(5) The shares issued in accordance with subsection (3) shall be deemed to have been issued for valuable consideration other than cash, being the discharge effected by subsection (4).

(6) A person is not a member of the transferring body at any time before the transition merely because the person holds shares in the body.

#### **Issue of shares in holding company**

12. (1) If shares in the transferring body are issued under subsection 11 (3) to the holding company, the holding company shall, as soon as practicable after that issue, issue to nominees of the Commonwealth shares in the holding company whose nominal value equals, as nearly as practicable, the nominal value of the first-mentioned shares.

(2) Shares issued under subsection (1) shall be deemed to have been fully paid up and to have been issued for a valuable consideration other than cash, being the shares in the transferring body issued to the holding company under subsection 11 (3).

#### **Transferring body may alter its share capital**

13. (1) During the reorganisation, the transferring body may, by written determination under its common seal, alter its share capital in one or more of the following ways:

- (a) by increasing the share capital by the creation of new shares of such amount as is specified in the determination;
- (b) by consolidating and dividing all or any of the share capital into shares of larger amount than the existing shares;
- (c) by subdividing shares in the body into shares of smaller amount;
- (d) by cancelling shares that, as at the time of the determination, have not been taken or agreed to be taken by any person and by reducing the amount of the share capital by the amount of the shares so cancelled.

(2) A determination under subsection (1) has effect accordingly.

#### **Reduction of transferring body's share capital**

14. (1) Subsection (2) has effect where, during the reorganisation, the transferring body:

- (a) is a wholly-owned subsidiary of the holding company; and
- (b) proposes to transfer particular property to the holding company.

(2) The transferring body may determine in writing under its common seal to reduce its share capital by cancelling specified paid-up shares whose nominal value equals, as nearly as practicable, the amount ascertained in accordance with the formula:

$$\frac{P \times NV}{TP}$$

where:

**NV** is the nominal value of the issued shares in the transferring body as at the time of the determination;

**P** is the value of the property as shown in the transferring body's books of account at that time; and

**TP** is the total value of the transferring body's property as shown in those books at that time.

(3) Where a determination is made under subsection (2):

(a) the transferring body's issued share capital is reduced as stated in the determination;

(b) the body's nominal share capital is reduced accordingly; and

(c) the body shall transfer the property to the holding company as soon as practicable and in any event before the transition.

(4) Where, as at the transition, the holding company has not complied with paragraph (3) (c) in relation to a particular determination under subsection (2), the determination shall be deemed never to have been made.

(5) A transfer of property under subsection (3) discharges the transferring body's liability to repay the value of the cancelled shares.

#### **PART IV—CONVERSION OF AUSTRALIAN AIRLINES TO PUBLIC COMPANY**

##### **Deemed registration under Companies Act**

15. (1) The transferring body shall be deemed:

(a) to have made, immediately before the transition, an application under section 85 of the *Companies Act 1981* to be registered as a company; and

(b) to have been entitled to make the application.

(2) The National Companies and Securities Commission shall be deemed:

(a) to have been required to grant the application referred to in subsection (1) and to register the transferring body as a company under subsection 86 (2) of the *Companies Act 1981*;

(b) to have granted the application at the transition; and

(c) to have so registered the transferring body, at the transition:

(i) by the name "Australian Airlines Limited"; and

(ii) in accordance with subsections 86 (3) and (4) of that Act, as a public company, and as a company limited by shares, within the meaning of that Act.

(3) The date of commencement of the transferring body's registration as a company under Division 4 of Part III of the *Companies Act 1981* shall be deemed to be the day on which this section comes into operation.

(4) The transferring body shall be deemed to have been, immediately before the transition, and to be, at the transition, a corporation within the meaning of the *Companies Act 1981*.

(5) The transferring body, as it exists after the transition, shall not be taken for the purposes of a law of the Commonwealth, of a State or of a Territory:

- (a) to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; or
- (b) to be a public authority or an instrumentality or agency of the Crown;

except so far as express provision is made by a law of the Commonwealth, or of that State or Territory, as the case may be.

#### **New name of transferring body**

16. (1) At the transition, the transferring body's name is changed to the name "Australian Airlines Limited".

(2) Subsection 65 (5) of the *Companies Act 1981* applies in relation to the change of name made by subsection (1) of this section as if it had been made under that Act.

(3) The name "Australian Airlines Limited" shall be deemed to have been registered in respect of the transferring body, immediately after the transition, under subsection 55 (4) of the *Companies Act 1981*.

(4) This section has effect notwithstanding anything in the *Companies Act 1981*, but nothing in this section prevents:

- (a) the transferring body from changing its name in accordance with section 65 of that Act; or
- (b) the cancellation, in accordance with Division 2 of Part III of that Act, of the registration of a name.

#### **Memorandum and articles of transferring body**

17. (1) The transferring body shall, before the transition, lodge with the Corporate Affairs Commission for the Australian Capital Territory a proposed memorandum, and proposed articles, of Australian Airlines Limited.

(2) As from the transition, the proposed memorandum, and the proposed articles, lodged under subsection (1):

- (a) are respectively the memorandum, and the articles, of the company; and
- (b) bind the company and its members accordingly.

(3) As from the transition, the *Companies Act 1981* applies in relation to the company's memorandum and articles as if they had been registered as such under that Act.

#### **Membership of transferring body**

18. (1) A person who immediately before the transition was, or was acting as, a member of the transferring body ceases at the transition to be, or to act as, such a member.

(2) By force of this subsection, each person who holds shares in the transferring body at the transition becomes a member of the transferring body at the transition.

(3) A person of the kind referred to in subsection (2) is, in respect of membership of the transferring body, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if the person had become a member of the body in accordance with the body's memorandum and articles.

#### **Application of certain provisions of Companies Act**

19. (1) Section 82 of the *Companies Act 1981* applies in relation to the transferring body as if the Commonwealth were a holding company of a kind referred to in subsection 82 (2) of that Act.

(2) Paragraph 86 (6) (b) and subsections 87 (4) and 90 (5) of the *Companies Act 1981* do not apply in relation to the transferring body.

(3) For the purposes of section 360 of the *Companies Act 1981*, a person is not a past member of the transferring body merely because he or she was a member of it, or acted as a member of it, before the transition.

#### **Accounting records**

20. For the purposes of the *Companies Act 1981*, accounts and records kept under section 35 of the *Airlines Act* shall be deemed to be accounting records kept by the transferring body under a provision of a previous law of the Australian Capital Territory, being a provision corresponding to section 267 of the *Companies Act 1981*.

#### **Accounts**

21. (1) This section has effect for the purposes of:

- (a) the *Companies Act 1981*; and
- (b) the *Companies (Transitional Provisions) Act 1981* as it applies to, and to persons and matters associated with, the transferring body by virtue of subsection 90 (6) of the *Companies Act 1981*.

(2) A report and financial statements that were prepared under section 40 of the *Airlines Act* in respect of a period and furnished to the Minister on a particular day shall be deemed to be a profit and loss account of the transferring body that was:

- (a) made out in respect of that period; and

- (b) laid before the body at an annual general meeting of the body held on that day.

**Operation of section 25B of Acts Interpretation Act**

22. Nothing in this Act or in the *Companies Act 1981* affects, or is affected by, section 25B of the *Acts Interpretation Act 1901* as that section applies in relation to the transferring body.

**PART V—USE OF CERTAIN NAMES**

**Protected body may operate under protected company name**

23. A protected body whose name is a protected company name may operate under the name in a State or Territory even if the name is not registered in relation to the body under a particular law, or any law, in force in the State or Territory.

**Protected body may operate under protected business name**

24. (1) A protected body may operate under a protected business name in a State or Territory even if the name is not registered in relation to the body under a particular law, or any law, in force in the State or Territory.

(2) Nothing in this section permits more than one body to operate under the same name at the same time in the same State or Territory.

**Other persons not to use protected names**

25. (1) A person other than a protected body shall not:

- (a) use in connection with a business, trade, profession or occupation;
- (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, vessel or craft (including aircraft);
- (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or
- (d) use in relation to:
  - (i) goods or services; or
  - (ii) the promotion, by any means, of the supply or use of goods or services;

a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it.

Penalty: \$1,000.

(2) Nothing in subsection (1) limits the generality of anything else in that subsection.

**Exceptions for pre-existing rights**

26. (1) Nothing in section 25, so far as it applies in relation to a particular protected name, affects rights conferred by law on a person in respect of:

- (a) a trade mark that is registered under the *Trade Marks Act 1955*;  
or
  - (b) a design that is registered under the *Designs Act 1906*;
- and was so registered at the protection time in relation to the name.

(2) Nothing in section 25, so far as it applies in relation to a particular protected name, affects the use, or rights conferred by law relating to the use, of a name (in this subsection called the “relevant name”) by a person in a particular manner if, at the protection time in relation to the protected name, the person:

- (a) was using the relevant name in good faith in that manner; or
- (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or a similar name, goods or services as the goods or services of the first-mentioned person.

#### **Use of other names by protected bodies**

27. This Part does not prevent a protected body from operating in a State or Territory under a name other than a protected name.

#### **Effect on State and Territory laws**

28. This Part does not prevent a protected body from registering a name under a law of a State or Territory.

### **PART VI—STAFF MATTERS**

#### **Employment of staff members continues after transition**

29. Subject to this Part, each staff member continues at and after the transition to be employed by the transferring body on the terms and conditions on which he or she was employed by the body immediately before the transition.

#### **This Act not to affect certain matters relating to staff members**

30. (1) This section has effect for the purposes of the application, at any time at or after the transition, of a law, award, determination or agreement in relation to the employment of a staff member.

(2) Neither his or her contract of employment, nor his or her period of employment, shall be taken to have been broken by the operation of this Act.

(3) Without limiting the generality of section 29 or subsection (2) of this section, this Act does not affect any accrued rights that he or she had immediately before the transition in respect of any kind of leave.

(4) Where:

- (a) if he or she had, immediately before the transition, ceased to be employed by the transferring body, a period during which he or she

was employed by the body or by any other person would have had to be taken into account in determining an amount payable to him or her, or a benefit to which he or she would have been entitled, because of his or her so ceasing; and

- (b) but for this subsection, some or all of that period would not have to be taken into account as a period during which he or she was employed by the body;

the body shall treat the whole of the first-mentioned period as a period during which he or she was employed by it.

### **Effect of sections 29 and 30**

31. Sections 29 and 30 are enacted only for the avoidance of doubt and, in particular, do not limit the generality of subsection 65 (5) or 87 (2) of the *Companies Act 1981*.

### **Variation of terms and conditions**

32. (1) It is a term of each staff member's employment after the transition that the terms and conditions of that employment may be varied to the extent to which, and in the manner in which, the terms and conditions of his or her employment could, immediately before the transition, be varied under section 17 or 18 of the *Airlines Act*.

(2) Nothing in this Part prevents the terms and conditions of a staff member's employment after the transition from being varied:

- (a) in accordance with those terms and conditions; or
- (b) by or under an applicable law, award, determination or agreement.

(3) In this section:

"terms and conditions" includes a term existing because of subsection (1);

"vary", in relation to terms and conditions, includes vary by way of:

- (a) omitting any of those terms and conditions;
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of the first-mentioned terms and conditions.

### **Application of Part IV of the Public Service Act**

33. For the purposes of the application, after the transition, of Part IV of the *Public Service Act 1922* in relation to a staff member, each body (other than a body prescribed for the purposes of this section), being:

- (a) the transferring body; or
- (b) a body corporate that is, at the transition, a new group company;

shall be deemed to be declared, by regulations in force under that Act, to be a Commonwealth authority for the purposes of that Part.

## **PART VII—TAXATION MATTERS**

### ***Division 1—Exemption from certain taxes***

#### **Interpretation**

**34.** In this Division:

“exempt matter” means:

- (a) an issue of shares under subsection 11 (3) or 12 (1), other than an issue to the holding company made after the transition;
- (b) a transfer of property, during the reorganisation, by the transferring body to a group company;
- (c) an issue of shares, during the reorganisation, by a group company to the transferring body;
- (d) the assumption by a group company, during the reorganisation, of a liability of the transferring body;
- (e) the transferring body’s deemed registration as a company under subsection 86 (2) of the *Companies Act 1981*;
- (f) the change of name made by subsection 16 (1) of this Act;
- (g) the operation of this Act; or
- (h) giving effect to a matter referred to in another paragraph of this definition;

“tax” includes:

- (a) sales tax;
- (b) tax imposed by the *Debits Tax Act 1982*;
- (c) stamp duty; and
- (d) any other tax, duty, levy or charge;

but does not include income tax imposed as such by a law of the Commonwealth.

#### **Exemptions relating to exempt matters**

**35.** Tax under a law of the Commonwealth or of a State or Territory is not payable in respect of:

- (a) an exempt matter; or
- (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed or given) because of, or for a purpose connected with, or arising out of, an exempt matter.

#### **Authorised person may certify in relation to exemptions**

**36. (1)** An authorised person may, by writing signed by him or her, certify that:

- (a) a specified matter or thing is an exempt matter; or
- (b) a specified thing was done (including, for example, a transaction entered into or an instrument or document made, executed or given)



because of, or for a purpose connected with, or arising out of, a specified exempt matter.

(2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.

***Division 2—Application of various Tax Act provisions***

**Deemed share capital of transferring body**

37. For the purposes of the Tax Act, the transferring body shall be deemed to have had, at all times before it complies with subsection 11 (3) of this Act, a share capital all the issued shares in which were, at all such times, beneficially owned by the Commonwealth.

**Holding company deemed non-existent before issue of shares in transferring body**

38. (1) This section has effect for the purposes of the Tax Act if:

- (a) shares in the transferring body are issued under subsection 11 (3) of this Act to the holding company; and
- (b) the holding company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout the period beginning when it was incorporated and ending immediately before the shares are so issued.

(2) For the purposes of determining whether the holding company is a group company in relation to a body corporate in relation to a period, the holding company shall be deemed not to have been in existence at any time during the period referred to in paragraph (1) (b).

**Application of section 25A of the Tax Act**

39. (1) Where, during the reorganisation, the transferring body transfers property to a body corporate (in this section called the “group company”) that is, at the time of the transfer, a new group company, subsections (2) and (3) have effect for the purposes of section 25A of the Tax Act.

(2) The transfer shall be disregarded.

(3) In relation to a time at or after the transfer, the group company shall be deemed to be, and the transferring body shall be deemed not to be, the same body as the body that owned the property immediately before the transfer.

**Application of section 26AAA of the Tax Act**

40. (1) Where, during the reorganisation, the transferring body transfers property to a body corporate (in this section called the “group company”) that is, at the time of the transfer, a new group company, subsections (2), (3) and (4) have effect for the purposes of section 26AAA of the Tax Act.

(2) The transfer shall be disregarded.

(3) In relation to a time at or after the transfer, the group company shall be deemed to be, and the transferring body shall be deemed not to be, the same body as the body that owned the property immediately before the transfer.

(4) If, as consideration for the transfer, the group company issues shares in the group company to the transferring body, the transferring body shall be deemed to have purchased the shares at the time when the transferring body would be taken or deemed for the purposes of section 26AAA of the Tax Act to have purchased the property if that section applied in relation to the transfer.

(5) If, at the transition, the holding company holds all the issued shares in the transferring body, section 26AAA of the Tax Act does not apply in relation to the holding company in relation to, or in relation to an interest in, any of those shares.

### ***Division 3—Investment allowance not affected by certain transactions***

#### **Interpretation**

41. Except so far as the contrary intention appears, expressions have the same meaning in this Division as in Subdivision B of Division 3 of Part III of the Tax Act.

#### **Disposal of property to new group company**

42. Paragraph 82AG (1) (a) of the Tax Act does not apply in relation to a disposal of property by the transferring body before the end of a particular period of 12 months if:

- (a) the disposal took place during the reorganisation;
- (b) the disposal was to a body corporate that was, at the time of the disposal, a new group company;
- (c) the property was not, at any time during that period, owned by a person other than the transferring body or a body corporate that was a new group company at that time; and
- (d) at no time during that period did a person who owned the property:
  - (i) lease it, let it on hire under a hire-purchase agreement or otherwise grant to another person a right to use it; or
  - (ii) use it outside Australia or for a purpose other than the purpose of producing assessable income.

#### **Substitution of new group company as lessee of property**

43. (1) Where:

- (a) a lease (in this section called the “old lease”) of property by a leasing company to the transferring body is terminated during the reorganisation; and
- (b) immediately after the termination, a new lease of the property takes effect, being a lease by the leasing company to a body corporate (in

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this section called the “group company”) that is, immediately after the termination, a new group company;

this section has effect for the purposes of subsection 82AG (3) of the Tax Act.

(2) The termination of the old lease shall be disregarded.

(3) The new lease shall be deemed to be a continuation of the old lease.

(4) In relation to a time at or after the termination, the group company shall be deemed to be, and the transferring body shall be deemed not to be, the same person as the lessee under the old lease.

(5) A contract or arrangement entered into by the transferring body with the group company shall be disregarded in so far as it related to the termination of the old lease or the entering into of the new lease.

**Lease assigned to new group company**

**44. (1) Where:**

(a) during the reorganisation, the transferring body assigns to a body corporate (in this section called the “group company”) the benefit of a lease of property by a leasing company to the transferring body; and

(b) at the time of the assignment, the group company is a new group company;

this section has effect for the purposes of subsection 82AG (3) of the Tax Act.

(2) The assignment shall be disregarded.

(3) In relation to a time at or after the assignment, the group company shall be deemed to be, and the transferring body shall be deemed not to be, the same person as the original lessee under the lease.

***Division 4—Application of Capital Gains Tax provisions***

**Interpretation**

**45.** Expressions have the same meaning in this Division as in Part IIIA of the Tax Act, except so far as the contrary intention appears.

**Consideration**

**46.** In determining for the purposes of this Division what is the consideration in respect of a disposal of an asset to a person, the following shall be disregarded:

(a) an interest or right, by way of security, subject to which the asset is acquired by the person;

(b) the assumption by the person of a liability.

**Relevant market value in relation to disposal**

47. For the purposes of this Division, the relevant market value in relation to a disposal of an asset is the market value of the asset at the time of the disposal.

**Notional assumed liability in relation to disposal**

48. (1) Where, during the reorganisation, the transferring body disposes of an asset (in this section called the "relevant asset") to a body corporate, this section has effect for the purposes of this Division.

(2) If, as at the transition, the body corporate has assumed (whether before, at or after the commencement of this section) a liability wholly or partly attributable to the relevant asset, or 2 or more such liabilities, whether or not the body corporate has also assumed other liabilities, the notional assumed liability in relation to the disposal is the amount equal to:

- (a) so much of the amount of the liability when it is assumed as is attributable to the relevant asset; or
- (b) the aggregate of so much of each of the amounts of the liabilities when they are respectively assumed as is attributable to the relevant asset;

as the case may be.

(3) Otherwise, the notional assumed liability in relation to the disposal is a nil amount.

(4) For the purposes of subsection (2), to the extent that, apart from this subsection, a liability is attributable to no asset disposed of by the transferring body to the body corporate before the transition, the liability shall be deemed to be attributable to the relevant asset to the extent of the amount calculated in accordance with the formula:

$$\text{General Liability} \times \frac{\text{RMV of Relevant Asset}}{\text{RMV of All Assets}}$$

where:

**General Liability** is so much of the amount of the liability as, apart from this subsection, is attributable to no asset so disposed of;

**RMV of Relevant Asset** is the number of dollars in the relevant market value in relation to the disposal of the relevant asset; and

**RMV of All Assets** is the number of dollars in the sum of the respective relevant market values in relation to all disposals of assets by the transferring body to the body corporate before the transition.

**Disposal of asset by transferring body to new group company**

49. (1) This section has effect for the purposes of Part IIIA of the Tax Act where:

- (a) during the reorganisation, the transferring body disposes of an asset to a body corporate (in this section called the "group company") that is, at the time of the disposal, a new group company;

- (b) because of section 160ZZO of the Tax Act, Part IIIA of that Act does not apply in respect of the disposal;
- (c) the consideration in respect of the disposal consists only of shares in the group company issued to the transferring body;
- (d) the notional assumed liability in relation to the disposal is less than the relevant market value in relation to the disposal;
- (e) if the transferring body acquired the asset after 19 September 1985—the notional assumed liability is also less than the amount that would have been:
  - (i) if the disposal occurs within 12 months after the day on which the transferring body acquired the asset—the cost base; or
  - (ii) in any other case—the indexed cost base;of the asset to the transferring body for the purposes of that Part if it had applied in respect of the disposal;
- (f) the market value of the shares when issued is as nearly as practicable equal to the amount by which the notional assumed liability is less than the relevant market value; and
- (g) the transferring body, by notice in writing accompanying the notice referred to in paragraph 160ZZO (1) (d) of the Tax Act, elects that this section is to apply to the shares and specifies the shares in the notice.

(2) If the transferring body acquired the asset before 20 September 1985, the body shall be deemed to have acquired the shares before that date.

(3) If the transferring body acquired the asset after 19 September 1985, then, for the purpose of:

- (a) ascertaining whether a capital gain accrued to the body; or
- (b) ascertaining whether the body incurred a capital loss;

in the event of a later disposal of the shares by the body, the body shall be deemed to have acquired the shares for a consideration equal to:

- (c) if the amount that would have been:
  - (i) if the later disposal occurs within 12 months after the day on which the body acquired the asset—the cost base, or the reduced cost base, as the case may be; or
  - (ii) in any other case—the indexed cost base, or the reduced cost base, as the case may be;

to the body of the asset for the purposes of Part IIIA of the Tax Act if that Part had applied in respect of the disposal of the asset by the body to the group company exceeds the notional assumed liability—the amount of the excess; or

- (d) in any other case—a nil amount.

**Cancellation of shares under section 14**

**50.** Part IIIA of the Tax Act does not apply in respect of a disposal of shares in the transferring body if the disposal was effected by the cancellation of the shares under section 14 of this Act.

**Treatment of shares in transferring body as at transition**

**51. (1)** In this section:

“asset” means an asset, as at the transition, of the transferring body;

“issued shares” means the issued shares, as at the transition, in the transferring body;

“liability” means a liability, as at the transition, of the transferring body;

“market value” means market value as at the transition.

**(2)** This section has effect for the purposes of Part IIIA of the Tax Act if:

- (a) at the transition, the holding company holds all the issued shares;
- (b) assets (in this section called the “pre-CGT assets”) were acquired by the transferring body before 20 September 1985;
- (c) the holding company, by written notice given to the Commissioner on or before the day on which the holding company lodges its return of income for the year of income in which the transition occurs, or within such further period as the Commissioner allows, nominates as pre-CGT shares such of the issued shares as are specified in the notice; and
- (d) the number of shares nominated does not exceed the number calculated in accordance with the formula:

$$\text{Shares} \times \frac{\text{Net Value of Pre-CGT Assets}}{\text{Net Value of Total Assets}}$$

where:

**Shares** is the number of issued shares;

**Net Value of Pre-CGT Assets** is the number of dollars in the market value of the pre-CGT assets reduced by the number of dollars in the liabilities, to the extent that the liabilities are attributable to the pre-CGT assets; and

**Net Value of Total Assets** is the number of dollars in the market value of the assets reduced by the number of dollars in the liabilities.

**(3)** The holding company shall be deemed to have acquired before 20 September 1985 the shares nominated under paragraph (2) (c).

**(4)** The rest of the issued shares are post-CGT shares for the purposes of subsection (5).

**(5)** For the purpose of:

- (a) ascertaining whether a capital gain accrued to the holding company;
- or

(b) ascertaining whether the holding company incurred a capital loss; in the event of a later disposal of a post-CGT share by the holding company, the holding company shall be deemed to have acquired the share for a consideration equal to the amount calculated in accordance with the formula:

**Relevant Cost Bases — Attributable Liabilities**  
**Post-CGT Shares**

where:

**Relevant Cost Bases** is the sum of the respective amounts that would have been, for the purposes of Part IIIA of the Tax Act:

(a) if the later disposal occurs within 12 months after the day on which the holding company acquired the share—the cost bases, or the reduced cost bases, as the case may be; or

(b) in any other case—the indexed cost bases, or the reduced cost bases, as the case may be;

to the transferring body of the assets (other than the pre-CGT assets) if the body had disposed of those assets at the transition;

**Attributable Liabilities** is the amount of the liabilities, to the extent that they are attributable to the assets (other than the pre-CGT assets); and

**Post-CGT Shares** is the number of post-CGT shares.

(6) For the purposes of this section, to the extent that, apart from this subsection, they are not attributable to the assets, the liabilities shall be deemed to be attributable to a particular asset to the extent of the amount calculated in accordance with the formula:

$$\text{General liabilities} \times \frac{\text{MV of particular asset}}{\text{MV of total assets}}$$

where:

**General liabilities** is the amount of the liabilities, to the extent that, apart from this subsection, they are not attributable to the assets;

**MV of particular asset** is the number of dollars in the market value of the particular asset; and

**MV of total assets** is the number of dollars in the market value of the assets.

## **PART VIII—AMENDMENTS OF THE AIRLINES ACT**

### **Repeal of certain provisions**

**52. (1)** Sections 30 and 30A of the Airlines Act<sup>1</sup> are repealed.

**(2)** The Airlines Act (other than sections 1, 5 to 18, inclusive, 19A, 30 and 30A of that Act) is repealed.

**(3)** Sections 5 to 18, inclusive, of the Airlines Act are repealed.

**Reference of powers by States: transferring body**

53. Section 19A of the Airlines Act is amended by adding at the end the following subsection:

“(3) Without prejudice to its effect apart from this subsection, this section also has, by force of this subsection, the effect it would have if:

- (a) a reference in subsection (1D) or (2) to the Commission were a reference to a body corporate that is a group company for the purposes of the *Australian Airlines (Conversion to Public Company) Act 1988*;
- (b) a reference in subsection (1D) to a State in relation to which this section applies were a reference to a State in relation to which this section applies by virtue of subsection (1C); and
- (c) all the words after ‘that State’ were omitted from subsection (1D).”.

**Reference of powers by States: group companies**

54. (1) Where there is in force an Act of the Parliament of a State (whether enacted before, at or after the commencement of this section) by which the matter of air transport is referred to the Parliament of the Commonwealth, subsection (4) applies to each group company in relation to that State.

(2) Where there is in force an Act of the Parliament of a State that was enacted after the commencement of this section and adopts this section, subsection (4) applies to each group company in relation to that State.

(3) Where there is in force an Act of the Parliament of a State (whether enacted before, at or after the commencement of this section) by which there is referred to the Parliament of the Commonwealth a matter (other than the matter of air transport) that is such that, because of the reference, it is within the power of the Parliament of the Commonwealth to make exercisable in that State by a group company the powers conferred by subsection (4), subsection (4) applies to that group company in relation to that State.

(4) Where this subsection applies to a group company in relation to a State, the group company may transport passengers and goods, for reward, by air between any place in that State and any other place in that State, but shall not do so otherwise than in accordance with any law of that State applicable to that transport.

(5) This section has effect without prejudice to the effect of section 19A of the Airlines Act.

**Interpretation of continuing provisions**

55. (1) Despite the repeals effected by subsection 52 (2), section 4 of the Airlines Act continues to have effect for the purposes of the continuing provisions (including that section).



(2) A reference in a continuing provision to the Australian National Airlines Commission shall be deemed to be a reference to the transferring body.

#### **Judicial notice of Commission's seal**

56. Despite the repeals effected by subsection 52 (3), subsection 6 (3) of the Airlines Act continues to have effect in relation to a document or notice to which the transferring body's seal was affixed, or appears to have been affixed, before the transition.

#### **Limitation of certain actions**

57. Despite the repeals effected by subsection 52 (2), section 63 of the Airlines Act continues to apply in relation to actions for, or arising out of, things done, or purporting to have been done, under that Act before the repeal of that section.

#### **Repeal of Australian National Airlines Regulations**

58. (1) The Australian National Airlines Regulations are repealed.

(2) Despite the repeal effected by subsection (1), regulation 4 of those Regulations continues to have effect for the purposes of proceedings in respect of a liability arising under that regulation before the repeal.

### **PART IX—MISCELLANEOUS**

#### **Compliance with Airlines Agreement**

59. Nothing in this Act or in a continuing provision affects, or authorises action inconsistent with, the transferring body's obligations under, or the provisions or purposes of, the agreement referred to in section 5 of the *Airlines Agreement Act 1981*.

#### **Application of Superannuation Acts**

60. (1) Section 145 of the *Superannuation Act 1922* does not apply in relation to the transferring body.

(2) The transferring body is not an approved authority for the purposes of the *Superannuation Act 1976* unless the body is specified in regulations as mentioned in paragraph (a) of the definition of "approved authority" in subsection 3 (1) of that Act.

(3) Subsection 159 (1) or (1A) of the *Superannuation Act 1976* does not apply to the transferring body so as to render it liable to pay to the Commonwealth, in respect of an amount paid out of the Consolidated Revenue Fund on or after 1 July 1987, an amount exceeding the amount calculated in accordance with the formula:

$$P \times CS$$

where:

- P** is the amount paid out of the Consolidated Revenue Fund; and  
**CS** is the fraction that represents the part of the period of contributory service of the eligible employee within the meaning of that Act to whom the last-mentioned amount relates that is after 30 June 1987.

**Commonwealth guarantee of liability assumed by group company**

**61. Where:**

- (a) at a particular time during the reorganisation, a group company assumes a liability of the transferring body to pay or repay money (including money payable by way of interest, costs or charges); and
- (b) immediately before that time, the payment or repayment of the money by the transferring body was guaranteed by or on behalf of the Commonwealth;

then, as from that time, the guarantee has effect, with such modifications as the circumstances require, as a guarantee of the payment or repayment of the money by the group company.

**Compensation for acquisition of property**

**62. (1)** Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the transferring body such reasonable amount of compensation as is agreed upon between the person and the transferring body or, failing agreement, as is determined by a court of competent jurisdiction.

**(2)** Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than by virtue of this section shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.

**(3)** In this section, “acquisition of property” and “just terms” have the same respective meanings as in paragraph 51 (31) of the Constitution.

**Regulations**

**63.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

**Principal Act**

**64.** In this Part, “Principal Act” means the *Compensation (Commonwealth Government Employees) Act 1971*<sup>2</sup>.

### **Interpretation**

**65.** Section 5 of the Principal Act is amended:

- (a) by omitting “and” from paragraph (a) of the definition of “prescribed authority of the Commonwealth” in subsection (1); and
- (b) by adding at the end of that definition the following word and paragraph:

“and (c) a company:

- (i) that is incorporated (whether before or after the commencement of this paragraph) under a law of the Commonwealth or a law in force in a State or Territory;
- (ii) in which the Commonwealth has a controlling interest; and
- (iii) that is declared by the regulations to be a body corporate to which this Act applies;”.

**66.** After section 7 of the Principal Act the following section is inserted:

### **Effect of company ceasing to be prescribed authority**

“7A. (1) This section has effect where:

- (a) at a particular time, a body corporate that is a prescribed authority of the Commonwealth because of paragraph (c) of the definition of ‘prescribed authority of the Commonwealth’ in subsection 5 (1) ceases to be such an authority; and
- (b) the body continues to exist after that time.

“(2) The body continues to be liable, or is liable, as the case requires, to pay or discharge each liability:

- (a) arising under or by virtue of this Act in relation to a person whom the body employed at any time before that time; and
- (b) existing immediately before that time, or arising at or after that time because of an event occurring before that time.

“(3) For the purposes of this Act, the body shall be deemed to be, in relation to a liability of a kind referred to in subsection (2), the prescribed authority of the Commonwealth in relation to the person to whom the liability relates.”.

## **PART XI—AMENDMENT OF THE LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) ACT 1976**

### **Principal Act**

**67.** In this Part, “Principal Act” means the *Long Service Leave (Commonwealth Employees) Act 1976*<sup>3</sup>.

## **Interpretation**

68. Section 4 of the Principal Act is amended:

- (a) by omitting from paragraph (6) (a) “or”; and
- (b) by adding at the end of subsection (6) the following word and paragraph:
  - “; or (c) a company that:
    - (i) is incorporated (whether before or after the commencement of this paragraph) under a law of the Commonwealth or a law in force in a State or Territory;
    - (ii) is a trading corporation, or a financial corporation, within the meaning of paragraph 51 (20) of the Constitution; and
    - (iii) is declared by the regulations to be a body corporate to which this paragraph applies.”.

## **PART XII—AMENDMENTS, AND REPEALS, OF OTHER ACTS**

### **Consequential amendments of other Acts**

69. (1) The Acts specified in Schedule 1 are amended as set out in that Schedule.

(2) The Acts specified in Schedule 2 are amended as set out in that Schedule.

### **Repeal of certain Acts**

70. The following Acts are repealed:

*Loans (Australian National Airlines Commission) Act 1972*

*Loans (Australian National Airlines Commission) Act 1976*

*Australian National Airlines Commission Retention Act 1984.*

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## **SCHEDULE 1**

Subsection 69 (1)

### **CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

#### ***Airlines Equipment Act 1958***

**Subsection 11 (1) (definitions of “commuter operator”, “competitive route”, “prescribed route” and “regional operator”):**

Omit “the Commission” (wherever occurring), substitute “Australian Airlines”.

**Subsection 11 (1) (definition of “Commission”):**

Omit the definition.

**SCHEDULE 1—continued**

**Subsection 11 (1):**

Insert the following definition in its appropriate alphabetical position (determined on a letter-by-letter basis):

“‘Australian Airlines’ means:

- (a) a body corporate that is a group company for the purposes of the *Australian Airlines (Conversion to Public Company) Act 1988*; or
- (b) any body, whether incorporated or not, in which such a body corporate has a controlling interest and that owns or operates aircraft;”.

**Sections 12 and 13, subsection 14 (1), section 15 and subparagraphs 19 (1) (d) (i) and 21 (2) (c) (i):**

Omit “the Commission” (wherever occurring), substitute “Australian Airlines”.

***Civil Aviation (Carriers’ Liability) Act 1959***

**Section 5:**

Insert the following definition in its appropriate alphabetical position (determined on a letter-by-letter basis):

“‘Australian Airlines’ means:

- (a) a body corporate that is a group company for the purposes of the *Australian Airlines (Conversion to Public Company) Act 1988*; or
- (b) any body, whether incorporated or not, in which such a body corporate has a controlling interest and that owns or operates aircraft;”.

**Subsection 27 (2):**

Omit “the Australian National Airlines Commission”, substitute “Australian Airlines”.

***Fringe Benefits Tax Assessment Act 1986***

**Subsection 136 (1) (subparagraphs (a) (ii), (iii) and (iv) of the definition of “stand-by value”):**

Omit “the Australian National Airlines Commission” (wherever occurring), substitute “Australian Airlines”.

**Subsection 136 (1):**

Insert the following definition in its appropriate alphabetical position (determined on a letter-by-letter basis):

**SCHEDULE 1—continued**

“ ‘Australian Airlines’ means:

- (a) a body corporate that is a group company for the purposes of the *Australian Airlines (Conversion to Public Company) Act 1988*; or
- (b) any body, whether incorporated or not, in which such a body corporate has a controlling interest and that owns or operates aircraft;”.

***Independent Air Fares Committee Act 1981***

**Subsection 3 (1) (definitions of “related route” and “trunk route operator”):**

Omit “the Commission”, substitute “Australian Airlines”.

**Subsection 3 (1) (definition of “Commission”):**

Omit the definition.

**Subsection 3 (1):**

Insert the following definition in its appropriate alphabetical position (determined on a letter-by-letter basis):

“ ‘Australian Airlines’ means:

- (a) a body corporate that is a group company for the purposes of the *Australian Airlines (Conversion to Public Company) Act 1988*; or
- (b) any body, whether incorporated or not, in which such a body corporate has a controlling interest and that owns or operates passenger aircraft, whether or not it also operates other aircraft;”.

**Subsections 3 (5) and (6), 13 (3), (4) and (7), 15 (1), (2) and (12), 16 (1) and (9), 17 (2) and 19 (1):**

Omit “the Commission” (wherever occurring), substitute “Australian Airlines”.

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**SCHEDULE 2**

Subsection 69 (2)

**CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

***Airlines Agreement Act 1981***

**Section 6:**

Repeal the section.

**SCHEDULE 2—continued**

***Australian National Airlines Amendment Act 1987***

**Subsection 4 (4):**

Omit the subsection.

***Conciliation and Arbitration Act 1904***

**Subsection 70A (1) (paragraph (d) of the definition of “Commonwealth authority”):**

Omit “the Australian National Airlines Commission,”.

**Subparagraph 88U (1) (b) (i):**

Omit the subparagraph, substitute the following subparagraph:

“(i) employment of flight crew officers by Australian Airlines Limited;”.

**Subsection 88ZC (3):**

Omit “section 17 of the *Australian National Airlines Act 1945*”, substitute “section 29 of the *Australian Airlines (Conversion to Public Company) Act 1988*”.

***Freedom of Information Act 1982***

**Part I of Schedule 2:**

Omit “Australian National Airlines Commission”.

***Sales Tax Assessment Act (No. 1) 1930***

**Schedule 2:**

Omit “Australian National Airlines Commission”.

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**NOTES**

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; No. 28, 1980; No. 115, 1983; No. 68, 1984; No. 65, 1985; No. 76, 1986; and No. 1, 1988.
2. No. 48, 1971, as amended. For previous amendments, see No. 136, 1971; No. 122, 1972; Nos. 105 and 216, 1973; No. 92, 1974; Nos. 157 and 166, 1976; No. 68, 1978; Nos. 111 and 155, 1979; No. 74, 1981; No. 98, 1982; No. 78, 1984; No. 95, 1985; and Nos. 28, 33, 106, 130 and 163, 1986.
3. No. 192, 1976, as amended. For previous amendments, see No. 9, 1978; Nos. 52 and 155, 1979; Nos. 6 and 61, 1981; No. 141, 1983; No. 63, 1984; and No. 166, 1985.

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[*Minister's second reading speech made in—  
Senate on 16 December 1987  
House of Representatives on 22 February 1988*]