

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

AUSTRALIAN POSTAL CORPORATION AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for
Communications and the Arts, Hon Michael Lee)



AUSTRALIAN POSTAL CORPORATION AMENDMENT BILL 1994

OUTLINE

The aim of the Bill is to:

- . encourage price and service competition in value-added postal services, by reducing the level of Australia Post's reserved services protection;
- . reaffirm Australia Post's community service obligations to make a standard letter service reasonably accessible at a uniform rate of postage;
- . ensure that the benefits of competition between postal services are passed on to consumers in the form of price restraint; and
- . enhance reporting obligations to ensure that Australia Post is accountable to the public for the way in which it discharges the Government's obligations.

The Bill implements the Government's reform package for Australia Post that was announced on 15 November 1993, and responds to the Industry Commission Report on the Efficiency of Mail, Courier and Parcel Service Industries.

The amendments made by this Bill to the Australia Postal Corporation Act 1989 (the Act) fall into three main groups.

The first group of amendments covers postal industry arrangements:

- . amendments to Australia Post's powers and functions (Part 2 of the Act); and
- . amendments to Australia Post's obligations and reserved services (Part 3 of the Act) to give effect to the Government's decisions to expose Australia Post to further competition.

The second group of amendments covers further business enterprise reforms of amendments to Australia Post's operations (Part 4 of the Act) to reflect changes in Australia Post's operating environment since the Corporation was established in 1989.

The third group of amendments comprises enhanced accountability and reporting provisions to safeguard the confidentiality of mail (new Part 7B of the Act). These amendments include provisions which bring into the Act existing Regulations dealing with the opening and examination of mail.

Specific features of the Bill are as follows:

The Bill reaffirms Australia Post's community service obligations to provide a letter service within Australia, and to provide a letter service that connects to overseas countries.

The Bill provides for greater competition in the letter market by amending the exceptions to Australia Post's reserved services in sections 29 and 30 of the Act to:

- . lower the level of price and weight protection;
- . exempt specialist services, such as document exchanges and letters carried within an organisation by a third party;
- . remove exceptions on the carriage of outgoing international mail, to allow operators to collect mail in Australia for delivery overseas; and
- . permit companies to collect letters overseas and bring them to Australia for lodgement with Australia Post for final delivery in Australia, at rates applying for domestic mail.

The Bill authorises Australia Post to exercise Government treaty rights to return incoming international mail in accordance with circumstances provided for by international treaty.

Interconnection arrangements will be established through new provisions that will enable operators to lodge mail at any designated Australia Post mail centre and receive discounts for pre-sorting and transporting mail closer to the point of final delivery. The Board of Australia Post will be required to determine discounts based on the average costs avoided by Australia Post.

The Bill will also enable the making of regulations so that the Trade Practices Commission (TPC) can inquire into and make recommendations to the Minister where there is a dispute about the rate of reduction offered by Australia Post in respect of a particular bulk interconnection service. Under these regulations, the Minister may also direct Australia Post to implement the TPC's recommendations.

Postal charges will continue to be subject to scrutiny by the Prices Surveillance Authority in those service segments where Australia Post retains an exclusive right to carry letters, and where it is the dominant service provider. In addition, the Act is to be amended to require the Minister to have regard to movements in the Consumer Price Index when notified of proposed changes in the rate of postage for the carriage of standard postal article by ordinary post. These amendments

will ensure that consumers, employees and the Government share in the benefits of Australia Post's productivity improvements.

The Bill enhances accountability and reporting requirements. Any Ministerial directions varying the financial targets, dividends or community service obligation policies recommended by the Board will be required to be laid before Parliament for 15 sitting days.

The Corporation will be required to publish disaggregated financial information in relation to its reserved services and non-reserved services. This amendment will assist in identifying whether there is any cross-subsidisation from Australia Post's reserved services to its competitive businesses.

The Bill also makes a number of minor changes to the Government's relationship with Australia Post to align Australia Post's operations with current commercial practice, including a requirement that the Minister consult with the Chairman on proposed Board appointments, and removing the requirement for the appointment of a Government Director.

Secrecy of mail provisions have been revised substantially to bring into the Act existing regulations dealing with the opening and examination of mail by authorised Australia Post employees. New provisions will make it an offence to use or further disclose information, for purposes other than the original purpose for which it was disclosed.

The Bill sets out in detail the circumstances where for limited purposes, postal information may be disclosed by current or former employees of Australia Post or by other persons. A higher level of protection will apply to disclosure of specially protected information that relates to some or all of the contents of mail. A second category of information that may be disclosed in a limited number of circumstances relates to postal or telecommunications services supplied by Australia Post, or the personal particulars of a person.

The Bill also sets out the circumstances where an Australia Post employee may open or examine mail. These purposes include repairing mail, obtaining sufficient information to deliver the mail, or destroying dangerous articles to meet public safety requirements.

Finally, the Bill also contains some minor amendments to the *Crimes Act 1914*. These amendments are necessary to:

- ensure consistency between the legislation relating to the carriage of dangerous goods by surface post and by air; and
- clarify that postal offences are limited to offences in the course of Australia Post's mail network.

FINANCIAL IMPACT STATEMENT

There is no direct financial effect expected from the operation of this Bill. No changes to the financial operations of Australia Post are being made. The Corporation is expected to continue to pay all taxes and charges, as well as a dividend to the Commonwealth.

While competition and restructuring may affect dividends and tax receipts from Australia Post in the short term, this is likely to be offset by new services offered by Australia Post and its competitors and by general productivity improvements within Australia Post.

There is not expected to be any adverse financial effect on postal services to consumers. All Australians will continue to have reasonable access to a letter service, which will be provided at a uniform rate of postage across Australia and funded by a cross-subsidy on the letter service.

Notes on Clauses

PART 1 - PRELIMINARY

Clause 1 - Short title

Clause 1 allows for the citation of the *Australian Postal Corporation Amendment Act 1994*.

Clause 2 - Commencement

Clause 2(1) provides for the majority of the Bill to commence on Royal Assent.

Clause 2(2) provides that paragraphs 4(a) and (f), 13(c) and (d) and 15(a) commence on 1 January 1995.

Clause 2(3) provides that, subject to subsection (4), paragraph 43(c) and sections 29 and 32 commence on a day to be fixed by Proclamation.

Clause 2(4) provides that, if the provisions referred to in subsection (3) do not commence by Proclamation within 6 months of the Bill receiving Royal Assent, the provisions will commence on the next day after the end of the six month period.

PART 2 - AMENDMENT OF THE AUSTRALIAN POSTAL CORPORATION ACT 1989

This Part includes amendments to the Act to implement postal industry reforms and enhance the accountability requirements which the Act places on Australia Post.

Clause 3 - Principal Act

Clause 3 provides that in the amending Act the term "Principal Act" means the *Australian Postal Corporation Act 1989*.

Clause 4 - Interpretation - definitions

Section 3 of the *Australian Postal Corporation Act* contains definitions of the terms used in the Act. As a consequence of other amendments in the Bill, this clause amends the definition in section 3, to delete obsolete definitions, to amend some existing definitions and to define some new terms.

Clause 4(a) amends the definition of a "standard postal article" to:

- (a) omit the reference to a "registered publication" (Australia Post will no longer provide a registered publication service from 1 January 1995);

- (b) substitute 250 grams for 500 grams (this amendment lowers the weight threshold of a standard postal article); and
- (c) omit the minimum size of the shorter and longer sides of a standard postal article (maximum size and weight conditions will continue to apply).

Clause 4(d) amends the definition of "office" so that it refers to an office of Australia Post in Australia or outside Australia. An office conducted by Australia Post includes an office conducted by an agent or licensee of Australia Post, who performs functions and provides services on behalf of Australia Post.

Clause 4(e) removes the definition of "government director". This definition is no longer needed in the Act as the requirement that a government director be appointed to the Board is removed from the Act (see clause 24).

Clause 4(f) removes the definition of a "registered publications service". After 1 January 1995, Australia Post will no longer provide a registered publication service.

Clause 4(g) inserts two new definitions - "reserved services", which are defined as the activities that Australia Post has an exclusive right to engage in under section 29, and "thing", which is defined to include a living thing.

Clause 5 - Repeal of section 6 and substitution of new section

New section 6 - Interpretation - meaning of subsidiary

New section 6 provides that in this Act subsidiary of a body corporate has the same meaning as in the Corporations Law.

Clause 6 - Specific postal and postal related powers

Section 18 of the Act lists specific powers of Australia Post. Clause 6(b) amends paragraph 18(d) of the Act to:

- (a) remove the reference to telegram services (Australia Post no longer provides a telegram service);
- (b) replace the term "telecommunications higher level services" with "telecommunications services" (a telecommunications service is defined in section 5 of the *Telecommunications Act 1991* as a service for carrying communications by means of guided or unguided electromagnetic energy or both).

Clause 6(c) inserts new paragraphs 18(e) and 18(ea) to refer to the function of supplying to mail house services (including mail order services and activities associated with fulfilling mail orders) and exchange services and contract mail management services

Clause 7 - Role of the Board

This clause amends section 23 of the Act to make it consistent with section 26 of the Act. Clause 7 provides that the role of the Board includes ensuring that, as far as practicable, Australia Post performs its functions in a manner consistent with sound commercial practice.

Clause 8 - Community service obligations

This clause amends subsection 27(2) of the Act to improve its readability. The new subsection makes it clear that the principal purpose of Australia Post's letter service is to carry letters within Australia that Australia Post has the exclusive right to carry, and to carry letters between Australia and places outside Australia.

Clause 9 - Insertion of New Section

Section 28A - Australia Post may return letters received from foreign postal authorities

New section 28A authorises Australia Post to exercise Australia's treaty rights under international conventions to return mail to foreign postal authorities, subject to directions by the Minister to the Board as to how the authorisation is to be exercised. Any such directions must be tabled in both Houses of Parliament within 15 sitting days after the Direction is issued (new subsection 28A(5)).

Clause 10 - Services reserved to Australia Post

The amendments to subsection 29(2) remove from the services reserved to Australia Post the carriage of letters between Australia and places outside Australia. These services will no longer be part of Australia Post's monopoly, and will be open to competition from other mail service providers.

New subsection 29(1) specifically provides that subject to section 30, Australia Post has the exclusive right to carry letters within Australia irrespective of the origin of the letter. Thus a letter which is brought into Australia by an international mail carrier and is destined for delivery to an address within Australia, must be lodged with Australia Post's network for delivery to the addressee by Australia Post.

Clause 11 - Exceptions to reserved services

Clause 11(a) amends subsection 30(1) of the Act to ensure consistency in terminology by use of the term "reserved service", which is defined in the amendments made by clause 4.

The other amendments in this clause alter or clarify the exceptions to the reserved service.

The effect of the amendment to paragraph 30(1)(a) made by clause 11(c) is to allow persons other than Australia Post to deliver letters which weigh 250 grams or more, whereas the existing specified weight is 500 grams. (This exception does not extend to letters that have been consolidated into one package that weighs more than 250 grams.)

The effect of new paragraph 30(1)(c), inserted by clause 11(d), is to remove catalogues and leaflets from the exception listed in paragraph 30(1)(c) of the Act. (The carriage of newspapers, magazines and books, would continue to be excepted from the services reserved to Australia Post).

New paragraph 30(1)(ca), inserted by clause 11(d), provides that the carriage of the following kinds of identical catalogues and leaflets are not included in the carriage services reserved to Australia Post:

- . unenclosed catalogues or leaflets;
- . enclosed catalogues or leaflets which are not addressed to a particular person or address; or
- . catalogues or leaflets which are enclosed in a transparent cover and directed to a particular person or address.

Clause 11(e) amends paragraph 30(1)(e) to allow carriage of a letter within Australia for any charge or fee which is at least 4 times the rate of postage within Australia for a standard postal article (whereas the existing provision in paragraph 30(1)(e) makes an exception in respect of charges or fees at least 10 times the standard rate).

Clause 11(f) omits paragraph 30(1)(f) of the Act, which provides that the carriage of a letter from a place in Australia to a place outside Australia for any charge or fee is an exception to the reserved service. This amendment is consequential to the amendment in clause 10 which removes from "the reserved service" provisions Australia Post's exclusive right to carry letters between Australia and places outside Australia.

Clause 11(g) inserts new paragraph 30(1)(ga), which provides a new exception to the reserved service exceptions. The primary purpose of this amendment is to allow organisations to contract out the carriage of letters between offices of the organisation. This amendment supplements the existing exception in paragraph 30(g) of the Act, which allows the carriage of a letter by the sender or an officer or employee of the sender. (Relevant terms in new paragraph 30(1)(ga) are defined in a new subsection 30(1B) - see notes on clause 11(k)).

Clause 11(h) inserts new paragraph 30(1)(ha) which provides an exception to Australia Post's reserved service where a person delivers letters to an office of Australia Post for delivery

by Australia Post under the bulk interconnection service (see notes on clause 14).

Clause 11(i) inserts new paragraph 30(1)(ma) which provides an exception to Australia Post's reserved letter service for the movement of documents as part of a document exchange service (i.e. a service involving the transfer of documents between members). The exception will permit a document exchange service to deliver documents from one service centre of a document exchange service to another service centre of that service, or within a service centre of the service. The exception is not intended to allow one document exchange service to carry documents to a different document exchange service centre on behalf of a member. The exception is also not intended to allow the direct delivery of mail to individual customers addresses, unless the delivery is in accordance with other exceptions to the reserved service.

Clause 11(k) inserts new subsection 30(1A) which provides that catalogues and leaflets will be taken to be "identical" for the purposes of 30(1)(ca) where they are identical in all respects, including the salutation and contents of the catalogue and leaflet.

Clause 11(k) also inserts new subsection 30(1B), which explains what is meant by the terms "office" and "organisation" in subsection 30(1)(ga).

"Office" is limited to a place where the organisation or individual conducts its business operations (new paragraph 30(1B)(a)).

For the purposes of the exception, an office of a franchisee is treated as a separate organisation from a franchisor (new paragraph 30(1B)(b)).

"Organisation" is defined in new paragraph 30(1B)(c) for the purposes of new paragraph 30(ga). The definition is intended to enable an office of one body corporate to contract out to a mail service provider other than Australia Post, for the carriage of letters to another office of the same body corporate.

New paragraph 30(1B)(c) is intended to ensure that separate bodies, agencies, authorities or services of a Commonwealth or State Government Department, or its equivalent in a Territory, are treated as separate organisations. For example, a state electricity authority in a particular state would be treated as one organisation, and could contract out the carriage of mail to another office of the same state electricity authority. However, mail that the state electricity authority is sending to a State housing authority would not be able to be carried by the contractor, because it is not considered to be mail of the same organisation, even though the same State government is ultimately responsible for the both organisations.

New subsection 30(1C) defines the term "service centre" in new paragraph 30(1)(ma) in relation to document exchange services. This term is defined to as a place where, under the terms of the service, all of the persons entitled to use the service may deposit and collect documents carried by the service. It is not intended that the document exchange service exception apply to the direct delivery of letters by the service provider to individual organisations.

Clause 11(1) inserts new subsection 30(3), which is intended to ensure that, where an article contains a number of things (such as a book and a letter) and not all of these things are exceptions to the reserved service provisions, then Australia Post will have the exclusive right to carry that article

Clause 12 - Actions for infringement of reserved services etc

This clause amends subsection 31(1) of the Act to make the terminology in that subsection consistent with the new definition of the term "reserved services".

Clause 13 - Terms and conditions generally

Section 32 of the Act sets out the general terms and conditions which apply to a service supplied by Australia Post for a person.

Clause 12(b) removes from paragraph 32(2)(e) the reference to the "nearest post office of Australia Post". This means that the Board will be able to determine the terms and conditions for the carriage of letters to any post office.

Clause 12(d) omits paragraph 32(2)(g) of the Act, which allows the Board of Australia Post to determine terms and conditions in relation to a registered publications service. Australia Post will not provide a registered publications service from 1 January 1995.

Clause 14 - Insertion of New Sections

New Section 32A - Terms and conditions - bulk interconnection service

New section 32A sets out the minimum terms and conditions which Australia Post must set in relation to the new bulk mail interconnection service, which allows mail service providers other than Australia Post to transport bulk mail (for example from Sydney to Perth) for final delivery by Australia Post. The provisions require Australia Post:

- to designate the mail centres where letters must be lodged for delivery, as only some mail centres are equipped to handle bulk mail lodgements (new paragraph 32A(2)(a);

- . to allow letters to be lodged for delivery under the service at offices as specified (new paragraph 32A(2)(b); and
- . to provide to mail service providers a reduction on the cost of final delivery of the article, which includes a component based on Australia Post's estimate of the average transport costs per letter that Australia Post has avoided because other mail service providers have used the bulk interconnection service and Australia Post has not been required to carry the letters for the whole of their journey (new paragraph 32A(2)(c)).

New Section 32B - Regulations may provide for inquiries into certain disputes about bulk interconnection services

By virtue of subsection 32(1) of the Act and the bulk interconnection service provisions in new section 32A, Australia Post would be able to negotiate with a person for the supply of a bulk interconnection service on agreed terms and conditions, providing those terms and conditions were consistent with relevant provisions in section 32A (including the requirement that the terms and conditions include the rate reduction component referred to in new paragraph 32A(2)(c)).

New subsection 32B(1) provides for the making of regulations enabling:

- . the Trade Practices Commission (TPC) to inquire into disputes about the amount of rate reduction which should be given to a person under a bulk interconnection service, and to make a recommendation to the Minister about the amount of that rate reduction; and
- . the Minister to direct Australia Post to act in accordance with a recommendation made by the TPC.

New Section 32C - Terms and conditions - incoming overseas mail service

New section 32C sets out the basis of the charge that must be paid by a mail service provider to Australia Post for final delivery of letters which the provider has brought into Australia from overseas. The amendment gives effect to the Government's decision to liberalise incoming international letters. Where the postal enterprise of the country of origin of the letter is a party to a convention about mail services to which Australia is also a party, the charge that the mail service provider is required to pay to Australia Post for final delivery of the letter is the amount set out in the convention. If there is no convention applicable, the charges, terms and conditions are the same as the normal charges, terms and conditions that would apply to the letter for domestic delivery.

Clause 15 - Certain postage charges subject to Ministerial review

This amendment:

- (1) omits paragraph 33(1)(b) of the Act which refers to registered publications. Australia Post will not provide a registered publications service after 1 January 1995.
- (2) adds new paragraph 33(4)(aa), which has the effect that changes in the consumer price index is one of the matters the Minister shall have regard to in deciding whether to disapprove an Australia Post Board determination to fix or vary the rate of postage for standard postal articles.

Clause 16 - Insertion of new section

New Section 33A - Postage stamps not to be sold for less than the usual retail price

New subsection 33A(1) prohibits a person authorised by Australia Post from selling stamps at less than its usual retail price, or from giving away a stamp free of charge.

New subsection 33A(2) allows Australia Post (but not an agent or licensee of Australia Post) to sell stamps to a person, at less than the usual retail price of the stamp, if that person has agreed with Australia Post that they will not sell the stamps to a third person at less than the usual retail price of the stamp. A "stamp" is defined broadly to include marks, such as marks of franking machines.

Under new subsection 33A(3), Australia Post may apply to the Federal Court for relief in the event of an infringement. The forms of relief which may be available include an injunction requiring cessation of the conduct and the option of either damages or an account of profits (new subsection 33A(4)). New subsection 33A(5) empowers the Court to grant an interim injunction.

New section 33A is intended to ensure that Australia Post can meet its community service obligation (set out in subsection 27(3) of the Act) to provide the letter service at a uniform rate of postage.

Clause 17 - Minister may direct certain variations of corporate plans

This clause amends section 40 of the Act to:

- (a) extend the period from 30 days to 60 days within which the Minister may, after consultation with the Board, direct it to vary the corporate plan (subsection 40(1)); and

- (b) require the direction to the Board to be tabled in Parliament (new subsection 40(4)).

Clause 18 - General matters to be included in annual reports

This clause amends section 43 of the Act to require the annual report of Australia Post to include a statement about the extent to which the Corporation has met performance standards in relation to its community service obligations, which are set out in section 27 of the Act.

Clause 18(c) also amends the Act to require Australia Post to report annually on the number of times during the year that information or documents were disclosed by Australia Post employees in reliance on new section 90J, other than new subsections 90J(2) and (4), and new section 90K.

Clause 19 - Financial matters to be included in annual reports

Clause 19(b) amends paragraph 44(b) of the Act to require Australia Post to specify either the dividend paid or proposed to be paid as one of the financial matters included in annual reports. This amendment is intended to overcome the difficulty which may occur in finalising accounts for the annual report where the Board of Australia Post has recommended, but the Minister has not yet accepted, that a dividend be paid.

Clause 19(c) of this clause inserts new paragraph 44(h), which requires the report of financial matters in the annual report to include the financial information requested by the Minister relating to revenue earned and expenses incurred in the provision of Australia Post's reserved services and its non-reserved services. This provision is intended to enhance public accountability, by demonstrating whether, and if so to what extent, Australia Post is cross-subsidising non-reserved services from revenue derived from the reserved services.

Clause 20 - Requirements for financial statements

This clause amends section 45 of the Act to provide updated references to the Corporations Law.

Clause 21 - Payment of dividends to Commonwealth

Clause 21(1)(a) amends section 54 of the Act to extend from 30 days to 45 days the time in which the Minister must respond in writing to the Board's recommendation as to the dividend Australia Post may pay to the Commonwealth.

Clause 21(1)(b) of this clause inserts new subsection 54(4A), which requires the Minister to table in both Houses of Parliament any direction to the Board of Australia Post to pay a dividend to the Commonwealth.

Clause 22 - Interim dividends

Clause 22(1)(a) amends subsection 55(2) of the Act to extend from 30 to 45 days the period within which the Board of Australia Post must, after receiving a notice from the Minister under subsection 55(1), make a recommendation in relation to the payment of a dividend.

Clause 22(1)(b) of this clause inserts new subsection 54(4A), which requires that a direction to the Board of Australia Post to pay an interim dividend to the Commonwealth be tabled in both Houses of Parliament within 15 sitting days after the direction is given.

Clause 22(2) of this clause ensures that the amendment in clause 22(1)(a) only applies after commencement.

Clause 23 - Repeal of Section 73 and substitution of new section

New section 73 - Appointment of directors

New subsection 73(1) (appointment by the Governor-General, of directors to the Board of Australia Post on the Minister's nomination) is in similar terms to existing subsection 73(A).

New subsection 73(2) requires the Minister, before making a nomination to the Governor-General, to consult with the Chairperson of the Australia Post Board.

New subsection 73(3) (requiring the Minister to take the expertise of prospective directors into account), replicates existing subsection 73(2).

New subsection 73(4) (providing that an appointment is not invalid merely because of any defect or irregularity in the instrument of appointment) replicates existing subsection 73(3).

Clause 24 - Repeal of section 74 and substitution of new section

New Section 74 - Term of appointment

The effect of this amendment is to delete the existing references to the term of appointment of a government director. Australia Post will no longer be required to have a government director on the Board.

Clause 25 - Termination of appointment

This clause amends section 79 of the Act to omit subsections (5) and (6) which specifically refer to the termination of the appointment of a government director.

This clause also inserts a new subsection 79(5), which provides that the Governor-General, on advice from the

Minister, may terminate the appointment of all or specified directors on the Board where the Minister is of the opinion that the Board has failed to comply with its obligations under section 41 (to notify the Minister of significant affecting events), or section 46 (to notify the Minister of significant business activities), or section 47 (to keep the Minister informed of the operations of Australia Post and its subsidiaries).

Clause 26 - Appointment

Clause 26(1)(a) omits subsection 83(1) of the Act, which provides that the Managing Director is to be appointed by the Minister after the Minister has received a recommendation from the Board. Clause 26(1)(a) also inserts a new subsection 83(1) which provides that the Managing Director is to be appointed by the Board.

Clause 26(1)(b) amends subsection 83(2) of the Act consequential on new subsection 83(1), with the effect that the person the Board appoints as Managing Director must be a person other than the Chairperson, Deputy Chairperson or one of the Directors of the Board.

Clause 26(2) provides that the amendments in clause 26(1) apply only to an appointment after commencement. These amendments will not therefore affect the appointment of the current Managing Director.

Clause 27 - Acting Managing Director

Clause 27(1) of this clause omits existing subsection 88(1) and (2). Clause 27(1) also inserts new subsection 88(1), which allows the Board to appoint a person to act as Managing Director during a vacancy or during periods in which the Managing Director is absent from duty, absent from Australia or unable to perform his or her duties as Managing Director.

Clause 27(2) of this clause provides that the amendments in clause 27(1) apply only to an appointment to act as Managing Director which is made after the commencement of these amendments.

Clause 28 - Insertion of New Part

PART 7A - APPLICATION OF STATE AND TERRITORY LAWS

This Part sets out how state and territory laws apply in relation to Australia Post. The Act currently includes a general statement as to the application of state and territory laws in section 91, and regulations set out the state and territory laws from which Australia Post is exempt. This Part brings these exemptions into the Act.

New Section 90A - Australia Post not entitled to any immunity or privilege of the Commonwealth

New section 90A confirms that, for the purposes of the laws of the Commonwealth, or of a State or Territory, Australia Post is not entitled to any of the immunities or privileges of the Commonwealth, except where expressly provided under this Act or any other law of the Commonwealth, a State or Territory.

New Section 90B - Discriminatory laws do not apply

New section 90B protects Australia Post against a state or territory law that discriminates against Australia Post.

New Section 90C - State or Territory laws do not apply retrospectively before 1 January 1991

New section 90C provides that Australia Post is not subject to state and territory laws which would operate retrospectively to a time before 1 January 1991.

New Section 90D - Laws relating to buildings, structures and facilities do not apply

New section 90D provides continuing exemptions from state and territory building and planning laws for Australia Post's buildings that before 1 January 1991 were the property of Australia Post and were occupied or in use by Australia Post, or that where under construction, alteration or demolition by or on behalf of Australia Post (new subsection 90D(1)). The continuing exemptions which apply to such buildings relate to standards of design or construction, approval of construction, occupancy or use and alteration or demolition (new subsection 90D(2)).

Clause 29 - Insertion of New Part

PART 7B - DEALING WITH ARTICLES AND THEIR CONTENTS

Division 1 - Interpretation

Part 7B contains provisions which:

- . deal with the duty of Australia Post employees and others not to disclose postal information (these amendments replace provisions in section 92 of the Act); and
- . impose restrictions on the opening and examination of postal articles (these provisions will replace regulations dealing with opening and examination of articles).

Division 1 - Interpretation

This Division defines terms used in the Part.

New Section 90E - Definitions

New section 90E defines relevant terms in new Part 7B, in particular:

- "employee" is defined to include agents and licensees of Australia Post, who are not employed by Australia Post, and any other person who performs services for or on behalf of Australia Post; and
- "in the course of post" is defined to include:
 - (a) carriage of articles by or through Australia Post; and
 - (b) the period in which an article is still under Australia Post's control, where it has been collected or received by Australia Post, but has not been delivered by Australia Post.
- "information" is defined to include supposition or opinion formed by an employee about the contents or substance of an article being carried by post (this definition is intended to ensure the prohibitions on disclosure of information cover a broad range of postal information).

New Section 90F - Meaning of "authorised ASIO officer"

New section 90F defines the expression "authorised ASIO officer", for the purposes of Division 2, as an ASIO employee who has been authorised by the Director-General of ASIO or his or her delegate to receive disclosures of information under Part 7B.

New Section 90FA - Meaning of "authorised discloser"

New section 90FA defines the expression "authorised discloser" as an employee who is authorised by the Board of Australia Post to make disclosures of information.

New Section 90FB - Meaning of "authorised examiner"

New section 90FB defines the expression "authorised examiner", for the purposes of Division 3, as a person appointed by the Board of Australia Post to open or examine mail under Division 3. An authorised examiner may include a customs officer authorised to examine the mail without opening under new section 90P.

Division 2 - Limits on use or disclosure of information and documents

This Division sets out the limits on use or disclosure of information or documents.

Subdivision A limits disclosure by current Australia Post employees. (Subdivision B limits disclosure by former Australia Post employees. Subdivision C limits secondary use or disclosure by other people.)

Subdivision A - Disclosure by employees of Australia Post

New Section 90G - Application of Subdivision

New subsection 90G(1) provides that, for the exceptions in Subdivision A to apply, an employee, which includes a person who performs services for or on behalf of Australia Post or an employee of that person, must have acquired the information or document in the course of his or her employment. The information or document must also be, or relate to, one of the following:

1. the contents or substance of an article being carried by, or currently within Australia Post's mail network;
2. postal or telecommunications services supplied by Australia Post (a post office box number held by a customer is the kind of information which may be relevant in this context); or
3. the affairs or personal particulars, including the address, of a person.

New subsection 90G(2) provides that information referred to in category 1. above, including the actual contents of a postal article, is "specially protected" (i.e. this means that it is subject to higher level restrictions on use or disclosure);

The categories 2. and 3. above are referred to in new subsection 90G(3) as "non-specially protected" (i.e. while still subject to restrictions on use and disclosure, the restrictions are not as broad as the restrictions on use and disclosure in relation to specially protected information.)

New subsections 90G(2) and 90G(3) further clarify the application of Subdivision A. New subsection 90G(2) provides that "specially protected" information is contents or information relating to the contents of an article. New subsection 90G(3) provides that information visible from the outside of an article is not specially protected.

New Section 90H - Prohibition on use or disclosure by authorised persons

New subsection 90H(1) provides that use or disclosure of information or a document by an authorised person is prohibited conduct if the disclosure is not permitted by new subsections 90J, 90K, or 90L of the Act. The penalty for a knowing or reckless breach of this section is imprisonment for up to 2 years (new subsection 90H(2)).

New paragraph 90H(3)(a) allows an employee who has made a disclosure referred to in new paragraph 90H(1)(a) to raise evidence that there was a reasonable possibility that the disclosure was permitted, and the Prosecution will then be

required to prove beyond reasonable doubt that the disclosure was not permitted (new paragraph 90H(3)(b)). This provision is intended to protect employees from prosecution where they have disclosed information on reasonable grounds.

New Section 90J - Permitted use or disclosure if information or document is specially protected

New section 90J sets out the situations in which use or disclosure of specially protected information or documents is authorised. "Specially protected information" is information or a document which is being carried on, or is under the control of, Australia Post's mail network.

New subsection 90J(2) permits use or disclosure of specially protected information, where the use or disclosure is necessary in the performance of duties for or on behalf of Australia Post. This is intended to ensure that employees may fulfil their duties related to processing the mail without committing an offence under the Act.

New subsection 90J(3) permits the use or disclosure of specially protected information, as required by a warrant. This allows law enforcement agencies to access postal information where authorised by a warrant issued under a law of the Commonwealth, a State or Territory, and ensures that an employee who discloses information as required by an issued warrant does not commit an offence under this Act.

New subsection 90J(4) permits use or disclosure of specially protected information, as required when an employee is summonsed as a witness to give evidence in court. An employee who discloses information as required when giving evidence in a Court would therefore not commit an offence under this Act.

New subsection 90J(5) permits use or disclosure of specially protected information, as required by a Commonwealth law (such as in relation to taxation or social security).

New subsection 90J(6) permits use or disclosure of specially protected information required by the specified state laws. This ensures that disclosures required by an order for production of information by the Criminal Justice Commission in Queensland, and the Crime Commission and Independent Commission Against Corruption of New South Wales, are excepted from the prohibitions on disclosure.

New subsection 90J(7) permits use or disclosure of specially protected information to emergency services personnel, where there are reasonable grounds for believing that the disclosure is necessary to prevent or lessen a serious and imminent threat to life, health or safety of a person.

New subsections 90J(8) and (9) permit disclosure by an authorised discloser to a member of a police force or service or where the authorised discloser has a suspicion on

reasonable grounds that an article consists of, or contains, anything that may be relevant to security, or is evidence of an offence.

New Section 90K - Extra situations in which use or disclosure is permitted if information or document is not specially protected

New section 90K sets out the circumstances in which disclosure is permitted of information or a document which is not specially protected (new subsection 90K(1)). Information or a document which is not specially protected covers information or documents which are, or relate to:

- (a) postal or telecommunications services supplied by Australia Post (such as a post office box number held by a certain person); or
- (b) the affairs or personal particulars, including the address, of a person.

New subsection 90K(2) permits use or disclosure of non-specially protected information to emergency services personnel, where the employee believes on reasonable grounds that the disclosure is necessary to assist in notifying the next of kin of a person who has died or been seriously injured.

New subsection 90K(3) permits disclosure of non-specially protected information by an authorised person to a customs officer where there are reasonable grounds for believing that the article consists of, or contains anything on which customs duty or import sales tax is payable, or the article is being carried in contravention of the Customs Act 1901.

New subsection 90K(4) permits disclosure of non-specially protected information by an authorised person to an authorised ASIO officer or employee.

New subsection 90K(5) permits disclosure which is reasonably necessary for the enforcement of the criminal law, or the enforcement of Commonwealth laws which impose a fine or are aimed at protecting public revenue.

New Section 90L - Disclosure of personal particulars, including name and address by consent

New section 90L permits disclosure of personal particulars, including name and address information, where the person giving the information has given express consent to the disclosure. This is particularly important in relation to the operation of the National Change of Address Scheme run by Australia Post. Under this scheme Australia Post, with permission of the person concerned, notifies a nominated

organisation of the person's change of business or home address.

Subdivision B - Use or disclosure by former employees of Australia Post

New Section 90LA - Application of Subdivision

New subsection 90LA(1) applies Subdivision B of Division 2 to former employees of Australia Post who acquired or received information (or a document) in the course of their employment with Australia Post, where the information relates to the carriage of articles or supply of services by Australia Post, or to personal affairs or particulars.

New subsections 90LA(2) and (3) further clarify the application of Subdivision B. New subsection 90LA(2) provides that "specially protected" information is contents or information relating to the contents of an article. New subsection 90LA(3) provides that information visible from the outside of an article is not specially protected.

New section 90LB - Prohibition on use or disclosure by former employees

New subsection 90LB(1) provides that relevant use or disclosure is prohibited conduct if it is not permitted by new section 90LC or 90LCA. New subsection 90LB(2) provides that a person is guilty of an offence, punishable on conviction by imprisonment for a period of up to two years, if the person knowingly or recklessly engages in prohibited conduct.

New subsection 90LB(3) enables a defendant in any prosecution for an offence against subsection (2) to produce or point to evidence suggesting a reasonable possibility that the use or disclosure was permitted under new sections 90LC or 90LCA, thereby requiring the prosecution to prove beyond a reasonable doubt that the use or disclosure was not so permitted.

New section 90LC - Permitted use or disclosure whether or not information or document is specially protected

New section 90LC allows use or disclosure whether or not the information or document is specially protected in the case of:

- (a) disclosure under warrants (new subsection 90LC(2));
- (b) disclosure as a witness (new subsection 90LC(3));
- (c) disclosure under a law of the Commonwealth (new subsection 90LC(4)); and

- (d) disclosure under a certain laws establishing Commissions (new subsection 90LC(5)).

New section 90LCA - Extra situations in which use or disclosure is permitted if information or document is not specially protected

New section 90LCA allows use of disclosure of information or documents which are not specially protected in relation to disclosure by ASIO officers and disclosure for the enforcement of law or protection of public revenue.

Subdivision C - Secondary use or disclosure or use by other people

Subdivision C applies to the limits on use or disclosure by people other than Australia Post employees or former employees. The subdivision regulates secondary disclosure of information by persons who have acquired information from an employee or past employee of Australia Post.

New Section 90LD - Application of subdivision

New section 90LD sets out the circumstances for permitted disclosure or use of information or documents by persons other than employees of Australia Post. The following people are specifically exempted from the prohibition on secondary disclosure:

- ASIO officers; and
- persons who obtained the information as a result of disclosure in a Court.

New Section 90LE - Prohibition on use or disclosure by other people

New section 90LE provides that it is an offence, punishable by imprisonment for up to 2 years, for a person described in new section 90LD to knowingly or recklessly use or disclose information or documents in a way not permitted in new section 90LD or new section 90LF.

New Section 90LF - Secondary use or disclosure permitted if for same purpose as original disclosure or use

New section 90LF permits secondary disclosure of information by persons identified in new section 90LD, if the disclosure is for the same purpose as the original disclosure that was permitted under new sections 90J or 90K. It is not intended to restrict law enforcement or customs officials from disclosing relevant information to other law enforcement agencies or prosecutors for law enforcement or customs purposes.

Subdivision D - Miscellaneous

This Subdivision is intended to ensure that nothing in the Division authorises opening or examining or affects any obligations that an Australia Post employee may have in relation to an article.

New section 90LG - Division does not authorise opening or examining

New section 90LG is intended to ensure that Division 2, which deals with limits on use or disclosure of information and documents, does not authorise the opening or examination of articles in the course of post. Any opening or examining of articles may only take place in accordance with the provisions in Division 3.

New Section 90LH - Division does not affect powers etc. in relation to things other than information or documents

New section 90LH is intended to ensure that the general prohibition on disclosure of information or documents does not prevent Australia Post employees from meeting their other legal obligations, such as complying with a warrant issued under Commonwealth, State or Territory law requiring the seizure of an article.

Division 3 - Limits on opening and examining

This Division will replace regulations dealing with opening and examination of articles made under the Act. The new Division sets out the limits which apply in relation to the opening and examination of articles. It also allows authorised people to open and examine articles in specified circumstances.

New Section 90M - Articles to which Division applies

New section 90M is intended to make clear that the limits on opening and examining articles contained in Division 3 only apply to articles which are within Australia Post's mail network (i.e. that the limits are intended to apply to articles being carried by Australia Post or articles that have been lodged with Australia Post and are awaiting carriage by Australia Post).

New Section 90N - Prohibition on opening or examining etc

New subsection 90N(1) provides that opening of an article or examination of its contents, with or without opening, is prohibited if it is not permitted by new sections 90P to 90S inclusive. A penalty of up to two years imprisonment applies for infringement (new subsection 90N(2)).

New Section 90P - Examining without opening

New section 90P allows examination of an article without opening, by an authorised examiner, through the use of X-Ray, metal or odour detector. This procedure is an important public safety requirement, particularly for the consignment of mail on aircraft. "Authorised examiner" is defined in new section 90FB.

New Section 90Q - Undeliverable articles

New subsection 90Q(2) allows an authorised examiner to:

- . open an article, which is incorrectly or inadequately addressed making it undeliverable; or
- . examine the article to obtain sufficient information to allow delivery to the intended receiver; or
- . allow the article to be returned to the sender.

"Authorised examiner" is defined in new section 90FB.

New subsection 90Q(3) provides that, subject to new section 90X, after an article has been opened it must either be:

- . sent on the intended recipient (where this is possible);
- . sent back to the sender if sufficient information is not available to allow delivery to the intended recipient; or
- . if delivery is not possible to either the intended recipient of the sender, dealt with in accordance with Australia Post's terms and conditions.

New section 90X applies if the article is dangerous, deleterious or offensive, or is subject to forfeiture.

New Section 90R - Repair

New section 90R allows opening of articles by an authorised examiner in the presence of another employee, for the purpose of repairing the article or its contents to enable delivery.

New subsection 90R(2) provides that subject to new section 90X after the authorised examiner makes appropriate repairs to the article or its contents, it must be closed and returned to the post.

New section 90X applies if the article is dangerous, deleterious or offensive, or is subject to forfeiture.

New Section 90S - Articles on which customs duty is payable etc

New section 90S provides that a authorised examiner, at the request of a customs officer, may open an article if there are

reasonable grounds for believing that the article is subject to customs or sales tax, or is being carried contrary to a law of Commonwealth relating to importation or exportation.

New subsections 90S(4) and 90S(5) provide that, after opening and examination under the section, the following procedures apply. If the article was found not to offend customs or sales tax laws, it must be closed and returned to the post. If the article was found to offend customs and sales tax laws, it must be closed and dealt with according to Commonwealth laws relating to that offence.

However if new section 90X applies, that is if the article is dangerous, deleterious or offensive, or is subject to forfeiture, the procedures in section 90S need not be followed.

New Section 90V - Articles to carry notice of opening etc

New section 90V requires that a notice be attached to an article that has been opened or examined in accordance with the provisions of Part 7B. However failure to attach a notice does not make the actual opening and examination of the article an offence.

New section 90W - Permitted or required dealings are not prohibited by new sections 90H, 90LB or 90LE

New section 90W is intended to ensure that any dealing with an article as required in Division 3 is not taken to be a disclosure of information or a document to which new section 90H, 90LB, or 90LE apply. New sections 90H, 90LB and 90LE provide that disclosure is prohibited where it is not specifically permitted in the amended Act, or where the information has been acquired in contravention of the amended Act.

New Section 90X - Articles may be dealt with under other provisions despite obligations under this Division

New subsection 90X(1) provides that, if the article being dealt with under any provision of Division 3 is dangerous, deleterious or offensive, the procedures set out in the relevant provisions in Division 3 as to what should be done with the article after opening need not be followed. This is because special procedures apply in Division 4 in relation to dangerous, deleterious or offensive articles.

New subsection 90X(2) provides that, if the article is subject to forfeiture, regulations made under the Act apply in relation the article, despite Division 3.

Division 4 - Dealing with dangerous, offensive etc. articles

New Section 90Y - Articles to which Division applies

New section 90Y provides that this Division, which deals with dangerous, deleterious and offensive articles, applies to an article only for the period that the article is in the course of post with Australia Post.

New Section 90Z - Dealing with dangerous or deleterious things

New section 90Z allows for the terms and conditions set by the Australia Post Board under section 32 of the Act to be taken into account by an employee in deciding how to deal with an article which contains, or appears on reasonable grounds to contain, something which could be explosive, dangerous or deleterious.

Division 5 - Miscellaneous

New Section 90ZA - Destruction of physically offensive things

New section 90ZA provides that an article that contains physically offensive material may be destroyed by an employee immediately he or she becomes aware of its offensive nature. For example, this will enable the immediate destruction of perishable articles or other articles likely to become offensive or deleterious through deterioration or decay during carriage by post.

New subsection 90ZA(2) makes it clear that pornographic material is not included in what is physically offensive for the purposes of the section.

New Section 90ZB - Permitted dealings are not prohibited by new sections 90H, 90LB, 90LE or 90N

New section 90ZB is intended to ensure that any dealing with an article permitted under Division 4 is not taken to be a disclosure of information or a document to which new sections 90H, 90LE or 90LB applies, or an opening or examination to which new section 90N applies. New sections 90H and 90LB and 90LE provide that disclosure is prohibited where it is not specifically permitted in the Act, or where the information has been acquired in contravention of the Act. New section 90N provides that opening of an article or examination of its contents with or without opening is prohibited if it is not permitted by new sections 90P to 90S inclusive, 90Z or 90ZA.

New Section 90ZC - Australia Post and employees are not liable for actions in good faith under this Part

New section 90ZC provides a general indemnity from legal action under Part 7B against Australia Post or an Australia Post employee, where an act was done or omitted in good faith.

Clause 30 - Repeal of sections 91 and 92

These sections of the Act, which deal with application of state and territory laws and use or disclosure of information,

are repealed because this Bill deals with their content in a more expansive way, without reliance on the Regulations.

Clause 31 - Unclaimed moneys

New section 98 reduces from 5 years to 2 years the period after which Australia Post may pay money from the Unclaimed Money Fund into Australia Posts's general money.

Clause 32 - Regulations

Clause 32 removes reference in paragraph 102(f) of the Act to the making of regulations with respect to the opening and examination of postal articles. These regulations are superseded by amendments in Division 3 of New Part 7B.

Part 3 - Amendment of the Crimes Act 1914

Clause 33 - Principal Act

Clause 33 provides that in this Part, the term "Principal Act" means that *Crimes Act 1914* (Commonwealth).

Clause 34 - Interpretation - definitions

Clause 34 adds the term "carried by post" to the definition section 85E of the Crimes Act, so that it is clear that when the term is used it only refers to carriage of articles by or through Australia Post.

Clause 35 - Repeal of section 85L and substitution of a new section

New section 85L of the Crimes Act makes it an offence of fraudulently open or tamper with mail-bags. Opening or tampering with articles in the course of post is dealt with in Part 2 of this Bill.

Clause 36 - Repeal of Section 85X and substituting a new section

This clause replaces section 85X of the Crimes Act to expand the offence to meet public safety requirements for the carriage of dangerous goods by post. The new section introduces three new categories of dangerous or deleterious substances or things and attaches a penalty to each which reflects the seriousness of a breach.

Causing a totally prohibited substance or thing to be carried by post will attract a penalty of up to 10 years imprisonment. A totally prohibited substance or thing is an explosive or other dangerous or deleterious substance or thing, such as flammable materials, which the regulations made under the Crimes Act prohibit from carriage by post. The prohibition on the carriage of these goods will bring Australia into line with international aviation security standards.

Causing a standard regulated substance or thing to be carried by post in any way other than as required under Australia Post's terms and conditions will attract a penalty of up to 5 years imprisonment. A standard regulated substance or thing is a dangerous or deleterious substance or thing which the regulations made under the Crimes Act provide may only be carried by post if they are carried in accordance with Australia Post's terms and conditions. This category may include substances that in a controlled environment are not dangerous, but if special care is not taken in the package and transportation of such material, may cause damage or harm. For example, this category of goods may include medicines and drugs, perishable food and live animals.

Causing a specially regulated substance or thing to be carried by post in any way other than in accordance with a permission granted by Australia Post will attract a penalty of up to 2 years imprisonment. A specially regulated substance or thing, is defined as any dangerous or deleterious substance or thing other than a totally prohibited substance or thing, or a standard regulated substance or thing.

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