

**IN THE ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION
BRISBANE REGISTRY**

Number: No 2012/3556.

BETWEEN: **ARCHERFIELD AIRPORT CHAMBER OF
COMMERCE INCORPORATED**
Applicant


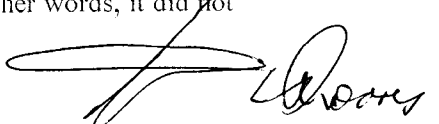
AND: **THE FEDERAL MINISTER FOR
INFRASTRUCTURE AND TRANSPORT**
First Respondent

AND: **ARCHERFIELD AIRPORT CORPORATION
PTY LTD**
Second Respondent

STATEMENT OF PETER FREDRICK MORRIS

I, Peter Frederick Morris of 39 Pillapai Street Charlestown, in the State of New South Wales

1. Attach as Attachment "A" is a statutory declaration by me made on the 9th day of December 2009 in relation to the underlying interests of the Scouts in relation to ground leases on Archerfield Airport. I confirm the contents of that statutory declaration remain true and correct.
2. Business and Property Representatives within the Queensland Regional Office of the Department of Aviation held delegations under section 15 of the Airports (Business Concessions) Act 1959 ("the Act") made by me as Minister to negotiate, issue, renew and terminate property leases on Commonwealth airports in the Queensland region, in accordance with instruments of delegation made under the Act.
3. I had the power pursuant to section 6 of the Act to grant leases and licences in respect of land within an airport and on such terms and conditions as I saw fit and to exercise any power or remedy of the Commonwealth in respect of any such lease or licence.
4. I was aware that the leasing term in section 11(1) (a) (ii) of the Act of less than 21 years which applied to ground leases at Commonwealth airports was inadequate and proved problematic because intending lessees could not afford to amortise the considerable capital cost of a leasehold improvement over such a short term. In other words, it did not

make financial sense and therefore intending lessees had difficulties to be able to obtain finance.

5. Ground leases were not to be confined to a single term and despite not having options to renew, would always be renewed on the same terms and conditions providing the lessee was up to date with lease payments. Delegates were acting under my instructions and my full delegation in representing to lessees or intending lessees (including the Scouts and Sailco Pty Ltd and others) that their leases would always be renewed. In making the representations to Sailco Pty Ltd and the Scouts Mr Munro and Mr Woodrow and other officers were duly acting within my authority for each of them to exercise the powers granted to me pursuant to section 6 of the Act to guarantee the lease renewal, provided Sailco Pty Ltd or the Scouts were substantially in compliance of their respective leases, that is, paid their rent.
6. This meant, continuous renewal of the lease, for a new term of the same length as the original term and on the same terms and conditions as the original lease.
7. The circumstances referred to above applied generally to all business and property officers within the Department of Aviation and for all non-terminal ground leases at Commonwealth airports.
8. In my second reading speech of the Federal Airports Corporation Bill of 1985 in the House of Representatives of the Federal Parliament of 13th November 1985 I stated in relation to the Federal Airports Corporation (a copy of Hansard is attached as attachment "B") I said:

"A general power of direction will also be utilised at the inception of the Corporation to enable the Minister to convey to the Chairman and members the Government's requirements on a variety of issues which will not be subject to recovery." and

"Provision is made for it to be able to levy charges for the use of its airports, to lease property on airports and to let business concessions. Arrangements existing at the time of transfer by way of lease or contract will, of course, transfer to the Corporation and will continue to bind the Corporation."

"Arrangements" included any made by me pursuant to section 6 of the Act or as delegated pursuant to instruments of delegation including such representations as had been made by the department or myself personally to intending and existing lessees as to the ongoing renewal of their leases prior to hand over to the FAC . This included the Scouts, Sailco Pty Ltd and other lessees subject to Commonwealth leases on Federal Airports regulated by the act and the FAC Act.

A handwritten signature in black ink, appearing to read 'Andrews', is written over the bottom right corner of the page.

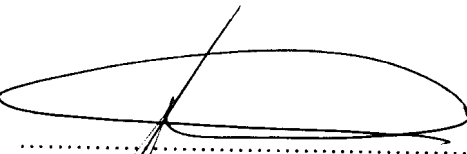
9. It was my direction that all rights, including any right existing in the leases granted under the Act together with the right to renewal of the leases, be transferred and become an obligation to the FAC pursuant to section 71(1), (2) and (3) of the Federal Airports Corporation Act 1986 (FAC Act) and that the Federal Airports Corporation ("FAC") must renew the leases, but substituting the FAC for the Department of Aviation, and that these be continuing obligations of the FAC.
10. Both during my term at Minister of Aviation and afterwards I was aware of a perennial national problem that was eroding and damaging aviation infrastructure, occurring both to federal and state airport infrastructure. Land developers were purchasing cheap land under the flight paths or at the ends of runways and then implementing well-funded and targeted lobbying campaigns to effect the closure of those runways, or portions of an airport, or the entire airport so as to then increase the values of the land they had purchased and to make super-profits from their activities. This has resulted in the closures of airports or aerodromes and runways or shortened runways and damaged the asset of the airport and utility of such airports. This has occurred to large airports, small regional airports and regional airports particularly when control has been handed to local councils or private entities.
11. During my period as Federal Minister for Aviation, the Department of Finance was pressing the government to privatise the airports. It was the view of cabinet at the time that Commonwealth Airports were a monopoly and that a monopoly was best run by Government as a Public monopoly, that is, transparent and publically accountable as opposed to private enterprise that had lack of transparency or any public accountability. The Department of Aviation warned of the consequences of privatisation including that the airport companies would prioritise to profit at the expense of the airport asset and would not be able to be controlled adequately by the Commonwealth but the Department of Finance had the view it could be controlled with legislation and the Hawke government concluded that it could not.
12. Some fifteen years after privatisation we are seeing that these earlier warnings of the department were right. Privatisation has allowed the monopoly position of the Commonwealth Airports to fall into private hands, and for the land developers to bring their lobbying activities from adjacent airport land onto airport land itself.
13. Privatised airports are not meeting the true requirements for users, additional airports are not being built and political lobbying to achieve financial gain is rife.

A handwritten signature in black ink, appearing to be 'A. Jones', is written over the page number.

SWORN by Peter Frederick Morris on the
30th Day of March 2013, at Newcastle in
the State of New South Wales

)
)
) *Peter Frederick Morris*
)
) Deponent

In the presence of:



.....
~~A Justice of the Peace/Solicitor~~

Judith Olsen

IN THE ADMINISTRATIVE APPEALS TRIBUNAL

GENERAL ADMINISTRATIVE DIVISION

BRISBANE REGISTRY

Number: No 2012/3556

BETWEEN:

**ARCHERFIELD AIRPORT CHAMBER OF
COMMERCE INCORPORATED**

Applicant

AND:

**THE FEDERAL MINISTER FOR
INFRASTRUCTURE AND TRANSPORT**

First Respondent

AND:

**ARCHERFIELD AIRPORT CORPORATION
PTY LTD**

Second Respondent

Attachments A and B to the Statement of Peter Fredrick Morris

“A” Statutory Declaration of Peter Fredrick Morris dated 9th December 2009

“B” 13th November 1985 second reading speech of the Federal Airports Corporation Bill of 1985



e/ Peter Fredrick Morris

In the presence of:



A Justice of the Peace/Solicitor

Judith Chelz

Statutory Declaration

"I, (Full Name) Peter Frederick Morris

of (Address) 39 Pillapai Street Charlestown Post Code: 2290

(Occupation) Retired in the State of New South Wales, do solemnly

and sincerely declare that:

- 1) I was:
 - a) A member of the Australian Parliament, House of Representatives from 1972 until 1998 for the electorate of Shortland (New South Wales).
 - b) The Minister for Transport of the Federal Government from 11th March 1983 until 24th July 1987.
 - c) The Minister for Aviation of the Federal Government from 13th December 1984 until 24th July 1987.
 - d) The Minister for Resources of the Federal Government from 24th July 1987 until 19th January 1988.
 - e) The Minister for Housing and Aged Care of the Federal Government from 19th January 1988 until 15th February 1988
 - f) The Minister for Transport and Communications Support of the Federal Government from 15th February 1988 until 2nd September 1988.
 - g) The Minister for Industrial Relations of the Federal Government from 2nd September 1988 until 4th April 1990.
- 2) The Commonwealth Department of Aviation (also known as Department of Civil Aviation and Department of Transport & Communications – Aviation Division) ("the departments" and "the department") and the formation and oversight of the Federal Airports Corporation were within my ministerial portfolios or responsibilities ("the ministerial responsibilities").
- 3) The granting of Commonwealth leases and related arrangements on federal airports was within the legislative framework of the ministerial responsibilities.
- 4) During the period I was the Federal Minister for Aviation, Manfred Cross, the Federal member for the electorate of Brisbane at the time, sought my assistance on behalf of the Queensland Branch of the Scout Association of Australia ("the Scouts") which was endeavouring to secure a lease of land on a non-commercial basis at Archerfield Airport on which to locate their proposed Youth Aviation Activities Centre.
- 5) I needed to determine if the Scouts met the necessary aviation requirements for a grant of a land upon Archerfield Airport and to consider if any concessional arrangements were warranted. I formed the view that the community based activities proposed to be conducted at the proposed Youth Aviation Activities Centre met the aviation criteria and would lead to increased numbers of competent young people being attracted to a career in aviation and that this would be of national benefit.
- 6) Accordingly I instructed the department to examine ways land could be provided to the Scouts that met the Scouts financial and other criteria and to implement the solution.
- 7) After the department had indentified a suitable site that met the Scouts requirements Manfred Cross sought my further assistance and expressed concern to me that the lease period being proposed by the department was too short given the amount of investment the Scouts would be incurring.
- 8) I was of the view that the lease granted to the Scouts could be renewed at the expiration of each term of the lease provided the Scouts met the obligations of the lease (e.g. made the lease payments). It was certainly not my intention that the Scouts leases on Archerfield Airport would be limited to a single term. The lease for each new term was to be on the same terms and conditions as the original lease. I advised Manfred Cross of these matters and re-assured him that renewal of the Scouts leases would occur and would not be a concern.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the **Oaths Act, 1900**.

Declared at Charlestown this 9th day of December 2009

Before me:

Stephan Herbert
(Signature of JP)

STEPHAN HERBERT
(Print Full Name of JP)

129270
(NSW Registration Number)

[Signature]

Declarant (Signature)
(This must only be signed in the presence of the JP)

Penalties for False Statutory Declarations

The **Oaths Amendment Act 1996** provides that if a Statutory Declaration is made to gain material benefit and the offence is dealt with by indictment the penalty is up to 7 years imprisonment. If dealt with summarily then the penalty is up to 2 years imprisonment and/or a fine of 100 penalty units (\$11,000). If the offence is swearing a false declaration that does not involve material benefit, the penalty is up to 12 months imprisonment and/or a fine of 50 penalty units (\$5,500).

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Mr PETER MORRIS (Minister for Transport and Minister for Aviation)(4.53) —I move:

That the Bill be now read a second time.

The purpose of this Bill is to establish the Federal Airports Corporation. For many years the Commonwealth-owned airports have been administered by a department of state—most recently the Department of Aviation. When the Government came to office in 1983 it had as part of its platform a policy for improved administration of major airports. We believed that placing this responsibility with a largely independent statutory authority would offer significant advantages to the travelling public, taxpayers, the aviation industry and airport administrators. Subsequent analysis has clearly confirmed that view.

I hasten to say that this view is not a reflection upon the Department of Aviation and its predecessors, but a recognition that the commercial operation of airports would be better managed by a Commonwealth business enterprise. Departments of state are of necessity bound by the Government processes which inhibit commercial flexibility and responsiveness. The aviation industry has been critical of this fact and of the inability of the current administrative processes to make changes in a timely manner to meet the requirements of a dynamic market. Additionally, governments in the past have unduly influenced the priorities for aviation infrastructure development for reasons unrelated to economics or efficiency. Indeed many of the decisions taken in the past have inhibited economy and efficiency in the industry.

This legislation will go a long way towards rectifying these problems and will enable the Corporation to act more readily to meet the changing needs of the travelling public and the aviation industry. The Federal Airports Corporation is an important part of the Government's overall strategy to improve the efficiency of the aviation industry and the levels of services to the consumer. This strategy includes the two reviews which have already been undertaken, that is, the Bosch Inquiry into Aviation Cost Recovery and the Butcher-Scully Review of International Air Freight. This Government has made substantial changes to Trans Australia Airlines and Qantas Airways Ltd to allow them to operate more commercially. Consequently both have achieved record profits in the past year. We have been steadily improving departmental efficiency and have moved to separate airport and airways charges so as to promote further efficiency in the aviation industry. Honourable members will be aware that we currently have a review under way of the Opposition's 1981 two-airline agreement.

In framing the legislation the Government has had to face the task of balancing the need for autonomy and entrepreneurial management with the need for public accountability to maximise public benefit. This approach fits in with the Government's policy of public enterprise-efficiency, consumer responsiveness and successful management. I believe that we have achieved that balance.

While the Corporation will be the sole provider of airport facilities in most areas where it will operate, it will provide an important part of the infrastructure for a competitive aviation industry. Within that context it will in all of its activities be subject to close scrutiny by aviation users and the aviation industry. This scrutiny will be enhanced through requirements in the legislation for consultation, disclosure of results and for the publication of indicators which year by year will show the performance of the Corporation across the range of its

- ⊕ **WAGES AND PRICES ACCORD**
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- ⊖ **FEDERAL AIRPORTS CORPORATION BILL 1985**
 - **First Reading**
 - ⊖ **Second Reading**
 - **Mr PETER MORRIS**
- ⊕ **CUSTOMS UNDERTAKINGS (PENALTIES) AMENDMENT BILL 1985**
- ⊕ **CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (No. 2) 1985**
- ⊕ **CUSTOMS TARIFF AMENDMENT BILL (No. 2) 1985**
- ⊕ **TAXIWAY SYSTEM, SYDNEY (KINGSFORD-SMITH) AIRPORT**
- ⊕ **INTERNATIONAL TERMINAL, SYDNEY (KINGSFORD-SMITH) AIRPORT**
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- ⊕ **PETROLEUM (SUBMERGED LANDS) (CASH BIDDING) AMENDMENT BILL 1985 [No 2]**
 - **JOINT SELECT COMMITTEE ON ELECTORAL REFORM**

activities and on an airport by airport basis.

The Government has set objectives for the Corporation covering social, financial, management and efficiency aspects. The Corporation will be required to take these objectives into account in its planning and operations. Additionally, the Corporation will be required to put forward to the Minister for Aviation each year a three-year forward program including its budget for the following year and details of its corporate plans. These requirements will be exercised at a strategic level, leaving the Corporation free in its day to day management and exercise of its commercial judgment.

To enable the Corporation to operate as autonomously as possible, it will be freed from the requirements of staffing under Public Service conditions, the requirement that it utilise the Department of Housing and Construction for its capital works-although it will be expected to provide the opportunity for that Department to compete for such work on a commercial basis-and the need for its day to day land dealings to be administered through the Department of Local Government and Administrative Services.

This legislation will provide a framework for the operation of airports more efficiently, more commercially and in a manner in which the Corporation's performance will be able to be judged by its owners, the people of Australia. Given the potential for greater efficiency resulting from setting up the Corporation, the Government will require it, and the Department of Aviation, to ensure that there is no net increase in staff over the two organisations at the time of the establishment of the Corporation. The rights and interests of employees transferring from the Department of Aviation to the Corporation will be protected. To ensure that their employment is not jeopardised, the Government will require as a matter of policy that the Corporation offer positions to all staff whose functions are transferred. While the Corporation will have power to set conditions of employment for its staff, it will also be required to provide, at the time of the transfer, offers of conditions of employment to transferring staff at least equivalent to those which they currently enjoy in the Australian Public Service.

I turn now to the more significant detail of the legislation. The functions prescribed for the Corporation will enable it to own, develop and operate its airports in an efficient and cost-effective way. It will, however, have overriding requirements to operate its airports safely and in a manner which accords with the public interest. The Department of Aviation will retain responsibility for the setting of safety and security standards for airports. The Corporation will be bound to abide by those standards. The Department will also retain responsibility for overall national airport planning issues. The legislation makes it clear that the Department of Aviation, through the existing integrated air traffic control system, will retain responsibility for the safe operation of aircraft.

The Corporation will be constituted in much the same way as other Commonwealth transport business undertakings with seven members including a chairperson and a deputy chairperson appointed for periods not exceeding five years. The usual provisions for such matters as remuneration, leave of absence, termination of appointment and disclosure of interests will apply.

The legislation provides for the specification of certain airports to be the responsibility of the Corporation, with ministerial approval being required for the Corporation to accept responsibility for others or for the Corporation to close an airport. The Corporation will, at the outset, take responsibility for all State capital city airports including the general aviation airports and will also be responsible for Coolangatta and Launceston airports. Although there has been some public debate about the inclusion of the general aviation airports in the Corporation, it is the Government's considered view that to exclude them would deny those airports the expertise and flexibility of management which will reside in the Corporation.

This is of particular significance in Sydney where the operation of Bankstown is a matter of concern and sensitivity to the people in nearby areas. There is no question that Sydney will be the city in which the new Corporation will face its major challenges and will have its major responsibilities even before considering a second Sydney airport. The Government has therefore decided that the head office of the Corporation should be located in Sydney.

An important aspect of the legislation is the requirement that the Corporation provide the Minister annually with an up-dated corporate plan including its budget and financial targets for the forthcoming year. It is largely through this mechanism and through its reporting procedures, including its annual report, that the Corporation will be kept aware of government requirements. Similarly, the responsible Minister will be able at the strategic level to monitor the Corporation. The successful use of this mechanism will be the major factor in enabling the Corporation to be freed from ministerial involvement in day to day management issues.

The legislation provides for the capital structure for the Corporation to be determined ministerially before the Corporation takes over its airports. The appropriate gearing ratio obviously depends on such matters as the value of assets being vested in the Corporation, its future investment program, levels of working capital required and the level of financial flexibility necessary for proper management. I will be consulting with my colleague the Minister for Finance (Senator Walsh) before determining an initial capital structure for the Corporation. It will also be useful to have the views of the Corporation's board on this issue before a particular commencing debt-equity ratio is fixed.

It must be recognised that airport operations are highly capital intensive, requiring long term investment planning decisions. In setting the capital structure for the Corporation, we will therefore need to give particular attention to the balance to be struck between the long

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term viability and needs for future investment of the Corporation, and the reasonable expectation of the Government for a proper return on the substantial public investment in airports. Provision is also made for a specific power of direction, which in particular circumstances would incur reimbursement where such a direction results in financial detriment to the Corporation. A general power of direction will also be utilised at the inception of the Corporation to enable the Minister to convey to the Chairman and members the Government's requirements on a variety of issues which will not be subject to recovery. Included amongst these will be, for example, the payment of ex gratia payments to local government in lieu of rates and the requirement that the Corporation offer employment to Department of Aviation employees whose functions transfer to the Corporation.

The Government has decided that the Corporation should not be subject to Commonwealth, State and local government taxes. In this respect the Corporation will be in a similar position to other public transport enterprises. If, however, the Corporation engages in activities in competition with private enterprise it will be required to do so through a subsidiary and thereby in respect of those activities be liable to taxation. This decision will continue the existing arrangements for Commonwealth airports and will ensure that taxation does not impose a new and substantial cost on the users of airports.

The Corporation will be required to operate in a manner which will enable it to produce a reasonable rate of return upon the assets which it employs. Provision is made for it to be able to levy charges for the use of its airports, to lease property on airports and to let business concessions. Arrangements existing at the time of transfer by way of lease or contract will, of course, transfer to the Corporation and will continue to bind the Corporation.

Mr Deputy Speaker, the establishment of the Corporation is a significant step forward in ensuring that the provision and operation of costly airport infrastructure is based on efficiency and investment undertaken only when there is financial and economic justification. In moving to establish the Federal Airports Corporation to operate our airports we are bringing Australia into line with general practice internationally. For the first time in Australia the financial performance of airports will be measured and results made available to airport users. One of the objectives set by the Government is that the Corporation be a good neighbour to the communities it serves. Within this responsibility the Corporation will be responsive to the needs of the travelling public and to those living in close proximity to airports.

Mr Deputy Speaker, I believe that this Bill represents a major step forward in aviation in Australia. It will assist the airport user. It will provide the basis for rational development and operation of airports. And it will reduce the call on the taxpayer for airport infrastructure costs. I commend the Federal Airports Corporation Bill to the House.

Debate (on motion by Mr Beale) adjourned.

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