



Civil Aviation Act 1988

No. 63 of 1988

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Application to state aircraft
5. Act to bind Crown
6. Extension to external Territories
7. Extra-territorial application

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

8. Establishment of Authority
9. Functions of Authority
10. Standards
11. Functions to be performed in accordance with international agreements
12. Directions
13. Powers of Authority
14. Limitations on formation of companies etc.
15. Limitations on formation of partnerships
16. Consultation

PART III—REGULATION OF CIVIL AVIATION

17. Aeronautical Information Service
18. Aeronautical Information Publications and Notices to Airmen
19. Civil Air Ensign
20. Defence aerodromes
21. Interference with navigational aids
22. Interception etc. of aircraft
23. Dangerous goods

TABLE OF PROVISIONS—continued

Section

- 24. Interference with crew or aircraft
- 25. Non-scheduled flights by foreign aircraft
- 26. Aircraft on international flights to have permission
- 27. Air Operators' Certificates
- 28. Exercise of discretion by Authority
- 29. Offences in relation to aircraft
- 30. Weather etc. to be a defence
- 31. Review of decisions
- 32. Powers and functions under State and Territory laws

PART IV— CONSTITUTION OF AUTHORITY

- 33. Constitution of Authority
- 34. Period of appointment of members
- 35. Remuneration and allowances of members
- 36. Outside employment
- 37. Leave of absence
- 38. Acting appointments
- 39. Meetings
- 40. Disclosure of interests
- 41. Resignation
- 42. Termination of appointment

PART V—OPERATION OF AUTHORITY

- 43. Corporate plan
- 44. Corporate plan etc. to Minister
- 45. Financial targets and performance indicators
- 46. Estimates
- 47. Minister may direct variation of financial plan
- 48. Reimbursement of cost of complying with directions

PART VI—FINANCE

Division 1—General

- 49. Statutory transfers of land etc. to Authority
- 50. Transfers of certain Commonwealth assets to Authority
- 51. Effects of transfers from Commonwealth to Authority
- 52. Money paid in advance to Commonwealth
- 53. Rights in respect of services and facilities formerly provided by Department
- 54. Capital of Authority
- 55. Exemption from tax
- 56. Payments of dividends to Commonwealth
- 57. Borrowing from Commonwealth
- 58. Borrowings otherwise than from Commonwealth
- 59. Guarantee of borrowings by Authority
- 60. Authority may give security
- 61. Borrowings not otherwise permitted
- 62. Guarantee of borrowings by subsidiary of Authority
- 63. Delegation by Treasurer
- 64. Application of Division 2 of Part XI of the Audit Act
- 65. Audit of subsidiaries

Division 2—Charges and Statutory Liens

- 66. Charges for services and facilities
- 67. Limits on charges
- 68. Register of statutory liens
- 69. Imposition of statutory lien
- 70. Effect of lien
- 71. De-registration of Australian aircraft
- 72. Seizure of aircraft

TABLE OF PROVISIONS—continued

Section

- 73. Sale of aircraft
- 74. Application of money
- 75. Cessation of lien
- 76. Certificates of amounts unpaid
- 77. Notice relating to lien
- 78. Dismantling etc. aircraft under lien
- 79. Manner of seizure of aircraft
- 80. Protection against actions
- 81. Insurance of aircraft
- 82. Review of decisions
- 83. Statements to accompany notices

PART VII—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

- 84. Chief Executive Officer
- 85. Chief Executive Officer not to engage in other work
- 86. Remuneration and allowances of Chief Executive Officer
- 87. Leave of absence
- 88. Resignation
- 89. Termination of appointment
- 90. Acting Chief Executive Officer
- 91. Staff of Authority
- 92. Consultants

PART VIII—MISCELLANEOUS

- 93. Delegation by Minister
- 94. Delegation by Authority
- 95. Substitution of Authority for Commonwealth in contracts etc.
- 96. Publication of directions
- 97. Lands Acquisition Act
- 98. Regulations

PART IX—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

- 99. Consequential amendments of other Acts

PART X—TRANSITIONAL PROVISIONS

- 100. Actions etc. under provisions amended or repealed
- 101. Statutory liens
- 102. Review of decisions
- 103. Delegations

SCHEDULE

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS



Civil Aviation Act 1988

No. 63 of 1988

An Act to establish a Civil Aviation Authority with functions relating to the safety of civil aviation, and for related purposes

[Assented to 15 June 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 *Civil Aviation Act 1988*.

Commencement

2. (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Part III, section 98 and Part X, and the amendments made by Part IX, commence on a day or days to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears:

“aerodrome” means an area of land or water (including any buildings, installations and equipment):

- (a) established as an aerodrome under the Air Navigation Regulations; or
- (b) the use of which as an aerodrome is authorised under the regulations made under this Act;

being such an area intended for use wholly or partly for the arrival, departure or movement of aircraft;

“aircraft”:

- (a) except in Division 2 of Part VI—means any machine or craft that can derive support in the atmosphere from the reactions of the air; and

- (b) in Division 2 of Part VI—means:

- (i) any machine or craft that can derive support in the atmosphere from the reactions of the air; and
- (ii) an object that was designed or adapted for use as an aircraft but is incapable of being so used because:

- (A) a part has, or parts have, been removed from it; or

- (B) it is in a wrecked or damaged condition;

being a machine, craft or object of a kind prescribed for the purposes of that Division;

“Air Operators’ Certificate” means a certificate issued under section 27;

“air route” means the navigable airspace between two points and the terrain beneath such airspace identified, to the extent necessary, for application of flight rules;

“air route and airway facilities” means facilities provided to permit safe navigation of aircraft within the airspace of air routes and airways, including:

- (a) visual and non-visual aids along the air routes and airways;
- (b) visual and non-visual aids to approach and landing at aerodromes;
- (c) communications services;
- (d) meteorological observations;
- (e) air traffic control services and facilities; and
- (f) flight service services and facilities;

“airway” means a designated path in an air route identified by an area of specified width on the surface of the earth;

“assets” means property of any description, other than rights referred to in sections 51, and 53;

“Australian aircraft” means aircraft registered in Australia;

“Australian territory” means:

- (a) the territory of Australia and of every external Territory;
- (b) the territorial sea of Australia and of every external Territory; and
- (c) the air space over any such territory or sea;

“authorised officer” means an officer authorised by the Authority in writing to act under the provision in which the expression occurs;

“Authority” means the Civil Aviation Authority established by this Act;

“authority of the Commonwealth” includes:

- (a) the Defence Force;
- (b) the Australian Customs Service;
- (c) the Australian Federal Police;
- (d) a body, whether incorporated or not, established for public purposes by or under a law of the Commonwealth or of a Territory;
- (e) the holder of an office established for public purposes by or under a law of the Commonwealth or of a Territory; and
- (f) a company in which the whole of the shares or stock, or shares or stock carrying more than half the voting power, is or are owned by or on behalf of the Commonwealth;

“aviation security” means a combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference;

“certificate” includes an Air Operator’s Certificate;

“Chairperson” means the Chairperson of the Authority;

“charge”:

- (a) means a charge as defined by section 66; and
- (b) in sections 69 to 81 (inclusive) also means a charge under the *Air Navigation (Charges) Act 1952*;

“Chicago Convention” means:

- (a) the Convention on International Civil Aviation done at Chicago on 7 December 1944, whose English text is set out in Schedule 1 to the *Air Navigation Act 1920*;
- (b) the Protocols amending that Convention, being the Protocols referred to in subsection 3A (2) of that Act, whose English texts are set out in Schedules to that Act; and
- (c) the Annexes to that Convention relating to international standards and recommended practices, being Annexes adopted in accordance with that Convention;

“Contracting State” means a foreign country that is a party to the Chicago Convention;

“Deputy Chairperson” means the Deputy Chairperson of the Authority;

“flight” means:

- (a) in the case of a heavier-than-air aircraft, the operation of the aircraft from the moment at which the aircraft first moves under its own power for the purpose of taking-off until the moment at which it comes to rest after being airborne; and
- (b) in the case of a lighter-than-air aircraft, the operation of the aircraft from the moment when it becomes detached from the surface of the earth or from a fixed object on the surface of the earth until the moment when it becomes again attached to the surface of the earth or a fixed object on the surface of the earth;

“licence”, except in paragraph 26 (2) (b), includes a rating or other endorsement on a licence;

“manoeuvring area” means that part of an aerodrome to be used for the take-off and landing of aircraft and for the movement of aircraft associated with take-off and landing, but does not include any part of an aerodrome to be used:

- (a) for the purpose of enabling passengers to board aircraft or disembark from aircraft;
- (b) for loading cargo on to aircraft or unloading cargo from aircraft; or
- (c) for refuelling, parking or carrying out maintenance on aircraft;

“member” means a member of the Authority and includes the Chairperson and the Deputy Chairperson;

“non-scheduled flight” means a flight over or into Australian territory otherwise than under the authority of an international airline licence issued under the *Air Navigation Act 1920*;

“officer” means a member of the staff of the Authority;

“operate”, in relation to an aerodrome, includes manage, maintain and improve the aerodrome;

“outstanding amount”, in relation to an aircraft in respect of which a statutory lien is in effect, in relation to a particular time, means:

- (a) the amount of any charge payable in respect of the aircraft that, at that time, has been unpaid for the whole of the payment period and is unpaid at that time;
- (b) the amount of any penalty that is unpaid at that time; and
- (c) the amount of any debt payable under section 81 in respect of the aircraft that is unpaid at that time;

to the extent that any such amount has not been remitted, waived or written off;

“payable” means due and payable;

“payment period”:

- (a) in relation to a charge payable under the *Air Navigation (Charges) Act 1952*—means 28 days after the day on which the charge became payable; or

(b) in relation to a charge payable under section 66—means the period determined under that section;

“penalty”, in Division 2 of Part VI:

(a) means a penalty payable under section 66; and

(b) in sections 69 to 81 (inclusive) also means a penalty under the *Air Navigation (Charges) Act 1952*;

“provide” includes maintain, operate and use;

“Register” means the Register maintained under section 68;

“Registrar” means the person by whom the Register is maintained;

“regulatory functions” means functions under paragraph 9 (1) (a);

“securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;

“share” means share in the share capital of a corporation, and includes stock;

“state aircraft” means:

(a) aircraft of any part of the Defence Force (including any aircraft that is commanded by a member of that Force in the course of duties as such a member), other than any aircraft that by virtue of registration under the regulations is an Australian aircraft; and

(b) aircraft used in the military, customs or police services of a foreign country;

“statutory lien” means a lien vested in the Authority under section 69;

“vehicle” includes:

(a) a trailer, caravan or portion of an articulated vehicle; and

(b) an object that was designed or adapted for use as a vehicle but is incapable of being so used because:

(i) a part has, or parts have, been removed from it; or

(ii) it is in a wrecked or damaged condition.

(2) A reference in this Act to services and facilities provided by the Authority is a reference to services and facilities provided as described in subsection 13 (4).

(3) The question whether a company is a subsidiary of the Authority shall be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Companies Act 1981*.

(4) A reference in this Act to dealing with securities includes a reference to:

(a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;

(b) creating, selling, purchasing or re-selling rights or options in respect of securities; and

(c) entering into agreements or other arrangements relating to securities.

(5) Where a statutory lien is vested in the Authority under this Act, the lien shall not be taken by implication to have any effect otherwise than as provided by this Act.

Application to state aircraft

4. Except where the expression "state aircraft" is used, references in Part III or section 98 to aircraft or air navigation do not include references to state aircraft or air navigation by state aircraft.

Act to bind Crown

5. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence, but this subsection does not prevent the prosecution of:

(a) a member of the crew of an aircraft owned by the Crown; or

(b) any other person employed by the Crown.

Extension to external Territories

6. This Act extends to all the external Territories.

Extra-territorial application

7. This Act extends to matters relating to:

(a) foreign aircraft flying into or out of Australian territory or operating in Australian territory; and

(b) Australian aircraft operating outside Australian territory.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Establishment of Authority

8. (1) There is established by this Act an Authority by the name of the Civil Aviation Authority.

(2) The Authority:

(a) is a body corporate with perpetual succession;

(b) shall have a seal; and

(c) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Authority appearing on a document and shall presume that the document was duly sealed.

Functions of Authority

9. (1) The functions of the Authority are:

- (a) as provided by this Act and the regulations, to conduct safety regulation of:
 - (i) civil air operations in Australian territory; and
 - (ii) Australian aircraft operating outside Australian territory;
- (b) to provide air route and airway facilities;
- (c) to provide air traffic control services, and flight service services, for, in either case, surface traffic of aircraft and vehicles on the manoeuvring area of aerodromes;
- (d) to provide a rescue and fire fighting service;
- (e) to provide a search and rescue service;
- (f) to provide an aeronautical information service;
- (g) to provide consultancy and management services relating to any of the matters referred to in this subsection;
- (h) to provide services to the Bureau of Air Safety Investigation in relation to the investigation of aircraft accidents and incidents;
- (j) any functions conferred on the Authority under the *Air Navigation Act 1920*;
- (k) any other prescribed functions, being functions relating to any of the matters referred to in this subsection; and
- (m) any functions incidental to any of the foregoing functions.

(2) The functions do not include responsibility for aviation security, but this subsection does not prevent the Authority from participating in arrangements to prevent or deal with hijacking or other acts of unlawful interference with civil aviation.

(3) The Authority may provide its services and facilities both within and outside Australian territory.

(4) Subject to section 12, the functions to provide services and facilities may be performed at the discretion of the Authority.

Standards

10. Without limiting the generality of the functions of the Authority under paragraph 9 (1) (a), those functions include developing, ensuring compliance with, and implementing (including implementing by means of certificates, licences, registrations and permits) standards relating to:

- (a) the flight crews engaged in operations of aircraft;
- (b) the design, construction, maintenance, operation and use of aircraft and related equipment;
- (c) the personnel engaged in the maintenance of aircraft and related equipment;
- (d) the planning, construction, establishment, operation and use of aerodromes;

- (e) the personnel engaged in anything referred to in paragraph (d);
- (f) the planning, establishment, maintenance, operation and use of air route and airway facilities, rescue and fire fighting services and search and rescue services, and any construction associated with those facilities and services; and
- (g) the personnel engaged in anything referred to in paragraph (f).

Functions to be performed in accordance with international agreements

11. The Authority shall perform its functions in a manner consistent with the obligations of Australia under the Chicago Convention and any other agreement between Australia and any other country or countries relating to the safety of air navigation.

Directions

12. (1) The Minister may give the Authority written directions as to the performance of its functions.

(2) Directions as to the performance of the regulatory functions shall be only of a general nature.

(3) Particulars of any directions given in a financial year shall be included in the annual report of the Authority for that year.

Powers of Authority

13. (1) In addition to any other powers conferred on it by this Act, the Authority has, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the powers include, subject to this Act, power:

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of real and personal property;
- (c) to join in the formation of companies;
- (d) to enter partnerships;
- (e) to let on hire plant, machinery, equipment or goods of the Authority not immediately required by the Authority; and
- (f) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Authority.

(3) The Authority shall not, except with the approval of the Minister, enter into a contract involving the payment by the Authority of an amount exceeding \$6,000,000 or such higher amount as is prescribed.

(4) Where the Authority may provide a facility or service, the Authority may do so:

- (a) itself;
- (b) in co-operation with another person (including the Commonwealth);
or

- (c) by arranging for another person (including the Commonwealth) to do so on its behalf.

(5) The Authority may appoint a body or bodies to advise the Authority in relation to the performance of its functions.

Limitations on formation of companies etc.

14. (1) The Authority shall not, without the written approval of the Minister:

- (a) subscribe for, or purchase, shares in, or debentures or other securities of, a company; or
- (b) join in the formation of a company that would, upon its formation, be a subsidiary of the Authority.

(2) An approval under subsection (1):

- (a) may be of general or special application; and
- (b) may be given subject to conditions or restrictions set out in the instrument of approval.

(3) Subject to subsection (4), where the Authority subscribes for or purchases shares in, or debentures or other securities of, a company, the Minister shall:

- (a) cause to be prepared a statement setting out particulars of the subscription or purchase and the reasons for it; and
- (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after:
 - (i) subject to subparagraph (ii)—the subscription or purchase took place; or
 - (ii) if the Minister is of the opinion that the disclosure of the subscription or purchase would adversely affect the commercial interests of the Authority—the Minister ceases to be of that opinion.

(4) Where the Authority holds a controlling interest in a company, the Authority shall ensure that the company does not do anything that the Authority cannot do.

(5) Without limiting the generality of subsection (4), the Authority shall ensure that a company in which it holds a controlling interest does not:

- (a) borrow money otherwise than from the Commonwealth; or
- (b) raise money otherwise than by borrowing;

except on terms and conditions that are specified in, or consistent with, the approval of the Treasurer of the borrowing or raising of money by the Authority.

Limitations on formation of partnerships

15. (1) The Authority shall not enter into a partnership without the written approval of the Minister.

(2) An approval:

- (a)** may be of general or special application; and
- (b)** may be given subject to conditions or restrictions.

(3) Subject to subsection (4), where the Authority enters into a partnership, the Minister shall:

- (a)** cause to be prepared a statement setting out particulars of the partnership and the reasons for it; and
- (b)** cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after:
 - (i)** subject to subparagraph (ii)—the partnership was entered into; or
 - (ii)** if the Minister is of the opinion that the disclosure of the partnership would adversely affect the commercial interests of the Authority—the Minister ceases to be of that opinion.

(4) Where the Authority is able to control the acts and things done by a partnership of which it is a member, the Authority shall ensure that the partnership does not do anything that the Authority cannot do.

Consultation

16. In the performance of its functions and the exercise of its powers, the Authority shall, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations.

PART III—REGULATION OF CIVIL AVIATION

Aeronautical Information Service

17. The Authority shall provide a service to be known as the Aeronautical Information Service, which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity and efficiency of air navigation, being information and instructions with respect to:

- (a)** aerodromes;
- (b)** air traffic control services and facilities;
- (c)** communication and air navigation services and facilities;
- (d)** meteorological services and facilities;
- (e)** search and rescue services and facilities;
- (f)** procedures and regulatory requirements connected with air navigation; and
- (g)** hazards to air navigation.

Aeronautical Information Publications and Notices to Airmen

18. (1) In providing the Aeronautical Information Service the Authority shall publish publications to be known as Aeronautical Information Publications and notices to be known as Notices to Airmen.

(2) The Aeronautical Information Publications shall include:

- (a)** the aeronautical information and instructions that, by this Act or the regulations, are required to be so published;
- (b)** such other aeronautical information and instructions as are of a lasting character essential to air navigation;
- (c)** the procedure to be followed and the particulars to be supplied by applicants for a permission referred to in this Part or subsection 14 (2), or section 17, of the *Air Navigation Act 1920*; and
- (d)** any matter relating to the facilitation of air traffic.

(3) The Notices to Airmen shall include:

- (a)** the aeronautical information and instructions that, by this Act or the regulations, are required to be so published; and
- (b)** such other aeronautical information and instructions as:
 - (i)** are of a temporary character; or
 - (ii)** cannot be made available quickly enough by publication in Aeronautical Information Publications.

(4) The Authority shall forward copies of Aeronautical Information Publications and Notices to Airmen to the International Civil Aviation Organization.

Civil Air Ensign

19. (1) The design and colours of the Civil Air Ensign of Australia are as specified by notification in the *Gazette* on 4 March 1948, until another ensign is appointed in its place under section 5 of the *Flags Act 1953*.

(2) The Civil Air Ensign of Australia may be flown or otherwise displayed:

- (a)** by the Authority;
- (b)** on an Australian aircraft engaged in international air navigation; or
- (c)** with the permission of the Authority and in accordance with any conditions specified in the permission.

(3) Except as provided in subsection (2), a person shall not fly or otherwise display the Civil Air Ensign.

Penalty: \$500.

Defence aerodromes

20. The Authority may arrange with the appropriate Ministers for aircraft to use an aerodrome controlled by a part of the Defence Force and, subject to the arrangement, the Authority may authorise the aircraft to use the aerodrome in accordance with conditions specified by the Authority.

Interference with navigational aids

21. (1) In this section:

“installation” includes any electrical or other equipment or any metallic structure;

“proprietor”, in relation to an installation, means the owner or user of the installation or the owner or occupier of the premises or place where the installation is installed, kept or operated.

(2) The following provisions apply if the Authority believes on reasonable grounds that an installation is or may be, either actively or passively, causing interference with radiocommunications to or from aircraft, or with navigational aids, in circumstances that are likely to endanger the safety of aircraft engaged in interstate or international air navigation or air navigation within, to or from a Territory.

(3) The Authority may serve a notice on the proprietor directing the proprietor to permit the installation to be inspected and tested by an officer.

(4) Upon the service of the notice, an officer may enter the premises or place where the installation is installed, kept or operated and inspect or test the installation.

(5) An officer exercising powers under subsection (4) shall produce identification in writing if requested to do so.

(6) If as a result of such an inspection or otherwise, the Authority considers it necessary to do so for the safety of aircraft referred to in subsection (2), the Authority may serve a notice on the proprietor directing the proprietor to make such modifications to the installation, or to take such other action, as is necessary to eliminate the cause of the interference, within a reasonable time specified in the notice.

(7) If the installation has been installed and is used and operated in accordance with all applicable laws, the proprietor may recover from the Authority the amount of all reasonable expenses incurred, and of loss actually suffered, in complying with a direction under subsection (6).

(8) A person shall not, without reasonable excuse, fail to comply with a direction contained in a notice under this section.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(9) If the proprietor fails to comply with a direction under subsection (6), the Authority may authorise an officer, with such reasonable assistance as the officer requires, to enter the premises or place in which the installation is installed, kept or operated, with such force as is necessary and reasonable, and to take the action that was so directed.

(10) A notice under this section may be served personally or may be served by post at the last-known place of residence or business of the proprietor or at the address at which the installation is installed, kept or operated.

Interception etc. of aircraft

22. (1) This section applies to:

- (a) an Australian aircraft; or
- (b) any other aircraft (including an aircraft that is not registered anywhere) that is, at the relevant time, being operated by an Australian operator.

(2) The pilot in command of an aircraft that is in flight over the territory of a foreign country shall not operate the aircraft for a purpose that is prejudicial to the security or public order of, or to the safety of air navigation in relation to, the foreign country.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) Where:

- (a) an aircraft flies over the territory of a foreign country; and
- (b) either:
 - (i) the flight is required to be authorised by the foreign country and is not so authorised; or
 - (ii) there are reasonable grounds for believing that the aircraft is being operated for a purpose that is prejudicial to the security or public order of, or to the safety of air navigation in relation to, the foreign country;

the pilot in command of the aircraft shall comply with any direction given by an authorised official of the foreign country:

- (c) requiring that the aircraft land at a specified aerodrome in the territory of the foreign country; or
- (d) for the purpose of preserving the security or public order of, or the safety of air navigation in relation to, the foreign country.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(4) In a prosecution of a person for an offence against subsection (3) it is a defence if it is established that the person believed on reasonable grounds that compliance with the direction would be more likely to endanger the safety of the aircraft or of persons on board the aircraft than would a failure to comply with the direction.

(5) Subsections (2) and (3) do not affect any other obligation imposed by law, including the law of a foreign country, to comply with a direction given by an authorised official of a foreign country.

(6) Where a person has been convicted of an offence in respect of an act or omission under the law of the foreign country, the person is not liable to be convicted of an offence arising under subsection (2) or (3) in respect of the act or omission.

(7) In this section:

“Australian operator” means an operator whose principal place of business, or whose place of permanent residence, is in Australian territory;

“authorised official”, in relation to a foreign country, means:

- (a) a member of the military, police, customs or air-traffic control services of the foreign country; or
- (b) a person authorised by the foreign country to give directions to aircraft flying over the territory of the foreign country;

“operator” has the same meaning as in the regulations;

“territory”, in relation to a foreign country, means the land and the adjacent territorial sea under the sovereignty, suzerainty, protection or mandate of the foreign country.

Dangerous goods

23. (1) An aircraft shall not carry dangerous goods, except with the permission in writing of the Authority and in accordance with the conditions specified in the permission.

(2) A person shall not carry or consign for carriage any dangerous goods on board an aircraft, except with the permission in writing of the Authority and in accordance with the conditions specified in the permission.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) In this section:

“dangerous goods” means:

- (a) explosive substances; and
- (b) things:
 - (i) which by reason of their nature are liable to endanger the safety of an aircraft or persons on board an aircraft; or
 - (ii) which the Authority declares, in the manner prescribed, to be things which, in its opinion, are likely to endanger the safety of an aircraft or persons on board an aircraft.

(4) Nothing in this section prevents the carriage and use on aircraft of signalling apparatus and other apparatus necessary for the operation or navigation of the aircraft or the safety of the crew or passengers.

Interference with crew or aircraft

24. (1) A person shall not, while in an aircraft:

- (a) interfere with a crew member; or
- (b) do any act that threatens the safety of the aircraft or of persons on board the aircraft.

(2) A person shall not tamper with an aircraft or an aircraft component or item of equipment.

Penalty: \$5,000 or imprisonment for 2 years, or both.

Non-scheduled flights by foreign aircraft

25. (1) Notwithstanding anything in section 14 of the *Air Navigation Act 1920*, if the Authority considers that an aircraft possessing the nationality of a Contracting State intends, in the course of a non-scheduled flight over Australian territory, to proceed over regions that are inaccessible or without adequate air navigation facilities, the Authority may direct:

- (a) that the aircraft follow an established air route; or
- (b) that the flight be conducted in accordance with conditions specified by the Authority.

(2) Where an aircraft possessing the nationality of a Contracting State makes a non-scheduled flight into Australian territory, it shall not take on or discharge passengers, cargo or mail in Australian territory (being passengers, cargo or mail carried, or to be carried, for reward) except with the permission of the Authority and in accordance with any conditions specified in the permission.

(3) A foreign aircraft not possessing the nationality of a Contracting State shall not make a non-scheduled flight over or into Australian territory except with the permission of the Authority and in accordance with any conditions specified in the permission.

Aircraft on international flights to have permission

26. (1) An aircraft shall not, except with the permission of the Authority and in accordance with any conditions specified in the permission:

- (a) arrive in Australian territory from a place outside Australian territory; or
- (b) depart from Australian territory for a place outside Australian territory.

(2) Subsection (1) does not apply to anything done:

- (a) as provided by subsection 14 (1) of the *Air Navigation Act 1920*;
- (b) in accordance with an international airline licence issued under regulations made under that Act;
- (c) in accordance with a permission given under subsection 25 (3) and any conditions specified in the permission; or
- (d) as authorised by an Air Operator's Certificate.

Air Operators' Certificates

27. (1) The Authority may issue Air Operators' Certificates for the purposes of its functions.

(2) Except as authorised by a Certificate:

- (a) an aircraft shall not fly into or out of Australian territory;
- (b) an aircraft shall not operate in Australian territory; and
- (c) an Australian aircraft shall not operate outside Australian territory.

(3) A Certificate has effect subject to conditions specified by the Authority.

(4) The Authority may, at any time, by notice in writing served on the holder, vary the conditions of a Certificate or impose further conditions.

(5) If a condition of a Certificate is breached, then, while the breach continues, the Certificate does not authorise any operation to which the condition relates.

(6) Where a condition of a Certificate has been breached, then, whether or not the breach is still continuing, the Authority may, by notice in writing served on the holder, suspend or cancel the Certificate or any specified authorisation contained in the Certificate.

(7) The term of a Certificate shall be as determined by the Authority.

(8) A Certificate is not transferable.

(9) Subsection (2) applies only to the flying or operation of an aircraft for such commercial purposes as are prescribed.

Exercise of discretion by Authority

28. (1) Where a person applies for a permission, or an Air Operator's Certificate, under this Part, the Authority shall give the permission or issue the Certificate unless the applicant has not complied with, or has not established the capability to comply with, the provisions of the regulations relating to safety, including provisions relating to the competence of persons to conduct operations of the kind to which the application relates.

(2) The Authority shall not, under this Part, impose or vary a condition in respect of, or suspend or cancel, a permission or an Air Operator's Certificate except for the purpose of ensuring compliance with the provisions of the regulations referred to in subsection (1).

Offences in relation to aircraft

29. (1) No owner, operator, hirer (not being the Crown) or pilot of an aircraft shall operate the aircraft or permit the aircraft to be operated so as to:

- (a) use an aerodrome in contravention of a condition specified under section 20; or
- (b) fly or be operated in contravention of a provision of this Part or a direction given, or condition imposed, under such a provision.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

Weather etc. to be a defence

30. (1) In any proceedings for an offence against this Act or the regulations, it is a defence if the act or omission charged is established to have been due to extreme weather conditions or other unavoidable cause.

(2) Any defence established under subsection (1) need only be established on the balance of probabilities.

Review of decisions

31. (1) In this section:

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“reviewable decision” means:

- (a) a refusal to grant or issue, or a cancellation, suspension or variation of, a certificate, permission, permit or licence granted or issued under this Act or the regulations; or
- (b) the imposition or variation of a condition, or the cancellation, suspension or variation of an authorisation, contained in such a certificate, permission, permit or licence.

(2) Application may be made to the Administrative Appeals Tribunal for review of a reviewable decision.

(3) Where the person making a reviewable decision gives to the person whose interests are affected by the decision notice in writing of the decision, the notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision.

(4) A failure to comply with subsection (3) in relation to a decision does not affect the validity of the decision.

Powers and functions under State and Territory laws

32. The Authority, or an officer, authority or person having powers and functions under this Act or the regulations, may also have similar powers and functions conferred by the law of a State or Territory relating to air navigation.

PART IV—CONSTITUTION OF AUTHORITY

Constitution of Authority

33. (1) The Authority shall consist of:

- (a) a Chairperson;
- (b) a Deputy Chairperson;
- (c) the Chief Executive Officer; and
- (d) 6 other members.

(2) The Chairperson may be appointed as a full-time member or as a part-time member.

(3) The members (other than the Chairperson and the Chief Executive Officer) shall be appointed as part-time members.

(4) The members (other than the Chief Executive Officer) shall be appointed by the Minister, and hold office on such terms and conditions (in respect of matters not provided by this Act) as are determined by the Minister in writing.

(5) Nothing shall be taken to prevent the appointment of one or more members of the staff to hold office under paragraph (1) (d).

Period of appointment of members

34. (1) Subject to this Part, a member (other than the Chief Executive Officer) holds office for the period, not exceeding 5 years, specified in the instrument of appointment.

(2) A person appointed as a member is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed as the Chairperson on a full-time basis and a person shall not be appointed as the Chairperson on a full-time basis for a period that extends beyond the day on which he or she will attain the age of 65 years.

Remuneration and allowances of members

35. (1) A member (other than the Chief Executive Officer) shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Outside employment

36. (1) Where the Chairperson has been appointed as a full-time member, he or she shall not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

(2) A member appointed as a part-time member shall not engage in any paid employment that, in the opinion of the Minister, conflicts with the proper performance of the duties of the member.

Leave of absence

37. (1) The Minister may grant:

- (a) leave of absence to a Chairperson appointed as a full-time member on such terms and conditions as to remuneration or otherwise as the Minister determines in writing; or
- (b) leave to a Chairperson appointed as a part-time member to be absent from a meeting or meetings of the Authority.

(2) The Chairperson may grant leave to another member to be absent from a meeting or meetings of the Authority.

Acting appointments

38. (1) The Minister may appoint the Deputy Chairperson or another member (other than the Chief Executive Officer or a member of the staff) to act as the Chairperson:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) The Minister may appoint a member (other than the Chief Executive Officer or a member of the staff) to act as the Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairperson is acting as the Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of the office of Deputy Chairperson.

(3) The Minister may appoint a person to act as a member referred to in paragraph 33 (1) (d) (in this section called an "ordinary member"):

- (a) during a vacancy in the office of an ordinary member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when an ordinary member is acting as the Chairperson or the Deputy Chairperson, is absent from Australia or is, for any reason, unable to perform the duties of the office.

(4) Where the Chairperson is a part-time member, a person appointed under paragraph (1) (b) to act as the Chairperson shall be appointed on a part-time basis.

(5) A person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(6) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in or in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Meetings

39. (1) The Authority shall hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson:

- (a)** may convene a meeting at any time; and
- (b)** shall convene a meeting on receipt of a written request signed by not less than 2 other members.

(3) The Minister may convene a meeting at any time.

(4) The Chairperson shall preside at all meetings at which he or she is present.

(5) Where the Chairperson is not present at a meeting:

- (a)** the Deputy Chairperson shall preside; or
- (b)** if the Deputy Chairperson is not present—the members present shall appoint one of their number to preside.

(6) At a meeting 5 members constitute a quorum.

(7) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.

Disclosure of interests

40. (1) A member who has a direct or indirect pecuniary interest in a matter being considered by the Authority shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure shall be recorded in the minutes of the meeting and the member shall not, unless the Minister or the Authority otherwise determines:

- (a)** be present during any deliberation of the Authority with respect to that matter; or
- (b)** take part in any decision of the Authority with respect to that matter.

(3) For the purpose of making such a determination by the Authority in relation to a member who has made a disclosure, a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a)** be present during any deliberation of the Authority for the purpose of making the determination; or
- (b)** take part in making the determination.

Resignation

41. A member other than the Chief Executive Officer may resign by instrument in writing delivered to the Minister.

Termination of appointment

42. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If:

- (a)** a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b)** a member, being a Chairperson who has been appointed as a full-time member:
 - (i)** engages, except with the approval of the Minister, in paid employment outside the duties of his or her office; or
 - (ii)** is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;
- (c)** a member, not being a Chairperson who has been appointed as a full-time member:
 - (i)** engages in paid employment that, in the opinion of the Minister, conflicts with the proper performance of the duties of the member; or
 - (ii)** is absent, except on leave of absence granted under paragraph 37 (1) (b) or subsection 37 (2), from 3 consecutive meetings of the Authority; or
- (d)** a member fails, without reasonable excuse, to comply with section 40;

the Minister may terminate the appointment of the member.

(3) This section does not apply to the Chief Executive Officer.

PART V—OPERATION OF AUTHORITY

Corporate plan

43. (1) The Authority:

- (a)** shall develop a corporate plan as soon as practicable after the commencement of Part II;
- (b)** shall review and revise the plan as soon as practicable before the beginning of each financial year (other than the first year covered by the plan); and
- (c)** may review and revise the plan at any time.

(2) The plan developed under paragraph (1) (a) shall include a statement of the objectives of the Authority for 3 years, being:

- (a)** if the plan is developed in the first 9 months of a financial year—that year and the next 2 financial years; or
- (b)** if the plan is developed in the last 3 months of a financial year—the next 3 financial years.

(3) The plan as revised under paragraph (1) (b) shall include a statement of the objectives of the Authority for the 3 financial years next following the revision of the plan.

(4) The plan shall outline the strategies and policies that the Authority intends to adopt in order to achieve its objectives.

Corporate plan etc. to Minister

44. (1) As soon as practicable after developing or revising the corporate plan, the Authority shall give a copy to the Minister.

(2) When the Authority gives the Minister a copy of the plan, it shall also give the Minister a copy of a financial plan that includes, in relation to each year in the relevant 3 year period covered by the corporate plan:

- (a) performance indicators in such terms as the Authority thinks appropriate;
- (b) in relation to services and facilities (other than search and rescue and aeronautical information services) provided by the Authority—a forecast of receipts and expenditure and a rate of return and dividend; and
- (c) estimates of receipts and expenditure in relation to:
 - (i) search and rescue and aeronautical information services provided by the Authority;
 - (ii) developing, and ensuring compliance with, standards; and
 - (iii) implementing standards, being matters relating to certificates, licences, approvals, permits, registrations and exemptions.

Financial targets and performance indicators

45. When preparing the financial plan, the Authority shall consider:

- (a) the need for high standards of aviation safety;
- (b) the objectives and policies of the Commonwealth Government known to the Authority;
- (c) any directions given by the Minister under section 12;
- (d) any payments by the Commonwealth to the Authority to fund its regulatory functions and search and rescue services;
- (e) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements;
- (f) the need to maintain the extent of the Commonwealth's equity in the Authority;
- (g) the need to earn a reasonable rate of return on the Authority's assets (other than assets wholly or principally used in the performance of regulatory functions or the provision of search and rescue services);
- (h) the expectation of the Commonwealth that the Authority will pay a reasonable dividend; and
- (j) any other commercial considerations the Authority thinks appropriate.

Estimates

46. (1) Subject to this section, the Authority shall:

- (a) prepare estimates, in such form as the Minister directs, for each financial year and, if the Minister so directs, for any other period; and
- (b) submit those estimates to the Minister not later than:
 - (i) in the case of estimates for a financial year—60 days before the beginning of the year; or
 - (ii) in any other case—such date as the Minister directs.

(2) In subsection (1):

“estimates” means estimates of receipts and expenditure referred to in paragraph 44 (2) (c).

Minister may direct variation of financial plan

47. (1) The Minister may direct the Authority to vary the financial plan in respect of financial targets, and performance indicators, relating to the provision of services and facilities.

(2) When doing so, the Minister shall consider:

- (a) the matters referred to in section 45 (other than paragraph (b));
- (b) the objectives and policies of the Commonwealth Government; and
- (c) any other commercial considerations the Minister thinks appropriate.

(3) A direction shall be in writing and shall set out its reasons.

Reimbursement of cost of complying with directions

48. (1) Where the Authority satisfies the Minister that it has suffered financial detriment as a result of complying with a direction given by the Minister under this Act, the Authority is entitled to be reimbursed by the Commonwealth the amount that the Minister determines, in writing, to be the amount of that financial detriment.

(2) The reference in subsection (1) to suffering financial detriment includes a reference to:

- (a) incurring costs that are greater than would otherwise have been incurred; or
- (b) forgoing revenue that would otherwise have been received.

(3) This section does not apply to a direction of the Minister made under section 47 or 56.

PART VI—FINANCE

Division 1—General

Statutory transfers of land etc. to Authority

49. (1) In this section:

“interest” includes any estate, right or title, whether legal or equitable;

“land” includes buildings and fixed structures.

(2) Where the Minister, by notice published in the *Gazette*:

(a) describes any land in which the Commonwealth holds an interest;
and

(b) describes that interest;

the following provisions have effect.

(3) The interest is transferred to the Authority, by force of this section, on the date specified in the notice, not being earlier than the date of publication of the notice.

(4) Where the interest of the Commonwealth is of such a kind that it is not held from another person, the transfer has effect as a grant to the Authority of an estate in fee simple.

(5) The Minister shall cause to be lodged with the Registrar-General, Registrar of Titles or other appropriate officer of the relevant State or Territory a copy of the notice, certified in writing signed by an officer of the Department authorised by the Minister for the purpose.

(6) The officer with whom a copy is lodged may register the transfer as nearly as possible as if it were a dealing in land and may deal with and give effect to the copy as if it were a grant or conveyance duly executed under the laws in force in the relevant State or Territory.

(7) A notice shall not be published under this section after one year from the commencement of this section.

Transfers of certain Commonwealth assets to Authority

50. (1) Where, immediately before the commencement of this section:

(a) a function of the Authority was being performed by the Department;
and

(b) an asset was held or used by the Department in connection with the performance of that function;

the Minister may, at any time, cause the asset to be transferred to the Authority.

(2) Subsection (1) does not prevent the Commonwealth from transferring any asset to the Authority otherwise than under that subsection.

Effects of transfers from Commonwealth to Authority

51. (1) Where any assets are transferred from the Commonwealth to the Authority, subsections (2) to (5) (inclusive) apply.

(2) The Minister and the Minister for Finance:

(a) shall, for the purposes of subsection (3) and section 54, determine the value of the assets as on the day of the transfer; and

(b) may determine an amount, not exceeding that value, for the purposes of subsection (3).

(3) If an amount is determined under paragraph (2) (b), the Commonwealth shall be taken to have made, on the day of the transfer, a loan to the Authority equal to that amount.

(4) The terms and conditions of the loan as to interest and otherwise shall be as determined by the Minister for Finance.

(5) Where, immediately before the transfer:

(a) a right of the Commonwealth arising out of a debt, liability or obligation of any other person in favour of the Commonwealth existed in respect of the assets; or

(b) a debt, liability or obligation of the Commonwealth existed in respect of the assets;

the right, debt, liability or obligation, as the case may be, of the Commonwealth is transferred to the Authority, by force of this section, to the extent determined by the Minister and the Minister for Finance.

(6) The Minister and the Minister for Finance shall, as soon as practicable after the commencement of this section, determine for the purposes of paragraph 54 (1) (h) the total amount of the provisions to be made by the Authority on account of liabilities transferred from the Commonwealth in respect of personnel transferred from the Commonwealth.

(7) A determination under this section shall be in writing.

(8) For avoidance of doubt, it is declared that a duty or a power under this section shall be performed, or may be exercised, as the case may be, from time to time in respect of the same matter.

Money paid in advance to Commonwealth

52. Where:

(a) a function of the Authority was formerly performed by the Department;

(b) an amount received by the Commonwealth is or includes an amount paid in advance on account of anything to be done by the Commonwealth in pursuance of that function; and

(c) that thing was not done by the Commonwealth before the commencement of this section;

there is payable to the Authority by the Commonwealth an amount that the Minister, having regard to all matters that he or she considers relevant, determines in writing as being payable because of the receipt of the first-mentioned amount.

Rights in respect of services and facilities formerly provided by Department

53. (1) Where, immediately before the commencement of this section:

(a) a function of the Authority was being performed by the Department; and

- (b) a right of the Commonwealth existed, arising out of a debt, liability or obligation of any other person in favour of the Commonwealth in respect of a service or facility provided by the Department in the performance of that function;

the right of the Commonwealth is transferred to the Authority, by force of this section, to the extent determined in writing by the Minister and the Minister for Finance.

(2) Where, immediately before the commencement of this section:

- (a) proceedings by the Commonwealth were pending in a court; and
- (b) the proceedings related to such a debt, liability or obligation;

then, to the extent that the proceedings so relate, they may be continued by the Authority and the Authority shall be substituted for the Commonwealth.

(3) In subsection (1):

“liability” includes:

- (a) liability to pay a charge under the *Air Navigation (Charges) Act 1952*, whether or not an invoice was issued, or a demand made, in respect of the charge before the commencement of this section; and
- (b) liability to pay a penalty under that Act in respect of such a charge.

Capital of Authority

54. (1) The capital of the Authority is equal to the sum of:

- (a) the value of assets that have been transferred to the Authority by the Commonwealth as determined under section 51;
- (b) the net realisable value of any rights transferred to the Authority under this Act;
- (c) any amounts paid to the Authority out of money appropriated by the Parliament for the purpose of providing capital;
- (d) any reserves resulting from the operations of the Authority (whether because of the retention of profits or otherwise) or from the revaluation of the Authority’s assets;
- (e) any retained profits other than reserves; and
- (f) any operating results affecting the capital of the Authority, not being reserves or retained profits;

less:

- (g) amounts taken to be loans under section 51;
- (h) the amount determined under subsection 51 (6);
- (j) debts, liabilities and obligations of the Commonwealth transferred to the Authority by subsection 51 (5); and
- (k) any amounts of capital repaid to the Commonwealth by the Authority.

(2) Interest is not payable to the Commonwealth on the capital of the Authority, but the capital of the Authority is repayable to the Commonwealth at such times, and in such amounts, as the Minister determines in writing.

(3) In making such a determination, the Minister shall have regard to any advice that the Authority has given to the Minister in relation to its financial affairs.

Exemption from tax

55. (1) The Authority is not liable to pay tax under any law of the Commonwealth or of a State or Territory.

(2) Subsection (1) does not apply to customs duties or to a law of the Commonwealth relating to sales tax.

Payments of dividends to Commonwealth

56. (1) The Authority shall, within 4 months after the end of each financial year, by notice in writing given to the Minister, recommend that it:

- (a) pay to the Commonwealth, in relation to its operations in the financial year, a dividend of an amount specified in the notice; or
- (b) not pay a dividend to the Commonwealth for the financial year.

(2) In making a recommendation, the Authority shall have regard to:

- (a) the matters specified in section 45; and
- (b) the extent of the Commonwealth's equity in the Authority.

(3) Subject to subsection (6), the Minister shall, within 30 days after receipt of the recommendation, give notice in writing to the Authority:

- (a) where the recommendation is that a dividend be paid:
 - (i) approving the recommendation; or
 - (ii) directing the Authority to pay a dividend of a different specified amount; or
- (b) where the recommendation is that a dividend not be paid:
 - (i) approving the recommendation; or
 - (ii) directing the Authority to pay a dividend of a specified amount.

(4) The Minister shall have regard to:

- (a) the matters specified in section 45 (other than paragraph (b));
- (b) the objectives and policies of the Commonwealth Government;
- (c) the extent of the Commonwealth's equity in the Authority; and
- (d) any other commercial considerations the Minister thinks appropriate.

(5) Where a dividend for a financial year is approved or directed under subsection (3), the Authority shall pay it to the Commonwealth within 8 months after the end of that year.

(6) A payment under this section may be made:

- (a) out of the profits of the Authority for the financial year to which the payment relates;
- (b) out of the profits of the Authority for any preceding financial year or years; or
- (c) partly out of the profits of the Authority for the financial year referred to in paragraph (a) and partly out of the profits of the Authority for any preceding financial year or years.

Borrowing from Commonwealth

57. The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Authority on such terms and conditions as he or she determines in writing.

Borrowings otherwise than from Commonwealth

58. (1) The Authority may, with the approval of the Treasurer:

- (a) borrow money otherwise than from the Commonwealth; or
- (b) raise money otherwise than by borrowing;

on terms and conditions specified in, or consistent with, the approval.

(2) Without limiting the generality or subsection (1), the Authority may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(3) A borrowing of money, or a raising of money otherwise than by borrowing, under subsection (1) may be made wholly or partly in a currency other than Australian currency.

(4) An approval shall be given in writing.

(5) For the purposes of this section:

- (a) the issue by the Authority of an instrument acknowledging a debt in consideration of:

- (i) the payment or deposit of money; or
- (ii) the provision of credit;

(otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Authority) shall be taken to be a raising by the Authority, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Authority (otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Authority) shall be taken to be a raising by the Authority, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

Guarantee of borrowings by Authority

59. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract:

- (a) guaranteeing the repayment by the Authority of money borrowed under paragraph 58 (1) (a) and the payment of interest (including any interest on that interest) on money so borrowed; or
- (b) guaranteeing the payment by the Authority of such amounts (which may be interest) that the Authority is liable to pay with respect to money raised under paragraph 58 (1) (b) as are specified in the contract.

(2) The Treasurer may, in writing, determine:

- (a) that the Commonwealth guarantees the repayment by the Authority of money borrowed under paragraph 58 (1) (a), and the payment by the Authority of interest (including any interest on that interest) on money so borrowed; or
- (b) that the Commonwealth guarantees the payment of such money (which may be interest) that the Authority is liable to pay with respect to money raised under paragraph 58 (1) (b) as is specified in the determination;

and, where the Treasurer makes such a determination, there shall be taken to be a guarantee by the Commonwealth accordingly.

(3) A contract entered into under subsection (1) may include either or both of the following provisions:

- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a foreign country;
- (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a foreign country in relation to any proceedings that may be taken under the contract.

Authority may give security

60. The Authority may give security over the whole or part of its assets for:

- (a) the performance by the Authority of any obligation incurred under section 57 or 58; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid by the Commonwealth under a guarantee under section 59.

Borrowings not otherwise permitted

61. The Authority shall not borrow money, or raise money otherwise than by borrowing, except in accordance with sections 57 and 58.

Guarantee of borrowings by subsidiary of Authority

62. (1) This section applies to a borrowing by a company that is a wholly owned subsidiary of the Authority, of money, whether in Australian currency or in another currency, that has been or is to be expended in connection with the objects of the company.

(2) Subject to this section, the Treasurer may, on behalf of the Commonwealth, at the request of the company, enter into a contract guaranteeing that the company will fulfil its obligations arising out of a borrowing to which this section applies to repay so much of the money borrowed, and to pay so much of the interest (including any interest on that interest) on that money, as are specified in the contract.

(3) For the purposes of the protection of the financial interests of the Commonwealth, the Treasurer shall not enter into such a contract unless:

- (a) the Treasurer is satisfied that the terms and conditions of the borrowing are reasonable;
- (b) where the borrowing consists of, or includes, the issue of instruments—the issue of those instruments, and the form of those instruments, have been approved by the Treasurer;
- (c) appropriate security to the satisfaction of the Treasurer is, or is to be, given to the Commonwealth;
- (d) undertakings to the satisfaction of the Treasurer are given by the company that the property over which security is, or is to be, taken in accordance with paragraph (c):
 - (i) will be insured and kept insured to its full insurable value against all risks against which it is customary to insure;
 - (ii) will not be sold or made the subject of a mortgage or charge having priority over the security given to the Commonwealth in respect of the contract of guarantee; and
 - (iii) will not be taken out of Australia for a destination outside Australia except after the giving of such security as the Treasurer requires;
- (e) undertakings to the satisfaction of the Treasurer are given by the company that, so long as the whole or any part of the amounts borrowed, or of any interest on those amounts, remains unpaid:
 - (i) officers of the Australian Public Service will have full access at all reasonable times to the financial accounts of the company when authorised in writing by the Minister for that purpose; and
 - (ii) the company will do everything within its power to ensure that the officers so authorised have access to the financial accounts of any body, whether corporate or unincorporate, in which the company has, at any time, whether directly or indirectly, a controlling interest;
- (f) undertakings to the satisfaction of the Treasurer are given by the company that any legal costs incurred by the Commonwealth in

connection with the contract of guarantee will be met by the company; and

(g) such other conditions as the Treasurer thinks necessary are fulfilled.

(4) Where the Treasurer enters into such a contract, the Treasurer shall cause to be laid before each House of Parliament, within 15 sitting days of that House after the contract is entered into, a notice specifying the amount and term of the borrowing and such other information relating to the borrowing or the guarantee as the Treasurer considers appropriate.

(5) For the purposes of this section:

(a) the issue by the company of an instrument acknowledging a debt in consideration of the payment or deposit of money, or the provision of credit; or

(b) the obtaining of credit by the company;

shall, to the extent of the amount of that money or of that credit, as the case may be, be taken to be a borrowing by the company.

(6) A contract entered into under subsection (2) may include either or both of the following provisions:

(a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a foreign country;

(b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a foreign country in relation to any proceedings that may be taken under the contract.

(7) For the purposes of subsection (1), a company is a wholly owned subsidiary of the Authority if that company is a subsidiary of the Authority and none of the members of the company is a person other than:

(a) the Authority;

(b) a nominee of the Authority;

(c) a subsidiary of the Authority none of whose members is a person other than the Authority or a nominee of the Authority; or

(d) a nominee of a subsidiary referred to in paragraph (c).

Delegation by Treasurer

63. The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Treasurer, delegate to a person holding or performing the duties of an office in the Department of the Treasury all or any of the powers of the Treasurer under sections 14, 58, 59 and 62.

Application of Division 2 of Part XI of the Audit Act

64. (1) The Authority is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) In its annual report under Division 2 of Part XI of the *Audit Act 1901*, the Authority shall include:

- (a) an evaluation of its overall performance compared with the financial targets and performance indicators for the year; and
- (b) a copy of any statement laid before a House of the Parliament under paragraph 14 (3) (b) or 15 (3) (b) during the year.

Audit of subsidiaries

65. (1) The Auditor-General shall audit the financial statements of each company that is a subsidiary of the Authority and shall prepare and submit to the Minister a report of the result of that audit.

(2) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the company, and records relating to assets of, or in the custody of, the company, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify so doing.

(3) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records.

(4) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit.

(5) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to all accounts and records of the company relating directly or indirectly to the receipt or payment of money by the company or to the acquisition, receipt, custody or disposal of assets by the company.

(6) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from, any such accounts or records.

(7) The Auditor-General or a person authorised by the Auditor-General may require any person to furnish him or her with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this section, and the person shall comply with the requirement.

(8) A person who contravenes subsection (7) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

(9) Nothing in this section:

(a) affects the application to the company of any law in force in a State or Territory relating to:

(i) the appointment of an auditor or auditors of the company; or

(ii) the powers and duties of an auditor or auditors of the company appointed under such a law; or

(b) prevents:

- (i) the appointment, under section 63P of the *Audit Act 1901*, of the Auditor-General as auditor of such a company for the purposes of a law of a State or Territory; or
- (ii) the inclusion in an arrangement under subparagraph 63P (1) (a) (i) or subsection 63P (2) of that Act relating to such an appointment of provision for the payment of a fee by the company to the Commonwealth in respect of carrying out an audit to which the arrangement relates.

(10) In this section, “financial statements”, in relation to a company, means profit and loss accounts and balance sheets of the company and includes statements, reports and notes, other than auditors’ reports or directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets.

Division 2—Charges and Statutory Liens

Charges for services and facilities

66. (1) In this section:

“charge” means:

- (a) a charge for a service or facility provided by the Authority; or
- (b) a fee or other charge in respect of a matter specified in the regulations, being a matter in relation to which expenses are incurred by the Authority under this Act or the regulations, including, but without being limited to, a fee or other charge in respect of, or for an application for:
 - (i) the grant, issue, renewal or variation of a certificate, licence, approval, permission, permit, registration or exemption under this Act or the regulations; or
 - (ii) the grant or variation of an authorisation, or the cancellation, suspension, variation or imposition of a condition, relating to anything referred to in subparagraph (i).

(2) Subject to this section, the Authority may make determinations:

- (a) fixing charges and specifying the persons by whom, and the times when, the charges are payable; and
- (b) fixing the penalty for the purposes of subsection (8).

(3) Before making a determination, the Authority shall give the Minister notice in writing of the proposed determination:

- (a) specifying the day on and from which the determination is intended to operate;
- (b) if it fixes a charge or penalty, specifying the basis of the charge or penalty; and
- (c) if it varies a charge or penalty—specifying the reason for the variation.

(4) The Minister may, within 60 days after receiving a notice of a proposed determination, give the Authority notice in writing approving or disapproving it.

(5) In doing so, the Minister shall have regard to the duties and responsibilities of the Authority under this Act.

(6) The Authority may make a determination only if:

(a) the Minister has approved it; or

(b) 60 days have elapsed since the Minister received notice of it and the Minister has not, within that period, given the Authority a notice disapproving it.

(7) A determination shall be made public in such manner as the Authority thinks appropriate.

(8) Subject to subsection (9), where a charge is not paid within the period determined by the Authority, being a period beginning on the day on which the charge became due and payable, the person liable for the charge is liable to pay the Authority, in addition to the charge, a penalty, calculated upon the unpaid amount of the charge from the day on which the charge became due and payable, and compounded.

(9) The penalty shall not exceed a penalty equivalent to 1.5%, or such other percentage as is prescribed, of the unpaid amount of the charge for each month or part of a month during which it is unpaid, calculated from the day on which the charge became due and payable, and compounded.

(10) Subsection (9) does not require the penalty to be calculated on a monthly basis.

(11) Charges and penalties may be recovered as debts due to the Authority.

Limits on charges

67. The amount or rate of a charge shall be reasonably related to the expenses incurred or to be incurred by the Authority in relation to the matters to which the charge relates and shall not be such as to amount to taxation.

Register of statutory liens

68. There shall be a Register of Statutory Liens, which shall be maintained, and shall be open to public inspection, as prescribed.

Imposition of statutory lien

69. (1) Subject to section 76, where:

(a) at the end of the payment period after a charge became payable in respect of an aircraft, the charge is not paid; and

(b) at the end of that period, a statutory lien is not in effect in respect of the aircraft;

then, if an appropriate officer so directs at any time, the Registrar shall make an entry in the Register in the manner prescribed and, upon the making of the entry, there is vested in the Authority in respect of the

aircraft a statutory lien covering the charge, any penalty that is or becomes payable in respect of the charge and any further outstanding amounts in respect of the aircraft.

(2) In subsection (1):

“appropriate officer” means:

- (a) if, at the end of the payment period, the only relevant charge is a charge under section 66—an authorised officer;
- (b) if, at the end of that period, the only relevant charge is a charge under the *Air Navigation (Charges) Act 1952*—an officer of the Department designated in writing by the Secretary to the Department; or
- (c) in any other case—an officer referred to in either paragraph (a) or (b).

Effect of lien

70. (1) Where a statutory lien has been registered in respect of an aircraft and until the lien ceases to have effect, the following provisions of this Division apply, in spite of any encumbrance in respect of the aircraft and any sale or disposition of, or dealing in, the aircraft or an interest in the aircraft, and whether or not the Authority has possession of the aircraft at any time.

(2) For the purposes of priorities amongst creditors and the purposes of the distribution of the proceeds of a sale made under section 73, the statutory lien has effect as a security interest in respect of the aircraft ranking in priority:

- (a) after any security interest (other than a floating charge) in respect of the aircraft created before the time of registration of the statutory lien, to the extent that that security interest covers a debt incurred before that time; and
- (b) before any security interest not falling within, or to the extent that it does not fall within, paragraph (a).

De-registration of Australian aircraft

71. (1) In the case of an Australian aircraft, if an outstanding amount covered by the statutory lien is unpaid at the end of 6 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later, an authorised officer may, having regard to all the circumstances, including the steps, if any, taken by any person to pay the whole or part of the outstanding amounts covered by the statutory lien, cancel the certificate of registration of the aircraft in the register of Australian aircraft maintained under the regulations.

(2) If the certificate is cancelled, the aircraft shall not be re-registered until the statutory lien ceases to have effect.

Seizure of aircraft

72. If an outstanding amount covered by the statutory lien is unpaid at the end of 9 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later, an authorised officer, or a person authorised in writing by such an officer to do so, may at any time; subject to section 79, seize the aircraft, and:

- (a) shall take reasonable steps to give notice of the seizure to:
 - (i) such persons as, in the opinion of an authorised officer, have a security interest in the aircraft;
 - (ii) each person who is any of the following, namely, an owner, operator, lessee, hirer, charterer or pilot in command, of the aircraft; and
 - (iii) such other persons as are prescribed; and
- (b) may keep possession of the aircraft until all outstanding amounts covered by the statutory lien are paid.

Sale of aircraft

73. (1) If an outstanding amount covered by the statutory lien is unpaid at the end of 9 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later, the Authority may at any time, whether or not the aircraft has been seized under section 72:

- (a) sell the aircraft as prescribed, whether by public auction or private contract;
- (b) make and execute all instruments and documents necessary for effecting the sale; and
- (c) give full and effective title to the aircraft free of all encumbrances, leases and contracts of hire.

(2) Before selling the aircraft, the Authority shall take reasonable steps to give reasonable notice of the sale to the persons referred to in paragraph 72 (a).

Application of money

74. (1) For the purposes of sections 71, 72 and 73, any payment received or recovered by the Authority in discharge of outstanding amounts covered by the statutory lien shall be taken to be applied successively in the discharge of those amounts in the order in which those amounts became payable.

(2) The proceeds of a sale under section 73 shall be dealt with as prescribed.

(3) If:

- (a) an amount is applied under subsection (1) in the discharge of an amount of charge or penalty, or both, payable under the *Air Navigation (Charges) Act 1952*; and

- (b) the amount of the charge, or, in the case of a penalty, the amount of the charge to which the penalty relates, was wholly or partly attributable to a service or facility that does not come within the functions of the Authority;

the Authority shall pay to the Commonwealth an amount calculated under the formula:

$$\text{received amount} \times \frac{\text{Commonwealth element}}{\text{total charge}}$$

where:

Commonwealth element is the amount of the total charge that relates to services and facilities that do not come within the functions of the Authority;

received amount is the amount applied as described in paragraph (a); and

total charge is the amount, or the aggregate of the amounts, as the case requires, referred to in paragraph (b).

Cessation of lien

75. (1) If:

- (a) there is no outstanding amount covered by the statutory lien;
- (b) the aircraft is sold under section 73; or
- (c) an appropriate officer directs in writing that the statutory lien ceases to have effect;

the statutory lien ceases to have effect, and the Registrar shall make an entry in the Register as prescribed.

(2) In subsection (1):

“appropriate officer” means:

- (a) if the outstanding amount covered by the statutory lien does not include an amount payable under the *Air Navigation (Charges) Act 1952*—an authorised officer;
- (b) if the outstanding amount so covered does not include an amount payable under section 66—an officer of the Department designated by the Secretary to the Department; or
- (c) in any other case—an officer referred to in either paragraph (a) or (b).

Certificates of amounts unpaid

76. (1) Upon a request made in writing in respect of an aircraft by a prescribed person, an authorised officer shall issue a certificate in writing, stating whether or not, as at a specified date and time, any charge or penalty, or any debt under section 81, is payable and unpaid in respect of the aircraft and, in respect of any such charge, penalty or debt, the amount of it and the date upon which it became payable.

(2) Where a certificate has been so issued, any statutory lien in respect of the aircraft, whether imposed before or after the time to which the certificate relates, does not cover:

- (a) any such charge or debt in respect of the aircraft that was payable and unpaid as at that time but was not specified in the certificate; or
- (b) any penalty relating to any such charge.

Notice relating to lien

77. (1) As soon as practicable after an entry is made in the Register under section 69 or 75 or action is taken under section 71, the Registrar shall publish in the *Gazette* notice of that fact, containing such particulars as are prescribed, and shall take reasonable steps to serve copies of the notice on such persons as are prescribed.

(2) A failure to comply with subsection (1) has no effect on the operation of section 69, 71 or 75, as the case may be.

Dismantling etc. aircraft under lien

78. (1) A person who, knowing or having reasonable grounds to believe that a statutory lien is in effect in respect of an aircraft, detaches any part or equipment from the aircraft without the prior approval of an authorised officer is guilty of an indictable offence punishable by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

(2) Subsection (1) does not apply to an act done as required by or under the regulations.

Manner of seizure of aircraft

79. A person is not entitled to seize an aircraft under section 72 if, upon being requested by the owner, operator or pilot in command of the aircraft to produce the authority by virtue of which the person is authorised to act under that subsection, the person fails to do so.

Protection against actions

80. (1) An action does not lie against the Authority, or against an officer, employee or agent of the Authority acting in the course of the person's duties, employment or agency, as the case may be, for or in respect of:

- (a) loss of, or damage to, an aircraft during its seizure in accordance with section 72; or
- (b) loss of, or damage to, an aircraft so seized while it is in the custody, possession or control of the Authority or of an officer, employee or agent of the Authority;

other than loss or damage wilfully or negligently caused by such an officer, employee or agent.

- (2) In subsection (1):

“officer” includes the Chief Executive Officer.

Insurance of aircraft

81. (1) Where an aircraft is to be seized under section 72, the Authority shall insure the aircraft, and keep it insured, against the loss of, or any damage to, the aircraft during its seizure or while it is in the custody, possession or control of the Authority or of an officer, employee or agent of the Authority.

(2) The insurance shall be for the benefit of the person or persons prescribed.

(3) Where an amount of a premium of the insurance is paid by the Authority, an equivalent amount becomes a debt payable to the Authority by the person by whom amounts covered by the statutory lien in respect of the aircraft are payable.

(4) In subsection (1):

“officer” includes the Chief Executive Officer.

Review of decisions

82. (1) In this section and in section 83:

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“reviewable decision” means a decision made under subsection 69 (1), 71 (1) or 73 (1).

(2) A person affected by a reviewable decision may, by notice in writing given to the Authority within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Authority (either before or after the end of that period) allows by notice in writing served on the person, request the Authority to reconsider the decision.

(3) The request shall set out the grounds upon which reconsideration of the decision is sought.

(4) Within 28 days after receiving the request, the Authority shall reconsider the decision and affirm or revoke the decision or vary the decision as the Authority thinks fit.

(5) Where the Authority affirms, revokes or varies a decision, the Authority shall, by notice in writing served on the person who made the request, inform the person of the result of the reconsideration of the decision, and give the reasons for affirming, revoking or varying the decision, as the case may be.

(6) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions that have been affirmed or varied under subsection (4).

Statements to accompany notices

83. (1) Where the person who makes a reviewable decision gives to the person or persons whose interests are affected by the decision notification in writing of the decision, that notice shall include a statement to the effect that a person affected by the decision:

- (a) may request the Authority to reconsider the decision; and
- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Authority under subsection 82 (4) affirming or varying the reviewable decision, apply to the Administrative Appeals Tribunal for review of the reviewable decision.

(2) Where the Authority makes a decision under subsection 82 (4) affirming or varying a reviewable decision, the notice given under subsection 82 (5) shall include a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the reviewable decision.

(3) A failure to comply with subsection (1) or (2) in relation to a decision does not affect the validity of the decision.

PART VII—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Chief Executive Officer

84. (1) There shall be a Chief Executive Officer of the Authority, who shall be appointed by the Minister.

(2) Subject to this Part, a person appointed as Chief Executive Officer holds office for the period, not exceeding 5 years, specified in the instrument of appointment.

(3) A person appointed as Chief Executive Officer is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as Chief Executive Officer and a person shall not be appointed or re-appointed as Chief Executive Officer for a period that extends beyond the date on which he or she will attain the age of 65 years.

(5) The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

Chief Executive Officer not to engage in other work

85. The Chief Executive Officer shall not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

Remuneration and allowances of Chief Executive Officer

86. (1) The Chief Executive Officer shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, shall be paid such remuneration as is prescribed.

(2) The Chief Executive Officer shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

87. The Minister may grant leave of absence to the Chief Executive Officer on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

Resignation

88. The Chief Executive Officer may resign by instrument in writing delivered to the Minister.

Termination of appointment

89. (1) The Minister may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

(2) If the Chief Executive Officer:

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b)** except with the approval of the Minister, engages in paid employment outside the duties of his or her office;
- (c)** is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or

(d) fails, without reasonable excuse, to comply with section 40;
the Minister may terminate the appointment of the Chief Executive Officer.

Acting Chief Executive Officer

90. (1) The Minister may appoint a person to act as Chief Executive Officer:

- (a)** during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) A person, other than a member of the staff, who is acting as Chief Executive Officer shall be paid the same remuneration and allowances as are payable to the Chief Executive Officer.

(3) A member of the staff who is acting as Chief Executive Officer shall continue to be paid the remuneration and allowances payable to the member as such a member but shall also be paid:

- (a) so much of any remuneration payable to the Chief Executive Officer as exceeds the remuneration that so continues to be paid to the member;
- (b) so much of any allowance payable to the Chief Executive Officer as exceeds the corresponding allowance that so continues to be paid to the member; and
- (c) if an allowance is payable to the Chief Executive Officer in respect of which there is no corresponding allowance payable to the member—that allowance.

(4) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in or in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Staff of Authority

91. (1) The staff of the Authority shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Chief Executive Officer has all the powers of a Secretary under the *Public Service Act 1922*, so far as they relate to the branch of the Australian Public Service comprising the staff of the Authority.

(3) The Chief Executive Officer may, on behalf of the Authority, arrange with an authority of the Commonwealth or another person:

- (a) for the services of officers or employees of the authority or of the other person, as the case may be, to be made available for the purposes of the Authority; or
- (b) for the services of an officer to be made available for the purposes of the authority or of the other person, as the case may be.

Consultants

92. The Authority may engage such consultants as it thinks necessary.

PART VIII—MISCELLANEOUS

Delegation by Minister

93. The Minister may, in writing, delegate all or any of the powers of the Minister under section 49, 50 or 52 to:

- (a) the person holding or performing the duties of the office of Secretary to, or unattached Secretary in, the Department; or
- (b) a person holding or performing the duties of a Senior Executive Service office within the meaning of the *Public Service Act 1922*, being an office in the Department.

Delegation by Authority

94. The Authority may, by writing under its common seal, delegate all or any of its powers under this Act to:

- (a) a member;
- (b) the Chief Executive Officer;
- (c) an officer; or
- (d) a person in respect of whose services arrangements under paragraph 91 (3) (a) are in force.

Substitution of Authority for Commonwealth in contracts etc.

95. If the Minister so declares in writing, a specified contract or other instrument:

- (a) to which the Commonwealth or the Commonwealth Government is a party; and
- (b) that related to an asset immediately before the transfer of that asset under this Act;

has effect after the transfer as if, to the extent to which the contract or instrument so relates:

- (c) the Authority were substituted for the Commonwealth or the Commonwealth Government as a party; and
- (d) any reference to the Commonwealth or the Commonwealth Government were, in relation to matters occurring after the transfer, a reference to the Authority.

Publication of directions

96. Where the Minister gives a direction under section 12, 47 or 56, the Minister shall cause it to be published in the *Gazette* within 21 days after it is given.

Lands Acquisition Act

97. The *Lands Acquisition Act 1955* does not apply in relation to, or prevent:

- (a) the acquisition (including the leasing) of land by the Authority by agreement;
- (b) the granting of a lease of land vested in the Authority;
- (c) the granting of a licence to occupy, or the giving of authority to use, land vested in the Authority; or
- (d) the disposal of land vested in the Authority.

Regulations

98. (1) The Governor-General may make regulations, not inconsistent with this Act:

- (a) prescribing matters required or permitted by this Act to be prescribed;
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (c) for the purpose of carrying out and giving effect to the provisions of the Chicago Convention relating to safety;
- (d) in relation to safety of air navigation within a Territory or to or from a Territory;
- (e) in relation to safety of air navigation, being regulations with respect to trade and commerce with other countries and among the States; and
- (f) in relation to safety of air navigation, being regulations with respect to any other matter with respect to which the Parliament has power to make laws.

(2) The regulations may apply in relation to state aircraft.

(3) Without limiting the generality of subsections (1) and (2), those subsections include the power to make regulations for or in relation to:

- (a) the registration, marking and airworthiness of aircraft;
- (b) the manner of applying for Air Operators' Certificates, including the information that may be required, and the conditions to be satisfied, for the issue of such Certificates;
- (c) requiring persons performing specified functions in relation to the operation or maintenance of aircraft and aerodromes to be the holders of licences, permits or certificates of specified kinds, and providing for the grant, issue, cancellation, suspension or variation of such licences, permits and certificates;
- (d) the planning, construction, establishment, operation and use of aerodromes, including the licensing of aerodromes;
- (e) the planning, construction, establishment, maintenance, operation and use of air route and airway facilities, including the obtaining of meteorological information;
- (f) hygiene, sanitation and public health at aerodromes;
- (g) the prohibition of the construction of buildings, structures or objects, the restriction of the dimensions of buildings, structures or objects, and the removal in whole or in part or the marking or lighting of buildings, structures or objects (including trees or other natural obstacles) that constitute or may constitute obstructions, hazards or potential hazards to aircraft flying in the vicinity of an aerodrome, and such other measures as are necessary to ensure the safety of aircraft using an aerodrome or flying in the vicinity of an aerodrome;
- (h) empowering the Authority, or an officer authorised by the Authority, to give or issue directions or instructions to all or any of the persons

holding licences, permits or certificates under this Act or the regulations, being directions or instructions with respect to matters affecting the safe navigation and operation, or the maintenance, of aircraft, and providing for the manner in which such directions and instructions are to be notified;

- (j) the formal proof and authentication of instruments made or issued under this Act or the regulations;
- (k) the powers (including powers of arrest) that may be exercised by members of the crew of an aircraft, in relation to persons on board the aircraft, for the purpose of ensuring the safety of the aircraft or of its passengers, crew or cargo or otherwise for the purposes of this Act or the regulations;
- (m) the review of decisions made under the regulations;
- (n) the supply in specified circumstances to specified officers of the Authority, and specified officers of the Department, of records in respect of an aircraft subject to a statutory lien under section 69, being records kept under the regulations and relating to:
 - (i) the maintenance done on the aircraft and its components; and
 - (ii) the time in service of the aircraft and its components;
- (o) enabling specified documents to be *prima facie* evidence of movements of aircraft for the purpose of establishing liability to charges; and
- (p) the imposition of penalties, not exceeding a fine of \$5,000, for a contravention of a provision of the regulations or a direction, instruction or condition issued, given, made or imposed under, or in force by virtue of, the regulations.

(4) Where the regulations provide for the removal, marking or lighting of anything referred to in paragraph (3) (g), the regulations shall also provide for the payment of compensation to any person who suffers loss or damage or incurs expense in or as a direct result of the removal, marking or lighting.

(5) Where the regulations provide for a direction, instruction, notification, permission, approval or authority to be given or issued in the form of a Civil Aviation Order, an Order so given or issued after the commencement of this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(6) The preceding provisions of this section (including provisions that do not contain references to the States or to a Territory) have effect as if the Northern Territory were a State.

(7) A law of a Territory (not being a law of the Commonwealth) does not have effect to the extent to which it is inconsistent with a provision of the regulations having effect in that Territory, but such a law shall not be taken to be inconsistent with such a provision to the extent that it is capable of operating concurrently with that provision.

PART IX—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Consequential amendments of other Acts

99. The Acts specified in the Schedule are amended as set out in the Schedule.

PART X—TRANSITIONAL PROVISIONS

Actions etc. under provisions amended or repealed

100. (1) Where this Act:

- (a) amends a provision of another Act; or
- (b) repeals and re-enacts (with or without modifications) a provision of another Act;

any act done, step taken or decision made by a person under that provision (being an act, step or decision in effect immediately before the amendment or repeal) continues to have effect as if it had been done, taken or made by the appropriate person under that provision as so amended or re-enacted.

(2) In an instrument that, by virtue of subsection (1), continues to have effect in the manner provided in that subsection:

- (a) a reference to the Secretary to the Department; and
- (b) a reference to the Department (other than a reference mentioned in paragraph (a));

shall be read as a reference to the Authority.

(3) Subsection (1) does not apply to the making of regulations.

(4) Where an instrument authorising the conduct of operations only within Australia, being a licence issued under Part XIII of the Air Navigation Regulations or an exemption and approval under regulation 203 of those Regulations, was in force immediately before the commencement of section 27:

- (a) the instrument continues in effect after that commencement, but shall be taken to be an Air Operator's Certificate issued under this Act; and
- (b) in the instrument as so continued in effect:
 - (i) a reference to the Secretary to the Department shall be read as a reference to the Authority;
 - (ii) a reference to the Department (other than a reference mentioned in subparagraph (i)) shall be read as a reference to the Authority;
 - (iii) a reference to a provision of the *Air Navigation Act 1920* shall be read as a reference to the corresponding provision of this Act;
 - (iv) a reference to a provision of the Air Navigation Regulations shall be read as a reference to the corresponding provision of regulations made under this Act; and

- (v) a reference to an Air Navigation Order, within the meaning of the Air Navigation Regulations, shall be read as a reference to a Civil Aviation Order, within the meaning of regulations made under this Act.

Statutory liens

101. (1) The Register maintained under section 5B of the *Air Navigation (Charges) Act 1952* shall be transferred to the custody of the Registrar.

(2) The Register maintained under section 68 shall be taken to include everything that comprised the Register referred to in subsection (1).

(3) A statutory lien in effect under the *Air Navigation (Charges) Act 1952* immediately before the commencement of this section continues in effect but is vested in the Authority by force of this section.

(4) This section does not limit the generality of section 100.

Review of decisions

102. (1) Where:

- (a) a provision of the *Air Navigation Act 1920* or the *Air Navigation (Charges) Act 1952* is repealed and re-enacted by this Act; and
- (b) immediately before the repeal, proceedings under the *Administrative Appeals Tribunal Act 1975* or the *Administrative Decisions (Judicial Review) Act 1977* were pending in respect of a decision made under that provision;

the proceedings may be continued in relation to that decision as affected by section 100.

(2) This section does not limit the generality of section 100 or of section 8 of the *Acts Interpretation Act 1901*.

Delegations

103. (1) Where, immediately before the commencing day, there was in force a delegation of a power or function under a provision, being subsection 14 (2), or section 15 or 17, of the *Air Navigation Act 1920*, the delegation has effect on and from the commencing day as being a delegation of both:

- (a) a power or function under that provision as affected by this Act; and
- (b) a power or function under the corresponding provision of this Act.

(2) Where, immediately before the commencing day, there was in force a delegation of a power or function under a provision, being subsection 14 (7) of the *Air Navigation Act 1920*, the delegation has effect on and from the commencing day as being a delegation of a power or function under the corresponding provision of this Act.

(3) In this section:

“commencing day” means, in relation to a provision of the *Air Navigation Act 1920*, the day on which the corresponding provision of this Act commences.

SCHEDULE

Section 99

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Administrative Appeals Tribunal Act 1975

Schedule 1:

Omit Part III.

Administrative Decisions (Judicial Review) Act 1977

Schedule 2:

Omit from paragraph (p) "*Air Navigation Act 1920*", substitute "*Civil Aviation Act 1988*".

Airlines Equipment Act 1958

Subsection 11 (1) (definition of "Air Navigation Regulations"):

Omit the definition.

Subsection 11 (1) (definition of "regional operator"):

Omit "an airline licence under Regulation 198 of the Air Navigation Regulations", substitute "an Air Operator's Certificate under the *Civil Aviation Act 1988* of a kind authorising the use of high capacity aircraft for domestic regular public transport passenger services".

Subsection 11 (1) (definition of "regular public transport service"):

Omit "Air Navigation Regulations", substitute "Civil Aviation Regulations".

Air Navigation Act 1920

Subsection 3 (1) (definition of "Australian aircraft"):

Omit "regulations", substitute "Civil Aviation Regulations".

Subsection 3 (1) (definition of "Australian territory"):

Omit the definition, substitute the following definition:

"'Australian territory' means:

- (a) the territory of Australia and of every external Territory;
- (b) the territorial sea of Australia and of every external Territory; and
- (c) the air space over any such territory or sea."

Sections 7 and 8:

Repeal the sections.

SCHEDULE—continued

Paragraph 13 (a):

Omit “or the regulations”, substitute “, the regulations, the *Civil Aviation Act 1988*, the regulations made under that Act,”.

Subparagraph 13 (c) (i):

After “regulations” insert “, the *Civil Aviation Act 1988*, the regulations made under that Act,”.

Subsection 14 (1):

Omit “and the regulations”, substitute “, the regulations, the *Civil Aviation Act 1988* and the regulations made under that Act”.

Subsection 14 (3):

Omit the subsection.

Subsection 14 (4):

Omit “have regard to —”, substitute “have regard to the following matters to the extent that they do not relate to the safety of air navigation, namely:”.

Subsection 14 (7):

Omit the subsection.

Section 15:

Add at the end the following subsection:

“(3) When exercising a discretion under this section, the Minister shall have regard only to matters that do not relate to the safety of air navigation.”.

Section 17:

Add at the end the following subsection:

“(2) In exercising a discretion under this section, the Secretary shall have regard only to matters that do not relate to the safety of air navigation.”.

Sections 18, 20, 21 and 21A:

Repeal the sections.

Subsection 22 (1):

- (a) Omit “or fails to comply with”.
- (b) Omit “(other than section 21A)”.

Subsection 22 (2):

- (a) Omit “, or fails to comply with”.
- (b) Omit “(other than section 21A)”.

SCHEDULE—continued

Paragraph 22 (4) (b):

Omit “, or, if the offender is a body corporate, a fine not exceeding \$25,000”.

Subsections 22 (5) and (6):

Omit the subsections.

Subsection 22 (7):

Omit “, or failure to comply with”.

Section 26:

After subsection (1) insert the following subsection:

“(1AA) Subsection (1) does not extend to a matter in relation to which:

- (a) the Civil Aviation Authority has functions; or
- (b) regulations may be made under the *Civil Aviation Act 1988*.”.

Paragraph 26 (2) (ca):

- (a) Omit “Australia” (wherever occurring), substitute “Commonwealth”.
- (b) Omit “(including, but without limiting the generality of the foregoing fees and other charges in respect of, or for applications or exemptions for, the grant, issue, renewal or variation of licences, certificates, approvals, permits, registrations or exemptions under the regulations)”.

Paragraph 26 (2) (e):

Omit all the words after “aerodromes” (first occurring).

Subsection 26 (2):

Omit paragraphs (a), (b), (f), (g), (h) and (j).

Subsection 26 (3):

Omit the subsection.

Section 28:

Repeal the section.

Air Navigation (Charges) Act 1952

Subsection 5 (1):

Omit “, air route and airway facilities, meteorological services and search and rescue services”.

Sections 5B to 5K (inclusive):

Repeal the sections.

SCHEDULE—continued

Paragraph 6 (2) (a):

Omit the paragraph.

Airports (Business Concessions) Act 1959

Section 3 (definition of “airport”):

(a) Omit paragraph (a), substitute the following paragraph:

“(a) an aerodrome owned or held under lease by the Commonwealth, other than an aerodrome under the control of a part of the Defence Force; or”.

(b) Omit from paragraph (b) “in pursuance of arrangements made by the Minister administering that Act”.

Subsection 5 (3):

Omit “in pursuance of the *Air Navigation Act 1920-1950* or of the regulations under that Act”.

Airports (Surface Traffic) Act 1960

Subsection 3 (1) (definition of “airport”):

(a) Omit from paragraph (b) all the words after “Territory” (second occurring), substitute “other than an aerodrome under the control of a part of the Defence Force”.

(b) Omit from paragraph (b) “in pursuance of arrangements made under section 18 of that Act”.

Antarctic Treaty (Environment Protection) Act 1980

Subsection 3 (1) (definition of “Australian property”):

Omit from paragraph (a) “Air Navigation Regulations”, substitute “Civil Aviation Regulations”.

Civil Aviation (Carriers’ Liability) Act 1959

Subsection 26 (1) (definition of “airline licence”):

Omit the definition, substitute the following definition:

“‘airline licence’ means:

- (a) an international airline licence in force under the Air Navigation Regulations; or
- (b) an Air Operator’s Certificate in force under the *Civil Aviation Act 1988* authorising airline operations;”.

Subsection 26 (1) (definition of “charter licence”):

Omit the definition, substitute the following definition:

“‘charter licence’ means:

SCHEDULE—continued

- (a) a charter licence in force under the Air Navigation Regulations; or
- (b) an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising charter operations;".

Conciliation and Arbitration Act 1904

Subsection 88ZC (2):

After "Air Navigation Regulations" insert "or the Civil Aviation Regulations".

Crimes (Aircraft) Act 1963

Subsection 3 (1) (definition of "Australian aircraft"):

Omit "Air Navigation Regulations", substitute "Civil Aviation Regulations".

Subsection 3 (1):

Insert the following definition:

"Civil Aviation Regulations" means regulations made under the *Civil Aviation Act 1988*, and includes any of those regulations as in force under the law of a State;".

Subsection 3 (1) (definition of "the Air Navigation Regulations"):

Omit the definition.

Paragraph 18 (2) (b):

Omit "Air Navigation Regulations", substitute "*Civil Aviation Act 1988* or regulations made under that Act".

Section 20A (definition of "Commonwealth Air Navigation Facilities"):

After "Commonwealth" insert "or an Authority of the Commonwealth".

Crimes (Currency) Act 1981

Subsection 23 (2) (definition of "Australian aircraft"):

Omit from paragraph (a) "Air Navigation Regulations", substitute "Civil Aviation Regulations".

Crimes (Hijacking of Aircraft) Act 1972

Subsection 3 (1) (definition of "Australian aircraft"):

Omit from paragraph (a) "Air Navigation Regulations", substitute "Civil Aviation Regulations".

SCHEDULE—continued

Crimes (Internationally Protected Persons) Act 1976

Subsection 3 (1) (definition of “Australian aircraft”):

Omit from paragraph (a) “Air Navigation Regulations”, substitute “Civil Aviation Regulations”.

Crimes (Protection of Aircraft) Act 1973

Subsection 3 (1) (definition of “Australian aircraft”):

Omit from paragraph (a) “Air Navigation Regulations”, substitute “Civil Aviation Regulations”.

Customs Act 1901

Subsection 59 (7) (definition of “Australian aircraft”):

Omit “*Air Navigation Act 1920*”, substitute “*Civil Aviation Act 1988*”.

Departure Tax Collection Act 1978

Section 3 (definition of “aerial work operation”):

Omit “paragraph 191 (b) of the Air Navigation Regulations as in force from time to time”, substitute “the Civil Aviation Regulations”.

Section 3 (definition of “charter operation”):

Omit “paragraph 191 (c) of the Air Navigation Regulations as in force from time to time”, substitute “the Civil Aviation Regulations”.

Section 3 (definition of “private operations”):

Omit “paragraph 191 (a) of the Air Navigation Regulations as in force from time to time”, substitute “the Civil Aviation Regulations”.

Federal Airports Corporation Act 1986

Paragraph 7 (3) (b):

Add at the end “or of the Civil Aviation Authority”.

Paragraph 8 (1) (d):

Omit “and” at the end of the paragraph.

Subsection 8 (1):

Add at the end the following word and paragraph:

“; and (f) co-operating with, and providing assistance to, the Civil Aviation Authority, to the extent required by the Authority, in relation to matters dealt with by the Authority in respect of Federal airports.”.

SCHEDULE—continued

Subsection 8 (3):

- (a) Omit “Minister”, substitute “Authority”.
- (b) Omit “*Air Navigation Act 1920*” (wherever occurring), substitute “*Civil Aviation Act 1988*”.

Subsection 70 (1):

Omit the subsection, substitute the following subsection:

“(1) The provisions of the Air Navigation Regulations empowering the Minister to establish or provide aerodromes and giving the Minister powers in relation to any such aerodromes do not apply in relation to a Federal airport.”.

Subsection 70 (2):

Omit “pursuant to regulation 82 of”, substitute “under”.

Subsection 70 (3):

Omit “sub-regulation 84 (1) of the Air Navigation Regulations”, substitute “the provisions of the Civil Aviation Regulations relating to licencing of aerodromes”.

Subsection 70 (4):

Omit the subsection.

Independent Air Fares Committee Act 1981

Subsection 3 (1) (definition of “aerodrome”):

Omit “Air Navigation Regulations”, substitute “*Civil Aviation Act 1988*”.

Subsection 3 (1) (definition of “air route facilities”):

Omit the definition, substitute the following definition:

“‘air route facilities’ means air route and airway facilities as defined in the *Civil Aviation Act 1988*.”.

Subsection 3 (1) (definition of “commuter operator”):

Omit “an airline licence under regulation 198 of the Air Navigation Regulations”, substitute “an Air Operator’s Certificate under the *Civil Aviation Act 1988* of a kind authorising the use of high capacity aircraft”.

Subsection 3 (1) (definition of “regular public transport service”):

Omit “Air Navigation Regulations”, substitute “Civil Aviation Regulations”.

Subsections 26 (1) and (6):

Omit “maintained and operated by the Minister in pursuance of regulation 82 of the Air Navigation Regulations”.

SCHEDULE—continued

Section 26:

Add at the end the following subsection:

“(11) In this section:

‘aerodrome’ means an aerodrome maintained and operated by the Minister under the Air Navigation Regulations;

‘air route facility’ means an air route facility provided by the Civil Aviation Authority.”.

Registration of Deaths Abroad Act 1984

Subsection 3 (1) (definition of “Australian aircraft”):

Omit from paragraph (a) “regulations under the *Air Navigation Act 1920*”, substitute “Civil Aviation Regulations”.

Sea Installations Act 1987

Schedule:

After “*Broadcasting Act 1942*” insert “*Civil Aviation Act 1988*”.

South Pacific Nuclear Free Zone Treaty Act 1986

Subsection 4 (1) (definition of “Australian aircraft”):

Omit from paragraph (a) “Air Navigation Regulations”, substitute “Civil Aviation Regulations”.

[Minister's second reading speech made in—
House of Representatives on 14 April 1988
Senate on 27 April 1988]