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AUSTRALIAN NATIONAL AIRLINES AMENDMENT BILL 1984

Date Introduced: 9 May 1984
House: House of Representatives
Presented by: Hon. K.C. Beazley, Minister for Aviation

Purpose

To give the Australian National Airlines Commission (trading as Trans Australia Airlines) more autonomy in its financial operations, to organise its activities along more commercial lines, to clarify the terms and conditions of the employment of Commissioners and officers, to determine the Commission's contributions to the Commonwealth for superannuation purposes and to require the Commission to formulate corporate plans.

Background

Following the release of the Department of Transport's Domestic Air Transport Policy Review in 1978, the Government undertook negotiations (begun by Mr Nixon and renewed by Mr Hunt) with TAA and Ansett Transport Industries Ltd. designed to formulate new arrangements to apply to the regulation of the domestic air transport industry. The Review, while supporting the concept of the Two Airlines Policy, argued inter alia that more competition and innovation should be exhibited by the two major airlines.

Among matters to be considered in formulating new industry arrangements was the appropriate structure of TAA. Several members of the Government backbench, as well as the new management of Ansett, had argued that a truly competitive environment could only prevail if TAA were sold. Mr Hunt subsequently referred the question of TAA's restructuring to an Inter-Departmental Committee which reported on 14 March 1980. The Committee noted that a review of TAA by Hill Samuel Australia had found that the airline's financial structure was inconsistent with a commercially competitive operation. The Report concluded that TAA should be given greater responsibility on the questions of determining profit targets, borrowings, salaries and other matters. On 6 July 1980, Mr Hunt announced that TAA was not for sale.
On 18 September 1980, Mr Hunt introduced the Australian National Airlines Amendment Bill (No. 2). The Bill, while maintaining the statutory authority status of the Commission, was designed to give the Commission more autonomy in its financial and staffing affairs. The Bill was introduced only hours before Parliament was dissolved (prior to the 1980 elections) and subsequently lapsed.

After the elections, in response to pressure which had again been applied by sections of the Government backbench, Mr Hunt announced, on 1 April 1981, that the Government had decided in principle to establish TAA as a public company. The Australian National Airlines Repeal Act 1981 was subsequently passed. However, none of the provisions of that legislation had been acted upon by the time the Labor Government came to power in March 1983.

The Fraser Government did, however, take certain steps which would have been prerequisites for any incorporation of the airline. It was widely recognised that there were a number of problems which would undermine TAA's ability to operate as a viable public company. Concern was especially expressed about TAA's high, non-commercial gearing ratio and its liabilities under the Commonwealth Superannuation Scheme. The Government, in December 1982, injected $25m into the airline in an attempt to improve its gearing ratio. Also, in June 1982, the Minister for Aviation, Mr Fife, announced that the Commonwealth would take over the remainder of TAA's unfunded superannuation liability. The total actuarial value of superannuation liabilities taken over by the Commonwealth, as at March 1982, was $259m.

TAA established its own groundstaff superannuation schemes, although existing employees were given the choice of remaining with the Commonwealth scheme. Although it was decided in principle that TAA should pay no more in superannuation contributions than those paid by a private enterprise, legislation to that effect was not introduced and the details of TAA's contributions in respect of those employees still in the Commonwealth scheme were still being finalised into 1984.

In its National Transport Policy document released in February 1983, the Labor Party stated its intention to retain TAA as a public authority but to give it more financial and managerial autonomy and cause it to operate on a more commercial basis. These policies are being implemented by the introduction of the Australian National Airlines Commission Retention Bill 1984 and the Australian National Airlines Amendment Bill 1984. The Government has also promoted the commercial viability of TAA by injecting,
in May 1983, an additional $90m of capital, bringing total
government advances to the Commission to $130m.

The present Bill has much in common with the
Australian National Airlines Amendment Bill (No. 2) 1980,
with many of the provisions being either identical or having
the same intent.

There are three major areas of difference between
the 1980 Bill and the present Bill. The present Bill (a)
requires TAA to formulate a rolling, three-year corporate
plan; (b) sets out a formula for determining the
Commission's superannuation contributions in respect of
employees remaining in the Commonwealth scheme, which
ensures that these contributions are comparable with those
paid by the Commission into its own schemes; and (c)
requires the Minister's approval to be obtained before the
Commission establishes or acquires shares in any body
corporate over which the Commission would have effective
control. The Bill also extends a government guarantee over
money raisings undertaken by any body corporate that is a
wholly-owned subsidiary of the Commission and which owns or
operates aircraft.

Other areas in which the present Bill differs in
substance from the 1980 Bill include provisions in the
former to expand the membership of the Commission and
increase the quorum at its meetings; to alter the limits
applying to the value of contracts and arrangements relating
to real property into which the Commission can enter without
Ministerial approval; to allow the Commission, rather than
the Minister, to determine the application of any profits
after the payment of dividends to the Commonwealth; and to
introduce a 21 day period during which the Minister for
Finance may approve or direct the Commission to alter the
form of its financial statements.

Unlike the 1980 Bill, the present Bill does not
contain provisions designed to clarify beyond doubt the
powers of the Commission to operate on routes within and
between States and Territories. Nor does it allow the
Commission to determine how it shall invest funds not
immediately required for the Commission's purposes.
Instead, it merely allows the Minister for Aviation to
replace the Treasurer as the Minister responsible for the
approval of any such investments which are not on fixed
deposit with a bank or in the form of Commonwealth
securities.
Main Provisions

Provisions under which Commissioners and Officers are Appointed

In line with the general tenor of the Bill to give more autonomy to the Commission, the Commission is given more freedom to exercise discretion in matters of staffing. Clause 5 repeals section 10 of the Act and inserts new sections 10 and 10A setting out the terms of appointment, powers and functions of the Commissioners and acting Commissioners while clause 10 amends section 17 to substantially relax the restrictions applying to the Commission's ability to determine the terms, conditions and levels of employment of officers, apart from the General Manager.

Clause 4 amends section 7 of the Principal Act to increase the membership of the Commission from 7 members to a minimum of 7 and a maximum of 9 members. Clause 8 amends section 15 to increase the quorum at meetings of the Commission from 3 to 4 members.

Clause 7 amends section 14, which relates to the grounds for the dismissal of Commissioners. Also, reflecting the recommendations of the Bowen Committee of Inquiry into Public Duty and Private Interest, clause 7 sets out more specific guidelines concerning the requirements for Commissioners to divulge pecuniary interests in any matter being considered by the Commission and the appropriate course of action to be taken where such interests exist.

Intra-State Transport Within Queensland and Tasmania

Clause 12 amends section 19A of the Act to dispense with the requirement that the Commission shall only provide services within these States (being States which have referred the power of air transport to the Commonwealth) with the consent of the State Premier. Instead, the Commission will be authorised to provide intra-State services within these States provided they are in accordance with applicable State laws.

Formation of a Body Corporate

Clause 13 amends section 19H of the Principal Act to require that the approval of the Minister must now be sought when the Commission establishes or acquires shares in a body corporate over which it would have effective control. Sub-clause 18(1) inserts, inter alia, a new section 32D which provides for the extension of Commonwealth guarantees
to cover interest and borrowings by wholly-owned subsidiaries of the Commission which own or operate aircraft, subject to certain specified conditions.

Superannuation

Sub-clause 18(1) also inserts a new section 32E which details the payment by the Commission of superannuation contributions to the Commonwealth for those eligible employees of the Commission who choose to remain in the Commonwealth Superannuation Scheme. The employer contribution paid to the Commonwealth will be the same proportion of an employee's salary as that which would be paid into TAA's own ground staff superannuation schemes. Such contributions will be paid directly to the Commonwealth rather than into a trust fund. The Commission continues to be required to pay its contributions under its own superannuation schemes into approved trust funds.

Organisation of the Commission Along Commercial Lines

The Bill aims to organise the activities of the Commission along lines more closely approximating those of privately operated businesses. The Bill concedes more autonomy to the Commission in many areas.

Clause 14 amends section 21 to increase the value of property, rights or considerations which can be acquired or disposed of, or contracts which can be entered into without Ministerial approval from the present $0.25m to $5m in the case of dealings in real property and to $2m in respect of other contracts and arrangements, including the giving of guarantees by the Commission in relation to borrowings or money raisings by other parties.

Clause 15 provides for the Commonwealth to reimburse the Commission for losses sustained on any service provided at Ministerial direction. Any directive by the Minister that the Commission undertake any service is required to be tabled in Parliament.

Clause 16 allows the Commission to request further capital from the Commonwealth if such funds are required to enable it to continue its functions on an efficient, competitive and profitable basis.

Sub-clause 18(1) repeals sections 31, 31A and 32 of the Principal Act. New Sections 31 and 32 are inserted to extend the money raising powers of the Commission from merely borrowing from the Commonwealth and other sources, to encompass dealing with securities. Borrowing from sources other than the Commonwealth or dealing with securities...
requires the approval of the Treasurer. Dealing with securities is defined in paragraph 3(1)(h) of the Bill. New section 32A permits the Commonwealth to guarantee such borrowings and their servicing. New section 32B enables the Commission to give security over all or part of its assets for the purposes of its money raising.

Sub-clause 18(1) also inserts new sections 32F and 32G which contain financial policy provisions designed to ensure that the Commission operates on a more commercial basis. Sub-section 32F(1) directs the Commission, not later than 30 days before the beginning of each financial year, to determine its financial target for the year, be that a specified profit or loss. In making that determination, the Commission shall have regard (a) to the need to ensure that the Commonwealth receives a reasonable return on the capital of the Commission, being a return of similar proportions to that which could be expected to be received by a privately-owned air transport undertaking in Australia having a similar capital structure as that of the Commission; (b) the need to maintain, in real terms, the net worth of the Commission; (c) the need to increase the reserves of the Commission to enable expansion of the Commission's operations; and (d) such other commercial considerations as the Commission thinks fit.

Sub-section 32F(2) allows the Minister to determine a different financial target and inform the Commission of that target along with reasons for making that determination. Sub-section 32F(5) requires the Minister to table a copy of that notice of determination and accompanying reasons in Parliament. Sub-section 32F(7) requires the Commission to pursue a policy directed towards ensuring that the relevant financial target is achieved.

Sub-sections 32F(8) and 32F(9) require the Commission to conduct, during the financial year, a review of the financial results of its operations and provides that where the Commission finds that operations have not been as profitable as estimated, the Commission shall devise and inform the Minister of measures it proposes to adopt to rectify the situation and the effects that the adoption of those measures will have on its financial results. Such a review will be made whenever the Minister so directs or as the Commission may require but in any event within 6 months of the beginning of a financial year or of a previous review.

The Bill also gives some additional autonomy to the Commission in determining its dividend policy. Proposed section 32G provides for the Commission to determine, on commercial criteria, the dividend it intends to pay to the
Commonwealth. The existing sub-section 32(1) presently empowers the Minister, with the concurrence of the Minister for Finance and after consultation with the Commission, to determine what dividend would represent a reasonable return to the Commonwealth. Nevertheless, proposed sub-section 32G(3) would still allow the Minister to direct that the Commission pay a different specified dividend. Where the Minister so directs, sub-clause 32G(5) would require that directive and a statement of reasons to be laid before Parliament.

Sub-clause 18(1) also inserts a new section 32H which requires the Commission, within 60 days after the commencement of each financial year, to give to the Minister a report setting out the Commission's financial and operational targets, strategies and policies for the next 3 years.

Clause 20 amends section 37A to allow the Commission more autonomy in the operation of its insurance accounts.

For further information, if required, contact:

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LEGISLATIVE RESEARCH SERVICE

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References

1. Bills Digest for the Australian National Airlines Amendment Bill (No. 2) 1980.