

# AIR TRANSPORT (AMENDMENT) ACT 1987 No. 112

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 36, 1964
5. Repeal of certain provisions of Act No. 18, 1930
6. Transitional provisions

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT  
SCHEDULE 2—TRANSITIONAL PROVISIONS

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**AIR TRANSPORT (AMENDMENT) ACT 1987 No. 112**

**NEW SOUTH WALES**



**Act No. 112, 1987**

An Act to amend the Air Transport Act 1964 with respect to removing certain limitations on the granting of licences, replacing the Air Licensing Advisory Committee with an Air Transport Council, allowing Australian Airlines to make an application for an intrastate licence, the deregulation of air freight services and the determination of licence fees; to repeal certain related provisions of the Transport Act 1930; and for other purposes. [Assented to 16 June 1987]

*Air Transport (Amendment) 1987*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the "Air Transport (Amendment) Act 1987".

**Commencement**

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (4), and section 4 in its application to that provision, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Principal Act**

3. The Air Transport Act 1964 is referred to in this Act as the Principal Act.

**Amendment of Act No. 36, 1964**

4. The Principal Act is amended in the manner set forth in Schedule 1.

**Repeal of certain provisions of Act No. 18, 1930**

5. Sections 202 (2) (i) and 265A (a) of the Transport Act 1930 are repealed.

**Transitional provisions**

6. Schedule 2 has effect.
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## SCHEDULE 1

(Sec. 4)

## AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 2 (**Interpretation**)—

## (a) Section 2 (1), definition of “Advisory Committee”—

Omit the definition.

## (b) Section 2 (1), definition of “Air Transport Council”—

After the definition of “Air Navigation Regulations”, insert:

“Air Transport Council” means the Air Transport Council constituted by section 2A.

## (c) Section 2 (1), definition of “Goods”—

Omit the definition.

## (d) Section 2 (5)—

Omit the subsection.

## (2) Sections 2A–2C—

Omit section 2A, insert instead:

**Air Transport Council**

2A. (1) There is constituted by this Act an Air Transport Council.

## (2) The Council—

(a) shall have and may exercise the functions conferred or imposed on it by or under this Act or any other law; and

(b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The Council shall consist of 5 members who shall (except in the case of the member referred to in subsection (4) (e)) be appointed by the Minister.

*Air Transport (Amendment) 1987*

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

## (4) Of the members—

- (a) one shall be a person with knowledge of the air industry who shall be Chairperson of the Council;
- (b) one shall be a person appointed to represent the Minister;
- (c) one shall be a person appointed to represent consumers;
- (d) one shall be a person nominated by the Minister for Tourism; and
- (e) one shall be the Secretary of the Ministry of Transport.

(5) Schedule 1 has effect with respect to the members of the Council.

(6) Schedule 2 has effect with respect to the procedure of the Council.

**Principal functions of Air Transport Council**

2B. The principal functions of the Air Transport Council are—

- (a) to advise the Minister on—
  - (i) any application for a licence that is referred to the Council by the Minister; and
  - (ii) any proposal to revoke, vary or suspend a licence or to attach further or new conditions to a licence, being a proposal that is referred to the Council by the Minister;
- (b) to determine, with the concurrence of the Minister, application and licence fees under this Act;
- (c) to exercise such functions as the Minister may delegate to it under this Act; and
- (d) to advise the Minister on such matters relating to air transport services as the Council thinks fit or as may be referred to the Council by the Minister.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Staff of the Air Transport Council**

2c. (1) An Executive Officer and such other staff as may be necessary to enable the Air Transport Council to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Council may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board.

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(3) The Minister may engage persons having suitable qualifications and experience as consultants to the advisory committee.

(4) The terms and conditions under which consultants are engaged shall be such as are from time to time determined by the Minister.

(3) **Section 3 (Licensing of persons for the carriage intrastate of passengers)—**

(a) Section 3 (1)—

Omit “or goods” where firstly occurring.

(b) Section 3 (1) (a), (b)—

Omit section 3 (1) (a)–(c), insert instead:

(a) the person is the holder of a licence under this Act; and

(b) if the person is operating or providing a regular air transport service, the route over which the passengers are carried is a route in respect of which the licence was granted.

(c) Section 3 (1A)—

Omit “(c). an aircraft is engaged in”, insert instead “, a person is operating or providing”.

*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

## (d) Section 3 (1A)—

Omit “or goods over a particular route if that aircraft, together with any other aircraft operated by the same person,”, insert instead “over a particular route if aircraft operated by the person”.

## (e) Section 3 (1B)—

Omit “(a)–(g)”.

## (4) Section 3A—

After section 3, insert:

**Authority for Australian Airlines to operate intrastate air services**

3A. Section 19A of the Australian National Airlines Act 1945 of the Commonwealth is adopted for the purposes of this Act.

(5) Section 4 (**Powers of authorised persons**)—

Section 4 (1)—

Omit “or goods” wherever occurring.

(6) Section 5 (**Applications for licences**)—

## (a) Section 5 (1) (a)—

Omit the paragraph, insert instead:

(a) be lodged at the office of the Ministry of Transport;

## (b) Section 5 (1) (c)—

Omit “a fee of \$3 or, where another fee is determined, that other fee”, insert instead “the application fee determined by the Air Transport Council with the concurrence of the Minister”.

## (c) Section 5 (1) (d)—

At the end of the paragraph, insert “and”.

## (d) Section 5 (1) (e)—

Omit section 5 (1) (e)–(g), insert instead:

(e) specify such particulars and contain such information as the Minister may require.

*Air Transport (Amendment) 1987*

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SCHEDULE 1—*continued*  
AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(7) Section 6 (**Consideration by the Minister of applications for licences**)—

(a) Section 6 (2)—

Omit “, including conditions as to whether the carriage of passengers or goods or of both passengers and goods is authorised by the licence”.

(b) Section 6 (3) (b)—

Omit the paragraph.

(c) Section 6 (3) (c)—

Omit “between persons holding or applying for licences under this Act”.

(d) Section 6 (3) (e)—

Omit the paragraph.

(e) Section 6 (3) (f), (g)—

Omit “the aircraft specified in the application for the licence and, in particular, its operation over the route or routes, or over any of the routes, specified in that application” wherever occurring, insert instead “aircraft by the applicant over the route or routes specified in the application”.

(f) Section 6 (3) (h), (i)—

After section 6 (3) (g), insert:

(h) whether the applicant and the applicant’s aircraft, pilots and passengers will be adequately insured:

(i) the ownership of, or the extent of the applicant’s rights to operate, the aircraft to be used by the applicant.



*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

## (8) Section 7—

Omit the section, insert instead:

**Licences**

7. (1) A licence shall be in such form as the Minister may determine and shall specify any route or routes in respect of which it is granted.

(2) A licence shall commence and expire on such days as are specified in the licence.

(3) Licence fees determined by the Air Transport Council with the concurrence of the Minister are payable in the prescribed manner and at the prescribed times by the holders of licences in respect of routes over which regular air transport services (within the meaning of section 3 (1A)) operate.

(9) Section 8 (**Revocation, suspension and variation of licences**)—

Section 8 (1)—

Omit “(a)–(g)”.

## (10) Section 10—

After section 9, insert:

**Determinations of application and licence fees**

10. (1) A determination by the Air Transport Council (with the concurrence of the Minister) of an application fee or licence fee for the purposes of this Act shall be by order published in the Gazette.

(2) An order shall take effect on and from the date of publication of the order or a later date specified in the order.

(3) An application fee or licence fee may be determined by reference to specified factors or so as—

(a) to apply generally or be limited in its application by reference to specified exceptions or factors;

*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) to apply differently according to different factors of a specified kind; or

(c) to provide for a maximum or a minimum fee, or so as to do any combination of those things.

(11) Section 11A (**Delegation**)—

## (a) Section 11A (1), (2), (5)—

Omit “Commissioner for Motor Transport” wherever occurring, insert instead “Air Transport Council”.

## (b) Section 11A (6)—

Omit “signed by the Commissioner for Motor Transport in his capacity”, insert instead “executed by the Air Transport Council in its capacity”.

## (c) Section 11A (6)—

Omit “signed by the Commissioner for Motor transport in that capacity”, insert instead “executed by the Air Transport Council in that capacity”.

(12) Section 13 (**Regulations**)—

## (a) Section 13 (1) (a)—

Before section 13 (1) (a1), insert:

(a) the determination and payment of application fees and licence fees;

## (b) Section 13 (1) (a1)—

Omit “Advisory Committee”, insert instead “Air Transport Council”.

## (c) Section 13 (4)—

After section 13 (3), insert:

(4) A regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(13) Schedules 1, 2—

Omit Schedule 1, insert instead:

## SCHEDULE 1

(Sec. 2A (5))

## PROVISIONS RELATING TO THE MEMBERS OF THE AIR TRANSPORT COUNCIL

**Age of members**

1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Council or to act in the office of a member.

**Deputies**

2. (1) A member of the Council may, from time to time, appoint a person to be a deputy of the member, and the member or the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy—

- (a) shall, if available, act in the place of the member; and
- (b) while so acting shall be deemed to be a member of the Council and shall have and may exercise the functions of the member.

**Term of office**

3. Subject to this Schedule, an appointed member of the Council shall hold office for such period as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

4. A member of the Council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Filling of vacancy in office of member**

5. If the office of any member of the Council becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

6. (1) A member of the Council shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Council of which reasonable notice has been served on the member, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) reaches the age of 70 years; or
- (h) is removed from office by the Minister under subclause (2) or (3).

(2) The Minister may remove a member of the Council from office.

(3) Without affecting the generality of subclause (2), the Minister may remove a member of the Council from office if the member contravenes the provisions of clause 7.

**Disclosure of pecuniary interests**

7. (1) A member of the Council who has a direct pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council; or

*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) in a thing being done or about to be done by the Council, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Council shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Council from time to time.

(4) After a member of the Council has, or is deemed to have, disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member of the Council contravenes the provisions of this clause, that contravention does not invalidate any decision of the Council or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member of the Council in a matter or thing which arises only because the member—

- (a) is a member of or associated with any institution, organisation or body;  
**and**
- (b) was appointed by virtue of that membership or association.

(7) A reference in this clause to a meeting of the Council includes a reference to a meeting of a committee or subcommittee of the Council.

*Air Transport (Amendment) 1987*

SCHEDULE 1—*continued*  
 AMENDMENTS TO THE PRINCIPAL ACT—*continued*

**Effect of certain other Acts**

8. (1) If by or under any other Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Council or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(2) The office of a member of the Council shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

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SCHEDULE 2

(Sec. 2A (6))

PROVISIONS RELATING TO THE PROCEDURE OF THE AIR  
 TRANSPORT COUNCIL

**General procedure**

1. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Council.

**Quorum**

2. The quorum for a meeting of the Council is 3 members.

**Presiding member**

3. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present shall be the decision of the Council.

*Air Transport (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Minutes**

5. The Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

**Authentication of documents**

6. Any document requiring authentication by the Council is sufficiently authenticated if it is signed by the Chairperson or by any member who is authorised by the Chairperson in that behalf.

**First meeting of the Council**

7. The Minister shall call the first meeting of the Council in such manner as the Minister thinks fit.

## SCHEDULE 2

(Sec. 6)

## TRANSITIONAL PROVISIONS

**Interpretation**

1. In this Schedule, "licence" does not include a licence to carry goods.

**Existing licences**

2. (1) The Principal Act, as in force immediately before the commencement of this Act, shall be deemed to continue to apply to and in respect of a licence under that Act.

(2) Subclause (1) does not authorise the renewal, after the commencement of this Act, of a licence referred to in that subclause.

(3) Subclause (1) does not prevent the holder of a licence referred to in that subclause from applying for a licence under the Principal Act as amended by this Act.

(4) The Minister may, on giving 1 month's notice to the holder of a licence referred to in subclause (1), terminate that licence with effect from a date not earlier than the end of that period of 1 month.

**Extension of existing licences**

3. (1) For the purpose of allowing a person time to apply for a licence under the Principal Act as amended by this Act, the Minister may extend the term of a licence which was in force under that Act immediately before the commencement of this Act.

(2) The Minister may require the payment of an appropriate fee in respect of such an extension.

*Air Transport (Amendment) 1987*

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SCHEDULE 2—*continued*  
TRANSITIONAL PROVISIONS—*continued*

**Applications made before commencement of this Act**

4. An application for a licence made before the commencement of this Act and not granted or refused as at that commencement has no effect.