Airport (Transitional) Bill 1995

Date Introduced: 27 September 1995
House: House of Representatives
Portfolio: Finance
Commencement: Royal Assent

Purpose

The purpose of the Bill is to provide for the leasing of certain airports.

Background

The background to this Bill is set out in the Digest on the Airports Bill 1995.

Main Provisions

'Sale time' for a Commonwealth owned company is defined as the particular time, in the opinion of the Minister for Finance, on which a majority of the voting shares in the company are acquired by a person or persons other than the Commonwealth or a nominee of the Commonwealth. The Minister of Finance must then declare the time to be sale time by a notice in the Gazette (clause 6).

Sydney West Airport (Badgerys Creek) is defined as an airport even if it is still a development site (clause 5).

'Transfer time' for employees is defined by clause 53 as immediately after the grant of an airport lease to a company.

Part 2 - Transfers from the Federal Airport Corporation to the Commonwealth

Airport land and certain FAC assets and liabilities are to be transferred from the FAC to the Commonwealth. The mechanism for the transfer of land is statutory vesting and clause 11 provides that specified land in which the FAC has any right, title or interest will vest in the
Commonwealth upon the publication in the Gazette by the Minister for Transport of a notice to that effect, without any conveyance, transfer or assignment.

Other FAC assets can be vested in the Commonwealth by the same procedure (clause 12), as can the liabilities of the FAC, other than contractual liabilities (clause 13). Once the FAC's interest in airport land vests in the Commonwealth, the airport ceases to be a Federal airport for the purposes of the FAC Act (clause 14).

Part 3 - Original grants of airport leases to companies

This Part applies to Kingsford-Smith, Sydney West, Tullamarine, Brisbane, Perth and other airports specified in the regulations where the site is owned by the Commonwealth (clause 19).

Clauses 20 and 21 permit the Commonwealth to grant an airport lease to a company if all of the company shares are beneficially owned by the Commonwealth (clause 20) or if none of the company shares are beneficially owned by the Commonwealth (clause 21). The Commonwealth cannot grant an airport lease to a company if some of the company shares are beneficially owned by the Commonwealth.

Clauses 22 and 23 permit the Minister for Finance, by notice in the Gazette, to vest assets and liabilities taken over under clauses 12 or 13 in a company granted an airport lease. By clause 24, an airport lease granted under clause 20 or 21 is subject to all existing leases in relation to the land and subject to all other existing interests in the land.

Part 4 - Transfer of the FAC's assets or contracts to airport - lessee companies and Part 5 - Transfer of the FAC's liabilities to airport-lessee companies

Those assets and contractual rights and obligations of the FAC which are not vested in the Commonwealth pursuant to clause 11, 12 and 13 can be transferred from the FAC to the airport-lessee companies pursuant to clauses 28 and 29. The Minister for Finance can effect the transfer by a notice in the Gazette. By clause 31, the Minister of Finance can also transfer a liability of the FAC (other than a contractual liability), to a company granted an airport lease, in the same way.

Part 6 - Treatment of sale of shares in an airport-lessee company owned by the Commonwealth

When an airport-lessee company is owned by the Commonwealth, Part 6 applies. The transfers effected by these sections would appear to be for accounting purposes so that the books of the various parties balance. Part 6 permits the Minister for Finance to determine that the Commonwealth will make a payment of capital to the FAC after an airport-lessee company has been granted an airport lease and before shares in the company are sold. The FAC must make a return of capital to the Commonwealth. When the shares are sold, the consideration is paid to the Commonwealth, the Commonwealth pays an equivalent amount to the FAC, and the FAC pays an equivalent amount to the Commonwealth. Set off is available.

Clause 37 contains a standing appropriation without a statutory cap.
Part 7 - Treatment of consideration payable by an airport-lessee company that is not owned by the Commonwealth

The provisions in Part 7 mirror the provisions in Part 6, but Part 7 applies to an airport-lessee company that is not owned by the Commonwealth. Again, the Part contains a standing appropriation without a statutory cap (clause 42).

Part 8 - Special tax rules

Some transactions are exempt from stamp duty and other taxes. By clause 44, the grant of an airport lease under clause 20, an agreement relating to a grant under clause 20, the transfer of an asset under clause 22, 28 or 29 to a company granted a lease under clause 20, the grant of a lease of an asset under clause 22 to a company granted an airport lease under clause 20, or an agreement relating to the grant of a lease of an asset under clause 22 to a company granted an airport lease under clause 20, are exempt from stamp duty and other State or Territory taxes. If the Commonwealth grants an airport lease under clause 21 to a company that is not owned by the Commonwealth, the transactions, agreements etc. are not exempt from stamp duty and other taxes.

Clauses 45 and 46 relate to depreciation and allow a sub-lessee to continue to depreciate property after the airport is leased. Clause 46 allows a company to which assets were transferred under clause 22, to claim depreciation on those assets as if the company had acquired the property from the FAC and not the Commonwealth.

Clause 50 provides that the Income Tax Assessment Act 1936 relating to depreciation and Part IIIA of that Act which deals with Capital Gains Tax, can be modified by regulations in relation to an airport lease transferred to a Commonwealth owned company and the assets transferred or leased to the company under clauses 22, 28 or 29.

Part 9 - Transfer of Staff from the FAC to Airport Lessee Companies

When an airport lease is granted to a company, those employees of the FAC that are specified by notice in the Gazette, cease to be employed by the FAC and are engaged as employees of the company (clause 53). The terms and conditions of employees are safeguarded (clause 54) but can later be varied by law, award, determination or agreement (clause 55).

Part 10 - FAC’s debts

Division 2 applies to loans to the FAC by the Commonwealth and Division 3 applies to non Commonwealth loans to the FAC. In Division 2, clause 63, the Treasurer may declare the principal and interest of a loan due and payable at a specified time. If an amount becomes due and payable, the Minister for Finance can determine that the Commonwealth is liable to pay the FAC an amount equal to that amount.

Clause 65 contains a standing appropriation power without statutory cap.
In relation to non Commonwealth loans, the Treasurer can declare, by notice in the Gazette, that a FAC obligation becomes a Commonwealth obligation, and authorise the payment of money by the Commonwealth to discharge the loan (clause 67). Alternatively, the Minister for Finance, by notice in the Gazette, can determine that an amount equal to an outstanding loan is payable to the FAC on condition that it is used to discharge the loan (clause 68).

Clause 69 contains a standing appropriation power without statutory cap.

Part 12 makes it clear that an airport lessee company is not a Commonwealth agency, public authority, or an instrumentality of the Crown.

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Bills Digest Service
Parliamentary Research Service 12 October 1995

This Digest does not have any legal status. Other sources should be consulted to determine whether the Bill has been enacted and, if so, whether the subsequent Act reflects further amendments.


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Published by the Department of the Parliamentary Library, 1995.