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Airport Amendment Bill 2002

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Airport Amendment Bill 2002

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25 February 2002

# Contents

Purpose . . . . .	1
Background . . . . .	1
Basis of Policy Commitment . . . . .	2
Main Provisions . . . . .	3
Concluding Comments . . . . .	4
Endnotes. . . . .	4

# Airport Amendment Bill 2002

**Date Introduced:** 14 February 2002

**House:** House of Representatives

**Portfolio:** Transport and Regional Services

**Commencement:** Sections 1 to 3 and items 2 to 4 of Schedule 1 will begin when the proposed Act receives Royal Assent. Item 1 of Schedule 1 will begin on a day to be fixed by proclamation.

## Purpose

To amend the provisions of the *Airports Act 1996* (the Airports Act) dealing with restrictions on the ownership of companies that operate airports, so that companies that operate Commonwealth general aviation airports will be exempt from the restrictions, and to make changes to the Schedule to the Airports Act so that the Schedule is consistent with terms used elsewhere in the Airports Act.

## Background

The Airports Act applies to the group of Commonwealth airports defined—by section 7—as core regulated airports. This group includes, for example, Sydney (Kingsford-Smith) Airport, the proposed Sydney West Airport (Badgerys Creek) and Melbourne (Tullamarine) Airport. The Commonwealth owns core regulated airports but has sold to private companies the leases to operate most of these airports (privatisation). The main exception is Kingsford-Smith, which is to be privatised some time this year.

Certain sections of the Airports Act also apply to another group of airports known as Commonwealth general aviation airports. There is no single definition of general aviation but it encompasses small-scale commercial operations (including low capacity or regional airlines), non-commercial fliers who own aircraft, gliding, training and recreational flying activities. In short, general aviation airports are those that do not operate major, regular, scheduled passenger services. There are three general aviation airports in the Sydney basin: Bankstown, Camden and Hoxton Park. Essendon airport in Melbourne is also a general aviation airport. Some general aviation airports have been privatised (leased out)

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by the Commonwealth in a similar manner as the larger core regulated airports. Linfox, one of the joint-venture partners in the Tesna consortium that is seeking to revive Ansett, is a joint owner of the company that leases Essendon.<sup>1</sup>

The Airports Act limits ownership of airport-operator companies. This term encompasses:

- companies that own the leases to operate airports (airport-lessee companies), and
- companies to whom airport-lessee companies have contracted out the management of the lease (airport-management company).

The ownership restrictions to which airport-operator companies are subject are:

- a 49 per cent limit on foreign ownership
- a 5 per cent limit on airline ownership, and
- a 15 per cent limit on cross-ownership for Sydney/Melbourne, Sydney/Brisbane and Sydney/Perth airports.

The restrictions on ownership of airports by airlines are aimed, in part, at ensuring competition in the provision of airport services. Substantial ownership of an airport by an airline has the potential for the airline to abuse its power to favour its own activities to the detriment of competing airlines. An airline that uses its ownership interest in an airport to engage in anti-competitive behaviour would also be likely to attract the attention of the Australian Competition and Consumer Commission under the *Trade Practices Act 1974*.

## Basis of Policy Commitment

The main policy feature of the Bill is that the ownership provisions will continue to apply to core regulated airports and to airports specified by regulation, but that general aviation airports would be exempt from the ownership provisions. According to the second reading speech, the policy decision to exempt general aviation airports was motivated by two considerations. The first arose from the 11 September 2001 attacks on Washington DC and New York. The second reading speech makes only fleeting reference to the attacks but the Explanatory Memorandum to the Bill refers to the economic consequences of the attacks on airports and airlines.

The second consideration relates to the efforts to get Ansett flying again. In announcing its decision on Tesna's claims for assistance to help revive Ansett, the Government stated:<sup>2</sup>

Linfox is the joint owner of the company that leases Essendon Airport. The Government will exempt all of the general aviation airports, including Essendon, from the airline ownership provisions of the Airports Act.

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We will make transitional regulations immediately and legislation will be introduced into Parliament early next year. Essendon Airport will remain a general aviation airport and Tesna will not be able to use it for scheduled services.

These transitional regulations mentioned in the above press release were made on 20 December 2001.<sup>3</sup> The regulations allowed airlines (or their associates) to hold more than the five per cent limit in an airport-operator company for the Essendon, Archerfield, Moorabbin, Parafield and Jandakot Airports. In the second reading speech for the Bill, the Hon. Wilson Tuckey MP, stated that the regulations

...removed an unnecessary restriction on the operations of general aviation airports<sup>4</sup> and in doing so increased the scope for investment in airport operator companies for general aviation airports.

An issue in the use of regulations to effect policy is the degree of certainty that regulations provide. According to the second reading speech, the purpose behind the proposed key amendment to the Airports Act is to provide greater certainty to potential investors in general aviation airports on the grounds that legislation will provide greater certainty than regulations. The proposed removal by legislation of the ownership restrictions on general aviation airports would give legislative backing to Linfox's position at Essendon airport.

An effect of the Bill would also to exempt the airport-operator companies at the privatised Tennant Creek and Mt Isa airports from the ownership provisions as these are not core regulated airports. However, since they provide regular passenger services, there are not true general aviation airports. The second reading speech notes that as the Government's policy is to remove the ownership restriction from general aviation airports, not regular passenger transport airports, regulations will be made to ensure these two airports remain subject to such restrictions.

## Main Provisions

Division 4 of Part 2 of the Airports Act deals with the five per cent limit on ownership by airlines. **Proposed schedule 1** of the Bill would, via **item 1**, insert a **new section 43A** into Division 4. This section would have the effect of applying the ownership restrictions only to:

- airport-operator companies with leases on core regulated airports, and
- airports specified in the regulations if that airport is subject to a lease.

Existing clause 5 of the Schedule to the Airports Act contains definitions of 'associates' for the purpose of the ownership provisions in Division 4 of Part 2. **Item 3** would add to clause 5 words to the effect that regulations may be made to declare that a person may not

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be taken to be an associate of another person for the purpose of the ownership provisions (or parts thereof).

## Concluding Comments

The easing of ownership restrictions on general aviation airports is subject to the condition that general aviation airports do not change the basic nature of their operations. This is evident in the proviso that Tesna not use Essendon Airport for scheduled services and that Essendon will remain a general aviation airport. To give effect to this intent, the Government has reserved the right to reapply the ownership restrictions should an airport violate this condition. How determinations of operating character will be applied to general aviation airports other than Essendon is yet to be seen.

A consequence of removing the ownership restrictions on general aviation airports is that, potentially, airlines could bid for leases on the three Sydney basin general aviation airports—Bankstown, Camden and Hoxton Park. But major airlines would be unlikely to bid for the leases while the airports remain general aviation airports. This raises the question of what the Government's intentions are with respect to these three airports. In particular, it raises the question of whether the Government envisages any change to Bankstown's status as a general aviation airport. The second reading speech notes only that the Government will review the exclusion of Bankstown, Camden and Hoxton Park from the ownership provisions during the privatisation process for the Sydney basin airports.

Proposed **item 3** seems to mean that a person who would ordinarily be considered an associate can, by regulation, be deemed not to be an associate. It is not clear under what circumstances such a regulation could or should be made.

## Endnotes

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- 1 Other general aviation airports are Moorabin, Archerfield, Parafield and Jandakot.
- 2 Hon. John Anderson MP, 'Tesna Consortium Bid For Ansett Australia', media release A257/2001, 27 November 2001 at [http://www.dotrs.gov.au/media/anders/archive/2001/nov\\_01/a257\\_2001.htm](http://www.dotrs.gov.au/media/anders/archive/2001/nov_01/a257_2001.htm)
- 3 Airports (Ownership - Interests in Shares) Amendment Regulations 2001 (No.2).
- 4 Note that the regulations did not remove the ownership restrictions for all general aviation airports, only those five named above.

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