

1988

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

SENATE

POSTAL SERVICES AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Transport and  
Communications, the Hon Ralph Willis M.P.)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF  
REPRESENTATIVES TO THE BILL AS INTRODUCED.

POSTAL SERVICES AMENDMENT BILL 1988

OUTLINE

The aim of the Bill is to:

- . establish a new corporate structure for Australia Post, as the Australian Postal Corporation, establish a Board, redefine the role of the Minister, Board and management, provide for new employment provisions and remove day-to-day controls;
- . allow Australia Post to commercially develop its properties;
- . make a minor amendment related to the arrangement between Telecom and Australia Post that Australia Post's electronic mail services will in future be a substitute for Telecom's telegram services.

This Bill is the first stage of legislative amendments to implement the Government's reform package for Post as announced by Senator Gareth Evans, in the 25 May ministerial statement "Reshaping the Transport and Communications Government Business Enterprises".

The Post reform package, as with the Government's other concurrent GBE reforms has four elements:

- . revised corporate and financial structures;
- . new planning and accountability mechanisms;
- . modification of major strategic controls;
- . removal of day-to day controls.

In future the Government is to be less involved in scrutinising the activities of Post. Instead the Government will focus on planning, through corporate plans and financial targets, and accountability for results with only some aspects monitored on an on-going basis. The emphasis is to concentrate on the bottom line, on how successfully the goals and targets are met. The Board's most important function will be to formulate policy directions for the Corporation, in accordance with the Act and any directions from the Minister. The Managing Director, has the responsibility, under the Board for managing the affairs of the Corporation, and can perform all its functions and exercise all its powers.

The reform process requires legislative and administrative changes. Reforms which require legislation will be implemented in two stages:

- . this Bill which provides for: the change of name to the Australian Postal Corporation and the establishment of the Board; new employment provisions; and removal of day to day controls;

a second Bill (proposed for passage in the Autumn sittings 1989, and to operate from 1 July 1989) which remakes the Postal Services Act 1975 as the Australian Postal Corporation Act 1989, redefines the objectives, functions and powers of the Corporation, and provides for the corporate planning and financial accountability measures.

his Bill provides for the constitution of the Board, including chairperson, Deputy Chairperson and the Managing Director and up to six other directors. Board members are appointed by the Governor-general and are subject to dismissal for ongoing underperformance in addition to current grounds such as misbehaviour, mental illness etc), in line with the emphasis for accountability for results. The Managing Director is appointed by the Minister after receiving a recommendation from the Board. Terms and conditions of employment for the Managing Director are a matter for the Managing Director and the Board, but the Board will consult with the Remuneration Tribunal about the remuneration package for the Managing Director in line with the amendments to the Remuneration Tribunals Act 1973 introduced in Part V of the Government Business Enterprises (Miscellaneous Reforms) Bill 1988.

The change over from Commission to Corporation retains the same body corporate and takes account of the need for the continuation of such matters as delegations etc. All the provisions dealing with the change of name and the Board will come into operation from a date to be proclaimed, likely to be 1 January 1989.

Employment provisions in the current Act will be replaced by simpler provisions which make the Board responsible for determining terms and conditions of employment. These provisions operate from a separate proclamation date to allow for ongoing consultations between Post and relevant unions before the changes are made, and to allow for appropriate new awards to be created.

The Bill includes provisions for continuity of employment for current staff.

Day-to-day controls are to be minimised in line with the devolving of responsibility to the Board. There will be appropriate mechanisms to allow the Minister to exercise strategic oversight, through the corporate plan and financial targets; these are currently being developed and will be provided for in the second stage legislation, once the required asset revaluations are completed, and the new financial structure for Post is established. Post will be free to engage in such standard business practices as entering into contracts, partnerships, joint ventures, and normal investment arrangements suitable for a business enterprise. In some cases the Board will be required to notify the Minister in writing before business activities are expanded. Borrowings will also be freed from specific approval requirements, subject to continued overall Loan Council scrutiny.

Part of the reform package for Post is that it should be able to commercially develop its properties and the Bill includes amendments to this effect. Post owns prime real estate in central business districts in cities throughout Australia which it has not hitherto been able to use in a cost-effective manner. The amendments in the Bill impose on Post a duty to use its land and buildings in accordance with sound commercial practice and grants Post the necessary powers to do so.

Australia Post and Telecom have agreed that in future the telegram services previously provided by Telecom will cease and telegram type services will be provided by Post as part of its electronic mail services. The Bill includes amendments to make it clear that Post's electronic mail services cover telegrams.

#### FINANCIAL IMPACT STATEMENT

The Bill does not involve any additional expenditure by the Commonwealth or additional revenue for the Commonwealth.

NOTES ON CLAUSES

PART I - PRELIMINARY

Claus 1 Short title etc.

Provides for the Act to be cited as the Postal Services Amendment Act 1988, and that the Principal Act is the Postal Services Act 1975.

Claus 2 Commencement

Subclause 2(1) provides for provisions removing day-to-day controls to operate from Royal Assent; this includes provisions in Part I of Schedule 1.

Subclause 2(2) provides for the commencement of provisions for the change of name to Corporation and the creation of the Board, from a date to be proclaimed (planned for 1 January 1989); this includes:

- clause 5 - providing for the continuation of Post as the Australian Postal Corporation;
- clause 10 which substitutes a new Part IV dealing with the creation of the Board and the appointment of Directors including the Managing Director;
- Part II of Schedule 1 which changes references to Commission to Board and alters other references and definitions.

Subclause 2(3) covers the amendments to employment provisions, also to operate from a date to be proclaimed, which can be earlier or later than the date for the amendments in subclause 2(2); these amendments include:

- clause 12 which substitutes a streamlined Part V;
- amendments in Part III of Schedule 1 changing references to "officer", "Service" etc which will not be used in the new legislation;

Clause 29 and 30 allow either the Corporation amendments or the employment amendments to be proclaimed first.

Clause 3 Application of Act

Inserts a proposed section 3AA which confirms the presumption that the Act applies within and outside Australia, in accordance with with normal drafting practice.

Clause 4           Heading to Part II

Amends the title of Part II of the Principal Act to change Commission to Corporation.

Clause 5           Australian Postal Corporation

Substitutes a proposed section 5 which provides for continuity of the Australian Postal Commission as the Australian Postal Corporation.

Inserts a proposed section 5A which continues provisions currently in section 24 (1) that Post is a body corporate, has a seal etc.

Clause 6           Particular Powers of Commission

Amends section 9 to expand Post's powers about contractual and financial matters. At present, most of these powers can only be exercised after receipt of approvals from the Treasurer or Minister and are dealt with in separate sections which are proposed to be repealed, for example the powers relating to contracts currently in sections 82 and 82A.

Clause 7           Electronic mail

Amends section 10A to clarify that Post's electronic mail services cover telegrams. Post has entered into an arrangement with Telecom to take over the function of providing telegram services.

Clause 8           Proposed section 10B and 10C

Inserts proposed section 10B - Management of Commission's land and buildings - to allow Post to commercially develop its properties. The proposed section requires Post to manage its land and buildings in accordance with sound commercial practice and gives Post the additional powers to do so. Post owns valuable land in central business districts in many Australian cities which is presently underdeveloped.

Proposed section 10C - Commission to notify Minister of significant business activities - provides that the Commission is required to give prior written notice to the Minister of specified new business activities entered into by Post or its subsidiaries; these include creation of subsidiaries, joint ventures, partnerships and, in accordance with guidelines (if any) from the Minister, acquisitions of major shareholdings and substantial businesses, and engaging in significant new business activities. This requirement does not preclude the operation of section 103(2) which requires the Commission to keep the Minister informed of the Commission's activities.

**Clause 9      Delegation of Corporation's powers**

Inserts proposed section 10D to give the Corporation a power of delegation to an employee (similar to that in existing section 36, proposed to be repealed by clause 10). Normally, the powers and functions of the Corporation are carried out by the employees of the Corporation under the control of the Managing Director, in accordance with the policies determined by the Board. The power of delegation is to cover important matters where it may be necessary for the employee to prove that the action taken was specifically authorised.

The provision makes it clear that the power of delegation can only be exercised by the Managing Director (under proposed subsection 32 (2) the Managing Director acts on behalf of the Corporation) or by an employee specifically authorised by the Board.

Proposed section 30 provides separately for delegations by the Board.

**Claus 10      Part IV - The Directors of the Corporation**

Repeals Part IV dealing with the "Constitution and Meetings of the Commission", and substitutes a proposed Part IV which deals with the structure and role of the Corporation.

**Division 1 - Board of Directors**

Proposed section 24 - Establishment - establishes a Board of directors.

Proposed section 25 - Role - defines the role of the Board as determining the policies of the Corporation, while ensuring the proper and efficient performance of functions and duties. This is subject to the Act and to directions (if any) by the Minister under proposed section 26.

Proposed section 26 - Directions to Board - continues provisions currently in section 8 for directions by the Minister about the exercise of Telecom's powers and functions. Existing directions are continued in force by clause 24.

Proposed section 27 - Constitution - outlines the membership of the Board, as the Chairperson, Deputy Chairperson, Managing Director and up to six other directors.

Proposed section 28 - Meetings - establishes the standard procedures for the calling and running of meetings, with a quorum of five, if there are nine Directors and four in other cases. There are provisions for chairing meetings in the absence of the Chairperson and Deputy Chairperson, and for meetings to be held by such means as telephone or closed circuit television.

Proposed section 29 - Disclosure of interest - sets out the requirements for declaring and recording direct and indirect pecuniary interests. A director is precluded from deliberations where the director has an interest.

Proposed section 30 - Delegation by Board - provides that the Board can delegate its powers (as opposed to the powers of the Corporation) to individual directors. This does not include the Board's powers under proposed section 10D (to authorise an employee to exercise the power to delegate the Corporation's functions) or any of its powers in relation to the Managing Director.

#### Division 2 - Managing Director

Proposed section 31 - Managing Director - establishes the position of Managing Director.

Proposed section 32 - Duties - defines the role of the Managing Director, which is, under the Board, to manage the Corporation. Proposed subsection 32(2) provides that the Managing Director can exercise all the powers and perform all the functions of the Corporation.

#### Division 3 - Provisions relating to directors other than the Managing Director

Proposed section 33 - Application of Division - makes it clear this Division does not apply to the Managing Director.

Proposed section 34 - Appointment of directors - provides for the appointment of directors by the Governor-General, as at present.

Proposed subsection 34(2) provides for the appointment of a Board with a balance of expertise, including one director who the Governor-General is satisfied, having regard to consultations between the Minister and unions, has an appropriate understanding of the interests of employees.



Proposed subsection 34(3) provides that an appointment is not invalid merely because of any defect or irregularity in the appointment.

Proposed section 35 - Term of appointment - provides for the maximum term of five years with government directors (any director who is a member of the Australian Public Service), holding office during the pleasure of the Governor-General.

Proposed section 36 - Directors hold office on a part-time basis - this provision does not, of course, refer to the Managing Director.

Proposed section 36A - Remuneration and Allowances - Remuneration of directors is by determination of the Remuneration Tribunal, with remuneration as prescribed in regulations under this Act if no determination is in force. By virtue of the Remuneration Tribunals Act, there is no payment for a government director.

Proposed section 36B - Leave of Absence - The Board grants leave to directors on such terms and conditions as the Board determines - this provision does not apply to the Managing Director whose leave is a matter for the terms and conditions of employment determined by the Board - see proposed section 36L.

Proposed section 36C - Resignation - provides for the resignation of directors in writing to the Governor-General.

Proposed section 36D - Termination of Appointment - Termination of appointment is by the Governor-General. These provisions do not apply to a (2) a government director who holds office during the Governor-General's pleasure and, in any case, only while the director remains a member of the Australian Public Service.

Proposed subsections 36(D)(1) and (2) provide for termination of appointment for the usual reasons such as misconduct, bankruptcy etc.

An additional ground for dismissal is ongoing underperformance. Under proposed subsection 36D(3) where the Minister is of the opinion that the performance of the Board or the Corporation has been unsatisfactory for a significant period of time, the Minister proposes the termination of appointment of all or some of the directors. Proposed subsection (4) applies for the termination of appointment of individual directors where the Minister is of the opinion that the performance of that director has been unsatisfactory.

Proposed section 36E - Terms and conditions of appointment not provided for by Act - the Minister can determine terms and conditions for directors about matters not provided for by the Act; for example, the Minister could determine that the director is provided with a fax machine, staff to assist in particular tasks, an office in Post headquarters, but not anything in the way of remuneration or allowances covered by the Remuneration Tribunal.

Proposed section 36F - Deputy Chairperson - provides for the appointment of a Deputy Chairperson who automatically acts as Chairperson, without the need for a special appointment, when the Chairperson is absent from Australia or unable to attend meetings, or when the position is vacant. The Deputy will chair meetings, and perform any other duties of the Chairperson.

Proposed section 36G - Acting appointments - provides for the appointment of an Acting Deputy Chairperson and acting directors. The maximum term is 12 months (see Acts Interpretation Act, section 33A).

#### Division 4 - Provisions relating to Managing Director

Proposed section 36H - Appointment - The Managing Director is appointed by the Minister after the Minister receives a recommendation from the Board. Having received a recommendation, the Minister can appoint a person not recommended, although in practice it is anticipated the Minister would accept the Board's choice.

A part-time Director can be considered for Managing Director but must resign the part-time position before appointment.

Proposed section 36J - Managing Director holds office during Board's pleasure etc - The Managing Director is not appointed for a term but holds office during the pleasure of the Board - see proposed section 36L.

Proposed section 36K - Managing Director holds office on a full-time basis - This is one term of employment not left to the Post Board.

Proposed section 36L - Terms and conditions of appointment not provided for by Act - The Managing Director holds office on terms and conditions determined by the Post Board. It is expected that the Board and the Managing Director would enter into contractual arrangements setting out the terms and conditions on which the Managing Director holds office, including grounds on which the Board could terminate the appointment without compensation, and details of compensation payable if the appointment is terminated on other grounds, by either party.

The remuneration of the Managing Director is determined by the Board, in consultation with the Remuneration Tribunal which is given an advisory role to cover remuneration packages for Government Business Enterprises such as Post. Other legislation dealing with terms and conditions of employment such as compensation, superannuation, long-service leave and maternity leave will not apply to the Managing Director. In line with the ministerial statement, Reshaping the Transport and Communications Government Business Enterprises, these new remuneration arrangements apply only to a person appointed after an international search.

Clause 26 preserves all the rights of the current Managing Director during his current term.

Proposed section 36M - Disclosure of interests - requires the Managing Director to provide a written statement to the Chairperson of all direct and indirect pecuniary interests, for example, that the Managing Director is a beneficiary under a trust controlled by other persons holding shares at the time of the statement in companies listed in the statement.

Proposed section 36N - Acting Managing Director - allows the appointment by the Minister of a director or other person to act as Managing Director. The maximum period for acting is 12 months (see Acts Interpretation Act, section 33A).

**Clause 11      Repeal of Division 1 of Part V**

Repeals provisions for the appointment of the Chief General Manager. The position of Chief General Manager is to be abolished. Clause 27 protects the rights of the current Chief General Manager.

**Clause 12      Staff**

Repeals Divisions 2 to 7 of Part V, which set out detailed staffing provisions, and inserts new streamlined employment provisions.

Proposed section 41 - Staff - provides for Post to employ such people as are needed to perform its functions and exercise its powers, on terms and conditions to be determined by the Corporation

Proposed section 42 - Corporation as employer - requires the Corporation to be a good employer.

Clause 28 provides for the continuation of employment of all Post officers and employees at transition.

Under subclause 2(3) these amendments will not operate until a date to be proclaimed and the Government has announced that the proclamation will not be made until agreement has been reached between Post and relevant unions about preservation of existing terms and conditions on changeover.

Clauses 29 and 30 allow the maximum flexibility for proclamation of the employment amendments, either before or after the commencement of the change to Corporation and the new Board.

At present, the Conciliation and Arbitration Commission has an extended jurisdiction under Division 8 of Part V, similar to that for other government bodies (without the requirement of the existence of an interstate dispute). The Industrial Relations (Consequential Provisions) Bill includes amendments to carry this extended jurisdiction over to the Australian Industrial Relations Commission, and clause 31 allows for the continued operation of Division 8, if the employment provisions are proclaimed before the new industrial relations legislation.

**Clause 13**      **Borrowing otherwise than from the Commonwealth**

Amends section 75A so the Treasurer's approval is not required before Post enters into agreements to borrow money. Post will still be subject to Loan Council arrangements.

**Clause 14**      **Financial Policy of the Commission**

Amends section 76 which sets out the financial policy to be followed by Post to remove from a provision which requires funds to be available for payment of superannuation, a reference to the Minister for Finance.

The superannuation arrangements for Post will be the subject of guidelines to be provided for under amendments to the Superannuation Act. Until these changes are in force the funds to be set aside for superannuation can be determined at officer level in the Department of Finance under the current Superannuation Act.

**Clause 15**      **Repeal of section 77**

Repeals section 77 which currently provides for the approval of the Treasurer for Post to open bank accounts - see clause 16.

**Clause 16      Application of moneys**

Amends section 78 of the Act which provides for the application of Post moneys by substituting a new subsection (2). The current provision limits the investment of moneys not immediately required to investment on fixed deposit in an approved bank, in Commonwealth securities and in any other manner approved by the Treasurer. The new provision allows investment in any manner consistent with sound commercial practice.

**Claus 17      Repeal of sections 82 and 82A**

Repeals sections 82 and 82A which deal with approvals for contracts above a specified limit and guidelines for hedging contracts. Clause 6 amends section 9 to include these powers in the general powers of Post, without the need for approvals.

**Claus 18      Annual Report**

Amends section 102 which deals with the Post Annual Report, to require particulars of subsidiaries, partnerships, joint ventures, share purchases and businesses acquired.

Proposed subsections (1C) to (1E) cover the requirement to provide information on of the Managing Director's income in the same manner as the requirements for executive officers under the Companies Act 1981.

**Clause 19      Rewards for information as to damage to property**

Amends section 105A, which allows Post to offer rewards for damage to property, by removing the current monetary limit of \$100 or such higher amount as is prescribed. No regulations have been made.

**Clause 20      New sections 114A and 114B**

Inserts proposed section 114A - Public Works Committee - which exempts Post from the operation of the Public Works Committee Act 1969. Post has already been exempted by regulation but in accordance with the Government's Guidelines for Statutory Authorities and Government Business Enterprises, this section includes the exemption in enabling legislation.

Proposed section 114B - Lands Acquisition Act - exempts Telecom from the Lands Acquisition Act 1955. By virtue of section 10 of the Acts Interpretation Act, this will apply to any Act which repeals and re-enacts the Lands Acquisition Act.

Note : The Corporation will not be empowered to obtain land through compulsory process. Any acquisition through compulsory process must be carried out through relevant Commonwealth Departments, and then only if there has been no effort to acquire by agreement. These arrangements acknowledge the Law Reform Commission recommendations on the matter of land acquisition. Post will be directed to observe Government policy in this regard.

**Clause 21 Consequential and minor amendments of Postal Services Act 1975**

Provides for three sets of amendments to the Postal Services Act, in Schedule 1:

Part I - to operate from Royal Assent - these relate to the removal of day-to-day controls. Two definitions in section 3 are amended to omit references to the Commission so they can operate if the change to Corporation and the creation of the Board commences before the staffing provisions;

Part II - Amendments relating to Corporation and Boards - to operate from the same day as the changes to Corporation and Board; these amendments:

alter references to "Commission" to "Corporation" or, in some cases "Board";

omit definitions (eg "Commissioner") and insert new definitions;

amend some other provisions to take account of the fact that the Corporation does not have members, and there will be a separate legal entity, the Board; for example subsection 7(1), which deals with the duties of the Commission, is rephrased to allow for the fact that the necessary opinion must be formed by the Board.

Proposed section 101 repeats the substance of the current section 24(3) which provides immunity for Post from the operation of State and Territory laws. The reference to section 83 makes it clear that the re-enactment of this provision is not intended to have any effect on Post's liability to payroll tax (see the Commonwealth Authorities Legislation (Pay-roll Tax) Amendment Act 1988).

Part III - Amendments relating to Staff - to operate from the same proclamation date as the employment amendments. They remove references to "officer" "Service", currently used in the Act.

**Clause 22 Consequential amendments**

Provides for two sets of amendments to other Acts, in Schedule 2:

Part I - Amendments relating to Corporation - to operate from the same proclamation date as the Corporation/Board amendments; they mainly deal with references to the Australian Postal Commission in other Acts and change the reference to "Corporation".

Part II - Amendments relating to staff - to operate from the same proclamation date as the employment provisions; these amendments remove references to "officer" etc in line with the employment provisions.

Note - Many Commonwealth Acts apply to Post because of definitions - eg "Commonwealth authority" which will not be affected by this Bill, as Post is not altering its status as a statutory authority, or where the change of name can be picked up in regulations. These include various legislation relating to employment, for example, Long Service Leave (Commonwealth Employees) Act 1976, Maternity Leave (Commonwealth Employees) Act 1973, Commonwealth Employees (Rehabilitation and Compensation) Act 1988, Superannuation Act 1976.

**Clause 23 Transitional provisions - charging determinations**

Saves determinations of prices and rentals under section 18.

**Clause 24 Transitional provisions - directions**

Saves any directions by the Minister in force under existing section 8 as if they had been made by the Board.

- Clause 25**      **Transitional provisions - delegations**
- Saves delegations made under section 36 of the powers of the Commission, as if they had been made under proposed section 10D. Subclause 25 (2) allows the new delegations provision to operate on the existing staffing provisions.
- Clause 26**      **Transitional provision - existing Managing Director**
- Saves the rights of the current Managing Director while he holds his current position.
- Clause 27 - Transitional provisions - existing Chief General Manager**
- Saves the rights of the Chief General Manager while he holds his office.
- Clause 28 - Employment of staff members to continue**
- Saves the employment of Post staff when the new employment provisions come into operation. Post and relevant unions will reach agreement on details of how the new employment arrangements will be handled and the amendments to employment provisions are subject to separate proclamation (see clause 2).
- Clause 29**      **Transitional Provisions - Part V**
- A technical drafting provision to allow the provisions for the Chief General Manager to continue in Part V, without a heading, if the employment provisions are proclaimed before the change to Corporation and Board.
- Clause 30**      **Transitional Provision - Divisions 2 to 7 of Part V**
- Subclause 30(1) allows for the Corporation/ Board amendments to operate before the employment amendments.
- Subclause 30(2) allows for the employment amendments to operate before the Corporation/Board amendments.
- Clause 31 - Transitional provisions - Division 8 of Part V**
- Leaves Division 8 of Part V to operate until repealed and replaced in the new Industrial Relations legislation.



**Claus 32 By-Laws**

Proposed section 5 provides that the Australian Postal Commission continues in existence as the Australian Postal Corporation, and proposed section 24 establishes a Board, as a separate legal entity from the Corporation. The current power of the Commission, in section 115, to make by-laws is amended so that, in future, by-laws will be made by the Board (see Schedule 1, Part II). Clause 32 saves the existing by-laws.

**Clause 33 - Transitional Provisions - Telecommunications (Interception) Act 1979**

The Telecommunications (Interception) Act 1979 includes a definition of "officer of the Commission" which covers both Telecom and Post. The consequential amendment is in the Telecommunications Amendment Bill. This clause covers transitional operation if either the Corporation/Board amendments or the employment amendments for Post operate earlier than those for Telecom.

**Clause 34 Transfer of funds**

Allows for the continued appropriation of moneys for Post after the change of name  
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