



New South Wales

# Air Transport Amendment Bill 2006

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Air Transport Act 1964* (the *principal Act*) so as:

- (a) to provide for the deregulation of certain air transport service routes, and
- (b) to abolish certain fees with respect to licences, and
- (c) to enable the Administrative Decisions Tribunal to review certain decisions with respect to licensing, and
- (d) to abolish the Air Transport Council, and
- (e) to establish the State Aviation Working Group, and
- (f) to clarify the circumstances in which a person is taken to be operating or providing a regular air transport service (relevant to determining whether or not the person is required to hold a licence), and
- (g) to make the Director-General of the Ministry of Transport (the *Director-General*), rather than the Minister for Transport (the *Minister*), the licensing authority under the principal Act, and

- (h) to enable regulations under the principal Act to make provision with respect to the furnishing of statistical information by persons who operate or provide air transport services, and
- (i) to enact savings and transitional provisions consequent on the enactment of the proposed Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Air Transport Act 1964* set out in Schedule 1.

**Clause 4** repeals the *Air Transport Regulation 2000* (which deals solely with fees) as a consequence of the proposed omission from the principal Act of the provisions that deal with fees.

## Schedule 1 Amendments

### Deregulation of air transport service routes

**Schedule 1 [7]** inserts a new section 4A into the principal Act. The proposed section will allow the Minister to “deregulate” air transport routes, thereby permitting persons to operate or provide air transport services along those routes without the need for a licence under the principal Act (see proposed section 3 (3) (b)).

**Schedule 1 [5]** inserts a new subsection (3) into section 3 of the principal Act. The proposed subsection provides that the licensing requirements of the Act do not apply to charter services or to services over a deregulated air transport route.

### Abolition of fees

**Schedule 1 [8], [10], [11] and [15]** amend or repeal existing sections 5, 7, 10 and 13 of the principal Act so as to omit provisions that impose fees or provide for the calculation or payment of fees.

### Review by Administrative Decisions Tribunal

**Schedule 1 [12]** inserts a new section 10A into the principal Act. The proposed section provides that an applicant for a licence under the principal Act, or the holder of a licence under the principal Act, may apply to the Administrative Decisions Tribunal for a review of any decision of the Director-General with respect to the application or licence.

### **Abolition of Air Transport Council**

**Schedule 1 [2]** omits sections 2A, 2B and 2C of the principal Act. These sections provide for the constitution and functions of the Air Transport Council.

### **Establishment of State Aviation Working Group**

**Schedule 1 [14]** inserts new sections 12A and 12B into the principal Act. The proposed sections provide for the establishment and functions of a State Aviation Working Group. The Working Group will comprise 7 members, of whom 4 will be officers of various Government Departments and 3 will be nominees of various private associations. The functions of the Working Group are to provide advice to the Director-General on matters relating to the regulation of air transport services, to provide information to interested persons concerning the regulation of those services and to seek the views of interested persons in relation to the regulation of those services. **Schedule 1 [17]** inserts a new Schedule 1 into the principal Act. The proposed Schedule contains further provisions with respect to the constitution and procedure of the proposed Working Group.

### **Circumstances in which person taken to operate or provide regular air transport service**

**Schedule 1 [3]** amends section 3 of the principal Act so as to make it clear that a person may be taken to be operating or providing an air transport service over a particular route in circumstances in which that and another person do so together by means of aircraft operated by both of them.

### **Licensing authority**

**Schedule 1 [4]** amends sections 3, 5, 6, 7 and 8 of the principal Act so as to replace references to the Minister with references to the Director-General. The proposed amendments will have the effect of making the Director-General, rather than the Minister, the licensing authority under the principal Act.

### **Furnishing of statistical information**

**Schedule 1 [15]** inserts a new paragraph (a) into section 13 (1) of the principal Act. The proposed paragraph will enable regulations to be made with respect to the furnishing of statistical information by persons who operate or provide air transport services within New South Wales.

### **Savings and transitional provisions**

**Schedule 1 [17]** inserts a new Schedule 2 into the principal Act. The proposed Schedule contains savings and transitional provisions consequent on the enactment of the proposed Act, and a provision that empowers the regulations under the principal Act to make further provision in that regard. **Schedule 1 [16]** is a consequential amendment.

**Miscellaneous**

**Schedule 1 [1]** amends section 2 (Definitions) of the principal Act so as to omit a number of obsolete definitions and add new definitions of *deregulated route*, *Director-General* and *Working Group*.

**Schedule 1 [6]** omits an obsolete section of the principal Act.

**Schedule 1 [9]** makes a consequential amendment to the heading to section 6 of the principal Act.

**Schedule 1 [13]** substitutes section 11A of the principal Act so that the provisions with respect to the delegation of functions reflect the other changes to be made by the proposed Act.

First print



New South Wales

# Air Transport Amendment Bill 2006

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New South Wales

## **Air Transport Amendment Bill 2006**

No. , 2006

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### **A Bill for**

An Act to amend the *Air Transport Act 1964* so as to provide for the deregulation of certain air transport service routes, abolish the Air Transport Council and establish the State Aviation Working Group; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Air Transport Amendment Act 2006</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Air Transport Act 1964 No 36</b>	6
The <i>Air Transport Act 1964</i> is amended as set out in Schedule 1.	7
<b>4 Repeal of Air Transport Regulation 2000</b>	8
The <i>Air Transport Regulation 2000</i> is repealed.	9



<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 2 Definitions</b>	3
	Omit the definitions of <i>Air Navigation Regulations</i> , <i>Air Transport Council</i> and <i>Regulations</i> from section 2 (1).	4 5
	Insert in alphabetical order:	6
	<i>deregulated route</i> means a route that is declared to be a deregulated route by an order in force under section 4A.	7 8
	<i>Director-General</i> means the Director-General of the Ministry of Transport.	9 10
	<i>Working Group</i> means the State Aviation Working Group established by section 12A.	11 12
<b>[2]</b>	<b>Sections 2A, 2B and 2C</b>	13
	Omit the sections.	14
<b>[3]</b>	<b>Section 3 Licensing of persons for the carriage intrastate of passengers</b>	15
	Omit “if aircraft operated by the person are engaged in a service conducted” from section 3 (1A).	16 17
	Insert instead “if aircraft operated by the person, whether alone or together with aircraft operated by some other person, are engaged in a service conducted by the person, whether alone or in association with any other such person”.	18 19 20 21
<b>[4]</b>	<b>Sections 3 (1A) (b) and (1B), 5 (1) (b) and (e) and (2), 6 (1) and (3), 7 (1) and 8 (1), (2) (b), (3) and (4)</b>	22 23
	Omit “Minister” wherever occurring. Insert instead “Director-General”.	24
<b>[5]</b>	<b>Section 3 (3)</b>	25
	Insert after section 3 (2):	26
	(3) This section does not apply to:	27
	(a) the provision of a charter service, being any air transport service that is operated or provided otherwise than as a regular service over a particular route, or	28 29 30
	(b) the provision of a regular air transport service over a deregulated route.	31 32

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<b>[6] Section 3A Authority for Australian Airlines to operate intrastate air services</b>	1
Omit the section.	2
	3
<b>[7] Section 4A</b>	4
Insert after section 4:	5
<b>4A Deregulated routes</b>	6
(1) The Minister may, by order published in the Gazette, declare specified routes or classes of routes to be deregulated routes for the purposes of this Act.	7
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(2) In deciding whether to make such a declaration with respect to particular routes or classes of routes, the Minister must have regard to the following matters:	10
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(a) the needs of the public of New South Wales as a whole, and of the public of any area or district, for air transport services along the routes concerned,	13
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(b) fostering competition between airlines in relation to the routes concerned,	16
	17
(c) the effect, if any, on the maintenance and development of adequate and reasonable public air transport services within New South Wales, of the operation of aircraft over the routes concerned,	18
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(d) the effect, if any, on the economic development of, or on the environment in, any area or district within New South Wales, of the operation of aircraft over the routes concerned.	22
	23
	24
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<b>[8] Section 5 Applications for licences</b>	26
Omit section 5 (1) (c).	27
<b>[9] Section 6</b>	28
Omit “by the Minister” from the heading to the section.	29
<b>[10] Section 7 Licences</b>	30
Omit section 7 (3).	31
<b>[11] Section 10 Determinations of application and licence fees</b>	32
Omit the section.	33

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<b>[12] Section 10A</b>	1
Insert before section 11:	2
<b>10A Review by Administrative Decisions Tribunal</b>	3
(1) An applicant for a licence may apply to the Administrative Decisions Tribunal for a review of any decision made by the Director-General with respect to the application.	4 5 6
(2) A person whose licence has been varied or revoked by the Director-General may apply to the Administrative Decisions Tribunal for a review of the Director-General's decision to vary or revoke the licence.	7 8 9 10
<b>[13] Section 11A</b>	11
Omit the section. Insert instead:	12
<b>11A Delegation of Director-General's functions</b>	13
The Director-General may delegate to any person any of the Director-General's functions under this Act, other than this power of delegation.	14 15 16
<b>[14] Sections 12A and 12B</b>	17
Insert after section 12:	18
<b>12A Establishment of State Aviation Working Group</b>	19
(1) There is to be a State Aviation Working Group, whose members are to include:	20 21
(a) an officer of the Ministry of Transport appointed by the Director-General of that Ministry,	22 23
(b) an officer of the Department of Planning appointed by the Director-General of that Department,	24 25
(c) an officer of the Department of Tourism, Sport and Recreation appointed by the Director-General of that Department,	26 27 28
(d) an officer of the Department of State and Regional Development appointed by the Director-General of that Department,	29 30 31
(e) a person appointed by the Minister on the nomination of the Shires Association of New South Wales,	32 33
(f) a person appointed by the Minister on the nomination of the Regional Aviation Association of Australia,	34 35

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(g)	a person appointed by the Minister on the nomination of the Australian Airports Association.	1 2
(2)	The member referred to in subsection (1) (a) is the Chairperson of the Working Group.	3 4
(3)	Schedule 1 has effect with respect to the constitution and procedure of the Working Group.	5 6
<b>12B</b>	<b>Functions of State Aviation Working Group</b>	7
	The Working Group has the following functions in relation to the provision of air transport services within New South Wales:	8 9
(a)	to advise the Director-General (and, through the Director-General, the Minister) on matters relating to the regulation of those services, including the policies and strategies to be adopted in relation to those services,	10 11 12 13
(b)	to provide information concerning the regulation of those services to persons having an interest in the provision of those services, including both State and local government agencies,	14 15 16 17
(c)	to seek the views of persons having an interest in the provision of those services in relation to the regulation of those services.	18 19 20
<b>[15]</b>	<b>Section 13 Regulations</b>	21
	Omit section 13 (1) (a) and (a1). Insert instead:	22
(a)	the provision to the Director-General, by persons involved in the operation or provision of air transport services within New South Wales, of statistical information concerning the operation or provision of those services, and	23 24 25 26 27
<b>[16]</b>	<b>Section 19</b>	28
	Insert after section 18:	29
<b>19</b>	<b>Savings, transitional and other provisions</b>	30
	Schedule 2 has effect.	31

<b>[17] Schedules 1 and 2</b>	1
Omit the Schedules. Insert instead:	2
<b>Schedule 1 Constitution and procedure of State Aviation Working Group</b>	3
	4
(Section 12A)	5
<b>Part 1 General</b>	6
<b>1 Definitions</b>	7
In this Schedule:	8
<i>Chairperson</i> means the Chairperson of the Working Group.	9
<i>member</i> means any member of the Working Group.	10
<i>Ministerial appointee</i> means a person who is appointed by the Minister as a member of the Working Group.	11
	12
<b>Part 2 Constitution</b>	13
<b>2 Terms of office of Ministerial appointees</b>	14
Subject to this Schedule and the regulations, a Ministerial appointee holds office for such period (not exceeding 2 years) as is specified in his or her instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	15
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<b>3 Ministerial appointees to be part-time members</b>	19
Ministerial appointees hold office as part-time members.	20
<b>4 Remuneration of Ministerial appointees</b>	21
A Ministerial appointee 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 appointee.	22
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<b>5 Vacancy in office of Ministerial appointee</b>	25
(1) The office of a Ministerial appointee becomes vacant if the appointee:	26
	27
(a) dies, or	28
(b) completes a term of office and is not re-appointed, or	29
(c) resigns the office by instrument in writing addressed to the Minister, or	30
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<p>(d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the <i>Public Sector Employment and Management Act 2002</i>, or</p> <p>(e) is absent from 3 consecutive meetings of the Working Group of which reasonable notice has been given to the appointee personally or by post, except on leave granted by the Director-General or unless the appointee is excused by the Director-General for having been absent from those meetings, or</p> <p>(f) 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, or</p> <p>(g) becomes a mentally incapacitated person, or</p> <p>(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.</p> <p>(2) The Minister may remove a Ministerial appointee from office at any time.</p> <p><b>6 Filling of vacancy in office of Ministerial appointee</b></p> <p>If the office of a Ministerial appointee becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.</p> <p><b>7 Disclosure of pecuniary interests</b></p> <p>(1) If:</p> <p>(a) a member has a direct or indirect pecuniary interest or other interest in a matter being considered or about to be considered at a meeting of the Working Group, and</p> <p>(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,</p> <p>the member must, 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 Working Group.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p>
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| (2) | A disclosure by a member at a meeting of the Working Group that the member:   | 1<br>2               |
| (a) | is a member, or is in the employment, of a specified company or other body, or  | 3<br>4               |
| (b) | is a partner, or is in the employment, of a specified person, or  | 5<br>6               |
| (c) | has some other specified interest relating to a specified company or other body or to a specified person,   | 7<br>8               |
|     | is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1). | 9<br>10<br>11<br>12  |
| (3) | After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Working Group otherwise determines:   | 13<br>14<br>15       |
| (a) | be present during any deliberation of the Working Group with respect to the matter, or  | 16<br>17             |
| (b) | take part in any decision of the Working Group with respect to the matter.  | 18<br>19             |
| (4) | For the purposes of the making of a determination by the Working Group under subclause (3), a member who has a direct or indirect pecuniary interest or other interest in a matter to which the disclosure relates must not:              | 20<br>21<br>22<br>23 |
| (a) | be present during any deliberation of the Working Group for the purpose of making the determination, or   | 24<br>25             |
| (b) | take part in the making by the Working Group of the determination.  | 26<br>27             |
| (5) | Subclauses (1) and (3) do not apply to an interest that the member has as:  | 28<br>29             |
| (a) | a member of any local government agency, or   | 30                   |
| (b) | an office bearer of any statutory body, or  | 31                   |
| (c) | a member of the Public Service or an employee of a statutory body.  | 32<br>33             |
| (6) | A contravention of this clause does not invalidate any decision of the Working Group.   | 34<br>35             |
| (7) | This clause applies to a member of a committee of the Working Group and the committee in the same way as it applies to a member of the Working Group and the Working Group.   | 36<br>37<br>38       |
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<b>8</b>	<b>Effect of certain other Acts</b>	1
(1)	Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of a Ministerial appointee.	2 3 4
(2)	If by or under any Act provision is made:	5
(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	6 7 8
(b)	prohibiting the person from engaging in employment outside the duties of that office,	9 10
	the provision does not operate to disqualify the person from holding that office and also the office of a Ministerial appointee or from accepting and retaining any remuneration payable to the person under this Act as a Ministerial appointee.	11 12 13 14
<b>Part 3</b>	<b>Procedure</b>	15
<b>9</b>	<b>General procedure</b>	16
	The procedure for the calling of meetings of the Working Group and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Working Group.	17 18 19 20
<b>10</b>	<b>Quorum</b>	21
	The quorum for a meeting of the Working Group is 4 members, of whom one is to be the Chairperson.	22 23
<b>11</b>	<b>Presiding member</b>	24
(1)	At any meeting of the Working Group, the Chairperson is to preside.	25 26
(2)	The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	27 28
<b>12</b>	<b>Voting</b>	29
	A decision supported by a majority of the votes cast at a meeting of the Working Group at which a quorum is present is the decision of the Working Group.	30 31 32
<b>13</b>	<b>Transaction of business outside meetings or by telephone</b>	33
(1)	The Working Group may, if it thinks fit, transact any of its business by the circulation of papers among all the members of	34 35



	the Working Group for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Working Group.	1 2 3
(2)	The Working Group may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	4 5 6 7 8
(3)	For the purposes of:	9
	(a) the approval of a resolution under subclause (1), or	10
	(b) a meeting held in accordance with subclause (2),	11
	the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Working Group.	12 13
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Working Group.	14 15 16
(5)	Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	17 18 19
<b>14</b>	<b>Minutes</b>	20
	The Working Group must keep minutes of proceedings at its meetings.	21 22
<b>15</b>	<b>First meeting</b>	23
	The Minister may call the first meeting of the Working Group in such manner as the Minister thinks fit.	24 25
<b>Schedule 2</b>	<b>Savings, transitional and other provisions</b>	26 27
	(Section 19)	28
<b>Part 1</b>	<b>Preliminary</b>	29
<b>1</b>	<b>Savings and transitional regulations</b>	30
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	31 32 33
	<i>Air Transport Amendment Act 2006</i>	34

(2)	Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.	1 2
(3)	To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	3 4 5
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or	6 7 8
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.	9 10 11
<b>Part 2</b>	<b>Provisions consequent on Air Transport Amendment Act 2006</b>	12 13
<b>2</b>	<b>Abolition of Air Transport Council</b>	14
(1)	The Air Transport Council is abolished.	15
(2)	No compensation is payable to any member of the Air Transport Council who is removed from office under this clause.	16 17
<b>3</b>	<b>Fees for applications and licences</b>	18
(1)	Fees that had been paid under section 7 of this Act before its amendment by the <i>Air Transport Amendment Act 2006</i> do not have to be repaid.	19 20 21
(2)	Fees that had been payable under section 7 of this Act before its amendment by the <i>Air Transport Amendment Act 2006</i> , but had not been paid, do not have to be paid.	22 23 24
<b>4</b>	<b>Appeals to Administrative Decisions Tribunal</b>	25
	Section 10A, as inserted by the <i>Air Transport Amendment Act 2006</i> , does not apply to any decision made before the commencement of that section.	26 27 28