

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

AUSTRALIAN SPORTS COMMISSION BILL 1985

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1985

(Minister for Sport, Recreation and Tourism)

A BILL

FOR

**An Act to establish the Australian Sports Commission, and for
other purposes**

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

- 5 1. This Act may be cited as the *Australian Sports Commission Act 1985*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

10 “appoint” includes re-appoint;

“Australian Sports Aid Foundation” means the Foundation formed in
accordance with sub-section 8 (1);

“Chairperson” means Chairperson of the Commission;

15 “Commission” means the Australian Sports Commission constituted by this
Act;

“Commissioner”, in relation to the Commission, includes the Chairperson and the Deputy Chairperson;

“Deputy Chairperson” means Deputy Chairperson of the Commission;

“securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents; 5

“share”, in relation to a company, means a share in the capital of the company, and includes stock;

“sport” means—

- (a) sport in Australia; and 10
- (b) the participation by Australians in international sport.

Extension to external Territories

4. This Act extends to all the external Territories.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COMMISSION 15

Establishment of Commission

5. (1) There is established by this Act a Commission by the name of the Australian Sports Commission.

(2) The Commission—

- (a) is a body corporate; 20
- (b) shall have a seal; and
- (c) may sue and be sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Commission appearing on a document and shall presume that the document was duly sealed. 25

Objects and functions of Commission

6. (1) The objects of the establishment of the Commission are—

- (a) to encourage the private sector to contribute to the funding of sport to supplement assistance by the Commonwealth;
- (b) to provide leadership in the development of Australia’s performance in sport; and 30
- (c) to encourage increased participation by Australians in sport.

(2) The functions of the Commission are—

- (a) to advise the Minister in relation to the development of sport;
- (b) to raise money through the Australian Sports Aid Foundation for the purposes of the Commission; 35
- (c) to administer and expend money appropriated by the Parliament, or raised by the Australian Sports Aid Foundation, for the purposes of the Commission;

- (d) to co-ordinate activities in Australia for the development of sport;
- (e) to consult and co-operate with appropriate authorities of the Commonwealth, of the States and of the Territories, and with other organizations, associations and persons, on matters related to its activities;
- (f) to initiate, encourage and facilitate research and development in relation to sport; and
- (g) to collect and distribute information, and provide advice, on matters related to its activities.

(3) The functions of the Commission may be performed within or outside Australia.

(4) The Commission may perform any of its functions in co-operation with a State or Territory or any person, association or organization.

(5) The Commission may perform its functions to the extent only that they are not in excess of the functions that may be conferred on it by virtue of any of the legislative powers of the Parliament, and, in particular, may perform its functions—

- (a) by way of expenditure of money that is available for the purposes of the Commission in accordance with an appropriation made by the Parliament;
- (b) for purposes related to the collection of statistics;
- (c) for purposes related to external affairs; and
- (d) for purposes in relation to a Territory.

Powers of Commission

7. (1) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may—

- (a) enter into contracts;
- (b) acquire, hold and dispose of real or personal property;
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Commission;
- (d) with the written approval of the Minister, make grants or lend money, and provide scholarships or like benefits;
- (e) appoint agents and attorneys, and act as an agent for other persons;
- (f) engage persons to perform services for the Commission;
- (g) accept gifts, bequests and devises made to the Commission (whether on trust or otherwise) and act as trustee of money or other property vested in the Commission on trust; and
- (h) do anything incidental to any of its powers.

(2) The powers of the Commission may be exercised within or outside Australia.

Australian Sports Aid Foundation

8. (1) The Commission may form a company, to be known as the Australian Sports Aid Foundation, for the purpose of raising money for the development of sport.

(2) Except to the extent necessary for the performance of its functions in relation to the Commission, the Australian Sports Aid Foundation is not empowered to do anything that the Commission is not empowered to do. 5

Directions to Commission

9. (1) The Minister may, by written notice, give directions to the Commission with respect to the policies and practices to be followed by the Commission. 10

(2) The Commission shall comply with any direction given to it under sub-section (1).

Strategic plan

10. (1) The Commission shall— 15

(a) formulate a strategic plan setting out the manner in which the Commission proposes to perform its functions on a continuing basis; and

(b) from time to time, review and revise the strategic plan.

(2) A strategic plan, or a revision of a strategic plan, has no effect until approved by the Minister. 20

(3) The first strategic plan shall be submitted to the Minister within 12 months after the commencement of this Act.

(4) At any time when a strategic plan is in effect, the Commission shall not perform its functions otherwise than in accordance with that plan. 25

Delegation

11. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a person, or to a committee, any of its powers under this Act, other than this power of delegation. 30

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission.

(3) A delegation of a power under this section does not prevent the exercise of the power by the Commission.

PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION

Constitution of Commission

12. (1) The Commission shall consist of—

- (a) the Chairperson;
- (b) the Deputy Chairperson; and
- (c) not fewer than 10 nor more than 20 other Commissioners.

(2) The Chairperson may be referred to as the Chairman or the Chairwoman, and the Deputy Chairperson may be referred to as the Deputy Chairman or the Deputy Chairwoman, as the case requires.

(3) The Commissioners shall be appointed by the Governor-General.

(4) A person appointed under paragraph (1) (a) or (b)—

- (a) shall hold office on a full-time or part-time basis, as is specified in the instrument of appointment; and
- (b) holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(5) A person appointed under paragraph (1) (c)—

- (a) shall hold office on a part-time basis; and
- (b) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(6) The exercise of the powers, or the performance of the functions, of the Commission is not affected by reason only that—

- (a) there is a vacancy in the office of Chairperson or of Deputy Chairperson; or
- (b) the number of persons appointed under paragraph (1) (c) falls below 10 for not longer than 3 months.

Remuneration and allowances

13. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal.

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

(3) Sub-sections (1) and (2) are subject to the *Remuneration Tribunals Act 1973*.

Resignation

14. A Commissioner may resign by written instrument delivered to the Governor-General.

Termination of appointment

15. (1) The Governor-General may terminate the appointment of a Commissioner for misbehaviour or physical or mental incapacity.

- (2) If a Commissioner—
- (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) is absent— 5
- (i) in the case of the Chairperson, except on leave of absence granted by the Minister; or
- (ii) in any other case, except on leave of absence granted by the Chairperson,
- from 3 consecutive meetings of the Commission; or 10
- (c) contravenes section 16 without reasonable excuse,
- the Governor-General may terminate the appointment of the Commissioner.

Disclosure of interests

16. (1) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Commission. 15

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and, unless the Minister or the Commission otherwise determines, the Commissioner shall not— 20

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

(3) For the purpose of the making of a determination by the Commission under sub-section (2) in relation to a Commissioner who has made a disclosure under sub-section (1), a Commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not— 25

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or 30
- (b) take part in the making by the Commission of the determination.

Meetings of Commission

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

- (2) The Chairperson— 35
- (a) may, at any time, convene a meeting of the Commission; and
- (b) shall, on receipt of a written request signed by not less than 3 other Commissioners, convene a meeting of the Commission.

(3) The Minister may, at any time, convene a meeting of the Commission.

(4) The Chairperson shall preside at all meetings of the Commission at which he or she is present. 40

(5) Where the Chairperson is not present at a meeting of the Commission, the Deputy Chairperson shall preside, or if the Deputy Chairperson is not present, the Commissioners present shall elect one of their number to preside.

(6) At a meeting of the Commission, a quorum is constituted by—

- 5 (a) 6 Commissioners; or
(b) a number of Commissioners that is not less than one-third of the number of Commissioners for the time being holding office, whichever is the greater number of Commissioners.

10 (7) Where, by reason of sub-section 16 (2), a Commissioner is not present at a meeting of the Commission during a deliberation of the Commission with respect to a matter, but, there would be a quorum present if that Commissioner were present, the remaining Commissioners present constitute a quorum for the purpose of any deliberation or decision of the Commission at that meeting with respect to that matter.

15 (8) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(9) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) The Commission shall keep a record of its proceedings.

20 (11) The Commission may invite a person to attend a meeting of the Commission for the purpose of advising or informing the Commission on any matter.

Acting appointments

25 **18. (1)** At any time when there is a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office) or the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of Chairperson, the Deputy Chairperson or a person acting as Deputy Chairperson under sub-section (2) shall act as Chairperson.

30 (2) The Minister may appoint a Commissioner to act as 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
35 (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Deputy Chairperson,

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

(3) The Minister may appoint a person to act as a Commissioner—

- 40 (a) during a vacancy in an office of Commissioner (whether or not an appointment has previously been made to the office); or

- (b) during any period, or during all periods, when a Commissioner is absent from duty or from Australia or is, for any other reason (including the reason that the Commissioner is acting as Deputy Chairperson), unable to perform the duties of the office of Commissioner, 5

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

(4) While a person is acting in an office under this section, the person has and may exercise all the powers, and shall perform all the functions, of the office. 10

(5) An appointment of a person under sub-section (2) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(6) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, if any, of a person acting under this section; and 15

(b) terminate such an appointment at any time.

(7) Where a person is acting in an office under paragraph (2) (b) or (3) (b) and the office becomes vacant while the person is so acting, then, subject to sub-section (5), the person may continue so to act until the Minister otherwise directs, the vacancy is filled, or a period of 12 months from the date on which the vacancy occurred expires, whichever first occurs. 20

(8) The appointment of a person under this section ceases to have effect if the person resigns the appointment by written instrument delivered to the Minister. 25

(9) The General Manager is not eligible for appointment under this section.

(10) The validity of anything done by or in relation to a person purporting to act under this section shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased. 30

Committees 35

19. (1) The Commission may establish such committees of its members as it thinks fit, and a committee shall assist the Commission as directed by the Commission.

(2) A committee may co-opt a person to be an additional member of that committee for the purposes of consideration of a particular matter. 40

(3) A person who is co-opted under sub-section (2) shall act in an advisory capacity only and is not entitled to remuneration or allowances.

(4) The number of members of a committee required to constitute a quorum at a meeting of that committee shall be as specified by the Commission.

(5) Section 16 applies to a member of a committee (including a member co-opted under sub-section (2)) as if—

- 5 (a) a reference in that section to the Commission were a reference to the committee; and
- (b) a reference in that section to a Commissioner were a reference to that member (whether or not that member is a Commissioner).

PART IV—GENERAL MANAGER AND STAFF

Division 1—General Manager

General Manager

20 **20.** There shall be a General Manager of the Commission, who shall be the chief executive officer of the Commission.

Appointment and term of office

15 **21. (1)** The General Manager shall be appointed by the Governor-General.

(2) A person appointed as General Manager shall hold office for such period, not exceeding 5 years, as the Governor-General specifies in the instrument of appointment.

20 (3) A person appointed as General Manager is eligible for re-appointment.

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

25 (5) The General Manager holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

General Manager not to engage in other work

30 **22.** The General Manager shall not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

Remuneration and allowances

23. (1) The General Manager shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) The General Manager shall be paid such allowances as are prescribed.

35 (3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

24. The Minister may grant leave of absence to the General Manager on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

5

25. The General Manager may resign by written instrument delivered to the Governor-General.

Termination of appointment

26. (1) The Governor-General may terminate the appointment of the General Manager for misbehaviour or physical or mental incapacity. 10

(2) If the General Manager—

- (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; 15
- (c) is absent from duty, except on leave of absence granted by the Chairperson, for 14 consecutive days or for 28 days in any 12 months; or

(d) contravenes section 27 without reasonable excuse, 20

the Governor-General may terminate the appointment of the General Manager.

Disclosure of interests

27. The General Manager shall give a written notice to the Minister of all direct or indirect pecuniary interests that the General Manager has or acquires in any business. 25

Acting General Manager

28. (1) The Minister may appoint a person (not being a Commissioner or acting Commissioner) to act as General Manager—

- (a) during a vacancy in the office of General Manager (whether or not an appointment has previously been made to the office); or 30
- (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of General Manager,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months. 35

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as General Manager; and

5 (b) terminate such an appointment at any time.

(4) Where a person is acting under paragraph (1) (b) and the office of General Manager becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled, or a period of 12 months from the date on which
10 the vacancy occurred expires, whichever first happens.

(5) The appointment of a person under this section ceases to have effect if the person resigns the appointment by written instrument delivered to the Minister.

(6) While a person is acting under this section, the person has and may
15 exercise all the powers, and shall perform all the functions, of the General Manager.

(7) The validity of anything done by or in relation to a person purporting to act under this section shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect or
20 irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Division 2—Staff

Staff of the Commission

25 **29.** (1) The staff required to assist the Commission shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The General Manager of the Commission has all the powers of, or exercisable by, a Secretary of a Department under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service
30 comprising the staff referred to in sub-section (1) as if that branch were a separate Department.

PART V—FINANCE

Appropriation of money

35 **30.** (1) There is payable to the Commission such money as is appropriated by the Parliament for the purposes of the Commission.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in sub-section (1) is to be paid to the Commission.

Estimates

31. (1) The Commission shall prepare estimates, in such form as the Minister directs, of the receipts and expenditure of the Commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs. 5

(2) The money of the Commission shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

Application of money

32. The money of the Commission shall be applied only— 10

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Commission in the performance of its functions and the exercise of its powers; and
- (b) in payment of remuneration and allowances payable under this Act.

Borrowing from the Commonwealth 15

33. (1) The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Commission at such rates of interest and on such other terms and conditions as that Minister determines.

(2) The Commission shall not borrow money except in accordance with sub-section (1). 20

(3) The Commission may give security over the whole or part of its assets for the repayment of amounts borrowed under sub-section (1) and the payment of interest on amounts so borrowed.

Contracts 25

34. The Commission shall not, except with the written approval of the Minister—

- (a) enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$500,000, or, if a higher amount is prescribed, that higher amount; or 30
- (b) enter into a lease of land for a period of 10 years or more.

Application of Division 3 of Part XI of Audit Act

35. (1) It is hereby declared that the Commission is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

(2) The Commission shall, in each report prepared pursuant to section 63M of the *Audit Act 1901* (as that section applies by virtue of sub-section (1))— 35

- (a) specify the financial transactions and the state of the affairs of the Australian Sports Aid Foundation; and
- (b) include particulars of each direction given to it by the Minister under sub-section 9 (1) during the financial year to which the report relates. 40

Commission exempt from taxation

5 36. (1) Subject to sub-section (3), the income, property and transactions of the Commission are not subject to taxation under the laws of the Commonwealth (other than laws relating to sales tax) or of a State or Territory.

(2) Subject to sub-section (3), the transactions of the Commission in respect of goods for use (whether as goods or in some other form), and not for sale, by the Commission are not subject to the laws of the Commonwealth relating to sales tax.

10 (3) The regulations may provide that sub-section (1) or (2) does not apply in relation to taxation under a specified law.

Foundation exempt from taxation

15 37. (1) Subject to sub-section (3), the income, property and transactions of the Foundation are not subject to taxation (including taxation under the *Bank Account Debits Tax Act 1982*) under the laws of the Commonwealth (other than laws relating to sales tax) or of a State or Territory.

20 (2) Subject to sub-section (3), the transactions of the Foundation in respect of goods for use (whether as goods or in some other form), and not for sale, by the Foundation are not subject to the laws of the Commonwealth relating to sales tax.

(3) The regulations may provide that sub-section (1) or (2) does not apply in relation to taxation under a specified law.

PART VI—MISCELLANEOUS

Trust money

25 38. (1) The Commission shall ensure that any money received or held by the Commission on trust is paid into an account opened and maintained pursuant to section 63J of the *Audit Act 1901* (as that section applies by virtue of section 35 of this Act) that does not, or accounts referred to in that section that do not, contain any money of the Commission not held on trust.

30 (2) Notwithstanding sections 31, 32 and 35—

(a) money or other property held by the Commission on trust shall be applied or dealt with only in accordance with the powers and duties of the Commission as trustee; and

35 (b) money held by the Commission on trust may be invested—

(i) in any manner in which the Commission is authorized to invest that money by the terms of the trust; or

(ii) in any manner in which trust money may, for the time being, be invested under law,

but not otherwise.

(3) Section 63K of the *Audit Act 1901* (as that section applies by virtue of section 35 of this Act) has effect as if—

- (a) the reference in that section to transactions and affairs included a reference to transactions and affairs relating to money or property received or held by the Commission on trust; and 5
- (b) the reference in that section to moneys or to assets included a reference to money, or assets, as the case may be, received or held by the Commission on trust.

(4) Section 63L of the *Audit Act 1901* (as that section applies by virtue of section 35 of this Act) has effect as if— 10

- (a) the reference in sub-section 63L (1) to financial transactions included a reference to transactions relating to money received or held by the Commission on trust; and
- (b) the reference in sub-section 63L (4) to moneys or to assets included a reference to money, or assets, as the case may be, received or held by the Commission on trust. 15

Reports to Minister

39. The Commission shall—

- (a) from time to time inform the Minister concerning the general conduct of its activities; and 20
- (b) furnish to the Minister such information in relation to its activities as the Minister from time to time requires.

Delegation by Minister

40. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by written instrument, delegate to a person all or any of the Minister's powers under this Act, other than— 25

- (a) this power of delegation; and
- (b) the Minister's powers under paragraph 7 (1) (d) and section 18.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister. 30

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

Regulations

41. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters— 35

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

