

## AIRLINES AGREEMENTS.

No. 70 of 1961.

An Act to amend the *Civil Aviation Agreement Act* 1952-1957.

[Assented to 27th October, 1961.]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title  
and citation.

1.—(1) This Act may be cited as the *Airlines Agreements Act* 1961.

(2) The *Civil Aviation Agreement Act* 1952-1957\* is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Airlines Agreements Act* 1952-1961.

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\* Act No. 100, 1952, as amended by No. 86, 1957.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. The title of the Principal Act is repealed and the following title inserted in its stead:— Title.

“An Act to approve certain Agreements relating to Air Transport, and for purposes connected therewith.”.

4. Section three of the Principal Act is amended— Approval of agreements.

(a) by omitting the word “Schedule” and inserting in its stead the words “First Schedule”; and

(b) by adding at the end thereof the following sub-section:—

“(2.) The agreement between the Commonwealth, the Australian National Airlines Commission, Ansett Transport Industries Limited and Australian National Airways Proprietary Limited, being the agreement a copy of which is set forth in the Second Schedule to this Act, is approved.”.

5. Sections four and five of the Principal Act are repealed and the following sections inserted in their stead:—

“4. The Commonwealth may give such guarantees as are provided for by the agreements referred to in the last preceding section. Guarantees.

“5. The Australian National Airlines Commission— Powers of Australian National Airlines Commission

(a) shall be taken to have had power to enter into the agreement referred to in sub-section (2.) of section three of this Act; and

(b) is empowered to do all such things as that agreement, and the agreement referred to in sub-section (1.) of section three of this Act as affected by that agreement, provide that the Commission will do.

“6. So long as the agreements referred to in section three of this Act remain in force, the Minister shall, for the purposes of those agreements, continue to perform his functions under Part IV. of the *Airlines Equipment Act* 1958.”. Functions of Minister under Airlines Equipment Act 1958.

6. The heading to the Schedule to the Principal Act is omitted and the following headings are inserted in its stead:— The Schedule.

### “THE SCHEDULES.

#### FIRST SCHEDULE.

Section 3 (1.).”.

Second  
Schedule.

7. The Principal Act is amended by adding at the end thereof the following Schedule:—

SECOND SCHEDULE.

Section 3 (2.).

AN AGREEMENT made the twenty-sixth day of September, One thousand nine hundred and sixty-one BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the first part, the AUSTRALIAN NATIONAL AIRLINES COMMISSION constituted under the *Australian National Airlines Act 1945* as for the time being amended of the Commonwealth (in this agreement called "the Commission") of the second part, ANSETT TRANSPORT INDUSTRIES LIMITED, a company incorporated under the laws of the State of Victoria relating to companies and whose registered office is situated at 489 Swanston Street, Melbourne, in the said State of the third part and AUSTRALIAN NATIONAL AIRWAYS PROPRIETARY LIMITED, a company incorporated under the laws of the State of Victoria and whose registered office is situated at 489 Swanston Street, Melbourne, in the said State of the fourth part:

WHEREAS by an agreement (in this agreement called "the Civil Aviation Agreement 1952") made the twenty-fourth day of October, One thousand nine hundred and fifty-two between the Commonwealth and Australian National Airways Proprietary Limited and set forth in the Schedule to the *Civil Aviation Agreement Act 1952* certain arrangements were agreed for the operation of air services within Australia:

AND WHEREAS by the *Civil Aviation Agreement Act 1952* the Parliament of the Commonwealth approved the Civil Aviation Agreement 1952 and provided that the Commission should do all such things as that agreement provides that the Commission would do:

AND WHEREAS following the acquisition by Ansett Transport Industries Limited of all the issued shares in Australian National Airways Proprietary Limited it became desirable to make further provision with respect to the operation of air services within Australia:

AND WHEREAS by an agreement (in this agreement called "the Civil Aviation Agreement 1957") made the sixteenth day of December, One thousand nine hundred and fifty-seven between the Commonwealth, the Commission, Ansett Transport Industries Limited, Australian National Airways Proprietary Limited and Ansett Airways Proprietary Limited in the form set forth in the Schedule to the *Civil Aviation Agreement Act 1957* additional arrangements including the establishment of a Rationalization Committee were agreed:

AND WHEREAS one of the objects of the parties to this agreement is to secure and maintain a position in which there are two, and not more than two, operators of trunk route airline services, one being the Commission, each capable of effective competition with the other, and the parties intend that this agreement shall be construed having regard to that object:

AND WHEREAS in order to further the purposes and objects referred to in the recitals to the Civil Aviation Agreement 1952 the parties to that agreement consider that it is desirable to extend its term for a period of ten years:

AND WHEREAS the Commonwealth is desirous of facilitating the equipment of the Commission and Australian National Airways Proprietary Limited with turbo-jet aircraft and ensuring that those aircraft are selected and introduced in circumstances which will promote the stability of the domestic air transport industry:

AND WHEREAS the parties to this agreement desire to consolidate the procedures relating to the rationalization of domestic air services in the light of experience of the operation of the Civil Aviation Agreement 1952 and the Civil Aviation Agreement 1957:

NOW THIS AGREEMENT WITNESSETH that it is agreed by and between the parties to this agreement as follows:—

Approval by  
Parliament.

1. This agreement shall have no force or effect and shall not be binding on the parties to this agreement unless and until it is approved by the Parliament of the Commonwealth.

Commence-  
ment.

2. This agreement shall commence and come into full force and effect upon the date upon which it is so approved.

Acquisition of  
turbo-jet  
aircraft.

3.—(1.) The Commission and the Company will not before the eighteenth day of November, One thousand nine hundred and sixty-two purchase, lease, otherwise obtain the use of, place an order for or deliver any letter of intent to purchase any turbo-jet aircraft or apply for a certificate under paragraph (c) of section 13 of the *Airlines Equipment Act 1958* in respect of any such aircraft.

SECOND SCHEDULE—*continued.*

(2.) The Commission and the Company will not operate any turbo-jet aircraft on air services within Australia and the Territories before the first day of July, One thousand nine hundred and sixty-four.

(3.) As to the first two turbo-jet aircraft to be operated by the Commission on public transport services within Australia and the Territories and the first two turbo-jet aircraft to be operated by the Company on public transport services within Australia and the Territories—

- (a) neither the Commission nor the Company will purchase, lease, otherwise obtain or place an order for such aircraft respectively until there is in force in respect of all those four aircraft certificates issued under paragraph (c) of section 13 of the *Airlines Equipment Act 1958*; and
- (b) the Commission and the Company will ensure that the first of such turbo-jet aircraft purchased, leased or otherwise obtained for use by the Commission and the Company respectively will commence public transport services on the same date and that the second of such turbo-jet aircraft purchased, leased or otherwise obtained for use by the Commission and the Company respectively will commence public transport services on the same date.

(4.) The conditions set out in the last preceding sub-clause shall not apply if either the Commission or the Company, as the case may be, has not been issued with a certificate under paragraph (c) of section 13 of the *Airlines Equipment Act 1958* in respect of the aircraft referred to in that sub-clause within six months after the date of the issue to the other of them of such a certificate.

(5.) The Commission and the Company shall each notify the other in writing when it makes an application (whether in respect of turbo-jet or other aircraft) to the Minister for a certificate under paragraph (c) of section 13 of the *Airlines Equipment Act 1958* and when it is issued with such a certificate.

4.—(1.) Subject to the provisions of this clause, if, after the commencement of this agreement, the Commission is authorized to purchase or otherwise obtain any turbo-jet aircraft, the Commonwealth will, at the request of Ansett Transport Industries Limited, but not before the eighteenth day of November, One thousand nine hundred and sixty-two, guarantee the repayment of, and the payment of interest on, such loan or loans as may be required for the purpose of enabling the purchase by Ansett Transport Industries Limited or Australian National Airways Proprietary Limited of an equal number of turbo-jet aircraft (and related spares and equipment) comparable in size and performance to those authorized for purchase or to be otherwise obtained by the Commission.

Guarantees of  
loans for  
turbo-jet  
aircraft.

(2.) The limit of the total liability of the Commonwealth under a guarantee or guarantees given in pursuance of this clause shall not at any one time exceed the sum that is the equivalent of six million pounds (£6,000,000).

(3.) Subject to sub-clause (7.) of this clause, a loan to be guaranteed in pursuance of this clause shall be repayable within a period not exceeding seven years from the date on which the loan moneys are received.

(4.) A guarantee by the Commonwealth in accordance with this clause shall be in such form as the Treasurer shall approve.

(5.) The Commonwealth shall not be bound to guarantee a loan unless—

- (a) the moneys are proposed to be borrowed upon reasonable terms and conditions;
- (b) proper security is to be taken by the lender over the aircraft and related spare parts and equipment to which the loan relates;
- (c) the loan arrangements contain such provision as the Treasurer considers necessary for the transfer to the Commonwealth of the benefit of securities in the event of the Commonwealth being called upon to make payment under the guarantee;
- (d) undertakings to the satisfaction of the Treasurer are given that the aircraft and other assets over which security is to be taken for the payment of moneys to which the guarantee relates—
  - (i) will be insured, and kept insured, against all risks against which it is customary to insure, and to their full insurable value;
  - (ii) will not be sold or made the subject of a mortgage or charge having priority over the security to the lender in respect of the loan; and
  - (iii) will not be taken out of Australia for a destination that is not in Australia or the Territories except after the furnishing of such security as the Treasurer may require; and
- (e) such other reasonable conditions as the Treasurer thinks necessary are fulfilled.

## SECOND SCHEDULE—continued.

(6.) A guarantee shall not be given by the Commonwealth under this clause in respect of any moneys borrowed by Ansett Transport Industries Limited or Australian National Airways Proprietary Limited after the expiration of a period of ten years commencing on the eighteenth day of November, One thousand nine hundred and sixty-two.

(7.) Ansett Transport Industries Limited and Australian National Airways Proprietary Limited will make all arrangements necessary to ensure that, upon the expiration of that period of ten years, all amounts borrowed by them or either of them and secured by a guarantee by the Commonwealth in pursuance of this clause, together with all interest payable thereon, will be repaid by regular payments in the shortest time practicable, but in any event before the expiration of the period of this agreement.

Restrictions on further financial assistance under Civil Aviation Agreement 1952.

5.—(1.) A guarantee shall not be given by the Commonwealth under clause 3 of the Civil Aviation Agreement 1952 in respect of any money borrowed by Australian National Airways Proprietary Limited after the seventeenth day of November, One thousand nine hundred and sixty-two.

(2.) The obligation specified in paragraph (b) of sub-clause (3.) of clause 3 of the Civil Aviation Agreement 1952 that, in the event of Australian National Airways Proprietary Limited being unable to obtain a loan in accordance with sub-clause (2.) of that clause, the Commonwealth will advance the amount required by that Company on loan as and when required shall upon the commencement of this agreement cease to have force and effect and shall cease to bind the Commonwealth.

A.T.I. not to request guarantees under Airlines Equipment Act.

6. Ansett Transport Industries Limited will not request a guarantee under paragraph (b) of sub-section (1.) of section 8 of the *Airlines Equipment Act* 1958.

Obligations of Commission and Company under Airlines Equipment Act.

7.—(1.) Subject to the next succeeding sub-clause, the Commission and the Company shall during the continuance of this agreement be bound by the provisions of Part IV. of the *Airlines Equipment Act* 1958 and shall continue to be subject to the obligations specified in paragraphs (a), (b), (c) and (d) of section 13 of that Act notwithstanding that all moneys in respect of which guarantees have been given under section 8 of that Act have been repaid.

(2.) The obligation specified in paragraph (c) of section 13 of the *Airlines Equipment Act* 1958 shall not apply to aircraft with an all-up weight of less than twenty thousand pounds (20,000 pounds).

(3.) The Commonwealth will ensure that the Minister will exercise his powers under Part IV. of the *Airlines Equipment Act* 1958 during the period of this agreement.

Air navigation charges and taxes on aviation fuel.

8. In implementing its policy of full recovery of the cost of facilities properly attributable to civil air transport, the Commonwealth will take into account the level of air fares, the rate of growth of the industry and the requirement of the airlines to provide a reasonable return on capital, and will not—

- (a) increase the rate of air navigation charges payable by the Commission and the Company by more than ten per centum in any period of twelve months; or
- (b) increase the amount of tax (including customs and excise duties) payable in respect of each gallon of aviation fuel in any period of twelve months by a greater amount than the corresponding amount of any increase in tax on motor fuel in that period.

Clauses of Civil Aviation Agreements 1952 and 1957 to cease to have effect.

9.—(1.) Clauses 4, 7 and 14 of the Civil Aviation Agreement 1952 and the Civil Aviation Agreement 1957 shall cease to have force and effect upon the commencement of this agreement.

(2.) Notwithstanding anything to the contrary contained in the last preceding sub-clause, the decisions and agreements given or reached as a result of proceedings of the Committee under clause 4 of the Civil Aviation Agreement 1957 and in force at the commencement of this agreement shall have the same force and effect as a decision under clause 12 of this agreement and the provisions of clause 7 of that agreement shall continue to have the same force and effect as if that agreement had not ceased to have force and effect.

Rationalization of services.

10. In order to avoid unnecessary overlapping of services and wasteful competition, to provide the most effective and economical services with due regard to the interests of the public and to bring earnings into a proper relation to overall costs, the Commission

SECOND SCHEDULE—*continued.*

and the Company will keep under review at all times during the continuance of this agreement the following matters in relation to air services within Australia and the Territories between Australia and the Territories and between the Territories:—

- (a) time-tables, frequencies and stopping places;
- (b) the aircraft types and aircraft capacity used on those air services;
- (c) proposed variations in the levels of fare and freight rates;
- (d) the industry passenger load factor and freighter load factor necessary to permit profitable airline operations by the Commission and the Company in relation to particular periods on specified groups of competitive routes; and
- (e) any other matters affecting the efficient and economical operation of those air services.

11.—(1.) The Commonwealth, the Commission and Ansett Transport Industries Limited will take immediate steps to establish a Rationalization Committee (in this agreement called "the Committee") which shall be constituted from time to time by—

Establishment and procedure of Rationalization Committee.

- (a) a Chairman who shall be known as the Co-ordinator and shall be nominated by the Minister;
- (b) a person nominated by the Commission; and
- (c) a person nominated by Ansett Transport Industries Limited.

(2.) The members of the Rationalization Committee established under clause 3 of the Civil Aviation Agreement 1957 will at the date of commencement of this agreement become the members of the Committee established under this clause and those members may be assisted by such reasonable number of advisers as they respectively consider appropriate.

(3.) The Record of the Rationalization Committee established under clause 3 of the Civil Aviation Agreement 1957 shall become part of the Record of the Committee established under this clause.

(4.) The Commonwealth, the Commission and the Company will each, upon being required so to do by the Co-ordinator, furnish or produce to the Committee all information, documents, books, papers and accounts which the Co-ordinator considers necessary to enable the Committee to consider any matter referred to the Committee under the next succeeding clause.

(5.) The Committee may from time to time during the continuance of this agreement make binding rules in relation to the conduct of the business of the Committee and may from time to time alter or rescind any of those rules.

12.—(1.) If the Commission and the Company are unable to agree on any matter referred to in clause 10, the matter in dispute may be referred to the Committee by either of them.

Functions of Committee.

(2.) The Committee will consider the matter and, if the members nominated by the Commission and Ansett Transport Industries Limited are, after such consideration, still unable to reach agreement, the Co-ordinator shall decide the matter and subject to the next succeeding clause, his decision shall be final and binding on the Commission and the Company.

(3.) The Co-ordinator shall give reasons in writing for each of his decisions under this clause and, where a matter is to be dealt with in accordance with the next succeeding clause, the Co-ordinator shall furnish those reasons, together with the Record of the Committee, to the person referred to in that clause as the Arbitrator.

13.—(1.) There shall be a person (in this agreement called "the Arbitrator") who is a person appointed by agreement between the Commission and Ansett Transport Industries Limited or in default of agreement a Justice of a federal court other than the High Court made available under arrangements made by the Attorney-General.

Appointment and functions of Arbitrator.

(2.) If the Commission or the Company is dissatisfied with a decision of the Co-ordinator under the last preceding clause and gives notice in writing to the Arbitrator and the Co-ordinator to that effect within fourteen days after the date of the Co-ordinator's decision, the matter shall be dealt with in accordance with this clause.

(3.) Representatives of the Commission and the Company will confer together on the matter in dispute under the chairmanship of the Arbitrator and, if those representatives are unable to agree, the Arbitrator himself shall decide the matter and his decision shall be final and binding on the Commission and the Company.

SECOND SCHEDULE—*continued.*

(4.) The Arbitrator shall have in relation to proceedings under this clause like powers to those of the Co-ordinator under sub-clause (4.) of clause 11.

Obligation to comply with rationalization agreements and decisions.

14. The Commission and the Company will each give effect to and not take any steps inconsistent with—

- (a) an agreement reached as the result of a review under clause 10 or of consideration by the members of the Committee under clause 12;
- (b) a final and binding decision of the Co-ordinator; and
- (c) a decision of the Arbitrator.

Obligation to extend cross charter agreement.

15. The Commission, Ansett Transport Industries Limited and Australian National Airways Proprietary Limited will extend the agreement known as the cross charter agreement made the twenty-sixth day of February, One thousand nine hundred and sixty from the date upon which that agreement is due to expire until the first two turbo-jet aircraft obtained by the Commission or the Company in accordance with clause 3 of this agreement commence public transport services, subject only to the exclusion of clauses 19, 24 and 25 of the cross charter agreement and to such modification (if any) in respect of the period after the sixth day of March, One thousand nine hundred and sixty-three of the financial provision of that agreement relating to the rental payable for the hire of aircraft as may be agreed between the parties thereto or as, in the absence of agreement, may be determined by the arbitration of one arbitrator mutually agreed upon or failing such agreement by arbitration under the laws relating to arbitration for the time being in force in the State of Victoria.

Commonwealth access to Company's accounts.

16. For so long as a loan or any interest on a loan the repayment of which has been guaranteed by the Commonwealth under clause 3 of the Civil Aviation Agreement 1952 or clause 4 of this agreement remains unpaid, officers employed in the Commonwealth Service shall 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 the Company will do everything within its power to ensure that the officers so authorised have similar access to the financial accounts of any company or firm in which the Company, whether directly or indirectly, now has or hereafter may have a controlling interest.

Compliance with agreement.

17. Ansett Transport Industries Limited will do everything within its power to ensure that the companies or firms in which it has from time to time, whether directly or indirectly, a controlling interest will do all such acts and things as this agreement and the Civil Aviation Agreement 1952 as affected by this agreement provide that they will do and that those companies and firms will not do anything inconsistent with the provisions or purposes of those agreements.

Air Navigation Act.

18. Nothing in this agreement or the Civil Aviation Agreement 1952 as affected by this agreement requires or permits the Commission or the Company to act in any manner inconsistent with the *Air Navigation Act* 1920–1960 or with the regulations in force under that Act.

Amendments to Civil Aviation Agreement 1952.

19. Upon the commencement of this agreement—

- (a) the term “the Chairman”, where it appears in the Civil Aviation Agreement 1952 as affected by this agreement, shall mean the Arbitrator appointed in accordance with clause 13 of this agreement;
- (b) the term “aircraft”, where it appears in clauses 8 and 9 of the Civil Aviation Agreement 1952 as affected by this agreement, shall refer only to aircraft with an all-up weight exceeding fifty thousand pounds (50,000 pounds); and
- (c) the term “the Company”, where it appears in the clauses of the Civil Aviation Agreement 1952 as affected by this agreement, shall mean Ansett Transport Industries Limited and shall include every company or firm in which that Company has from time to time, whether directly or indirectly, a controlling interest.

Extension of term of Civil Aviation Agreement 1952.

20. The Civil Aviation Agreement 1952 as affected by this agreement shall continue in force for a further period of ten years commencing on and from the date on which the period specified in clause 16 of the Civil Aviation Agreement 1952 expires and this agreement shall be read and construed as forming part of that agreement as so extended and affected.

SECOND SCHEDULE—*continued.*

21. The Commonwealth will introduce in the Parliament of the Commonwealth such legislation as is necessary to enable the Commission to do all such things as this agreement and the Civil Aviation Agreement 1952 as affected by this agreement provide that the Commission will do. Legislation.

22. This agreement shall remain in force for so long as the Civil Aviation Agreement 1952 as extended by this agreement is in force. Period of agreement.

23.—(1.) In this agreement, unless the contrary intention appears— Interpretation.

“the Attorney-General” means the Attorney-General of the Commonwealth and includes any Minister or member of the Federal Executive Council for the time being acting for the Attorney-General of the Commonwealth;

“the Company” means Ansett Transport Industries Limited and every company or firm in which Ansett Transport Industries Limited has from time to time, whether directly or indirectly, a controlling interest;

“the Minister” means the Minister of State for Civil Aviation of the Commonwealth, and includes any Minister or member of the Federal Executive Council for the time being acting for the Minister of State for Civil Aviation;

“the Territories” means the Territories of or administered by the Commonwealth; and

“the Treasurer” means the Treasurer of the Commonwealth, and includes any Minister or member of the Federal Executive Council for the time being acting for the Treasurer.

(2.) An obligation, prohibition or limitation imposed on the Company under this agreement shall severally bind or apply to Ansett Transport Industries Limited and each and every company or firm in which that company has from time to time, whether directly or indirectly, a controlling interest.

IN WITNESS whereof the parties have executed this agreement the day and year first hereinbefore written.

SIGNED, SEALED AND DELIVERED BY THE  
RIGHT HONOURABLE ROBERT GORDON  
MENZIES, Prime Minister of the Commonwealth,  
for and on behalf of the Commonwealth, in the  
presence of— ROBERT MENZIES.

A. L. MOORE.

The COMMON SEAL of the AUSTRALIAN  
NATIONAL AIRLINES COMMISSION was  
hereunto affixed, in the presence of— L.S.

G. T. CHIPPINDALL, Chairman

LYLE J. BYRNE, Secretary

The COMMON SEAL OF ANSETT TRANSPORT  
INDUSTRIES LIMITED was hereunto affixed, in  
the presence of— L.S.

R. M. ANSETT, Director

GEORGE JONES, Director

H. J. CLAPPISON, Secretary

The COMMON SEAL OF AUSTRALIAN  
NATIONAL AIRWAYS PROPRIETARY  
LIMITED was hereunto affixed, in the presence of— L.S.

R. M. ANSETT, Director

F. PASCOE, Director

A. FLANDERS, Secretary