

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN SHIPPING COMMISSION AMENDMENT BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport  
the Hon. P.F. Morris MHR)



### OUTLINE

The purpose of this Bill is to amend the Australian Shipping Commission Act 1956:

- (a) to improve the management of the Australian Shipping Commission and to provide it with more autonomy in its day to day control over the operations of the Australian National Line;
- (b) to make a number of amendments to the Act which are of a machinery nature; and
- (c) to repeal some sections of the Act which are redundant.

The improvement in the management of the Commission shall be achieved by provisions for the appointment by the Governor-General of the Chairman on a part time basis and of a Managing Director who shall be the chief executive of the Commission and a Commissioner on a full time basis. The appointment of a part-time Chairman will provide a more appropriate division of control over the affairs of the Commission and be more in line with the top management structure adopted in commercial enterprises.

While the Bill will provide the Commission with more autonomy, it in no way reduces the Commission's accountability to the Parliament for its conduct of the affairs of the Commission and operation of the Australian National Line. The amendments to give effect to this increase in autonomy relate to those sections of the Principal Act concerned with contracts requiring Ministerial approval, directions to the Commission and subsequent reimbursement for any costs incurred, charges for services, terms and conditions of employment for ANL staff, financial policy and borrowing powers. In addition, a section is to be included requiring the Commission to undertake Corporate Planning.

The machinery amendments to the Principal Act are concerned with those Sections relating to Commissioners as regards their appointment, their remuneration and allowances, and the disclosure of interests. They are also concerned with meetings of the Commission, the ability of the Commission to delegate its powers and a clarification of its functions. In addition, amendments are proposed to remove the restriction that ANL employees must be British subjects and to the By Law and Regulation sections of the Act.

The Sections which are to be repealed and not substituted by new sections refer to the British Merchant Shipping Act, which is no longer applicable; the provision for the Commonwealth to buy and sell ships for the purpose of paying shipbuilding subsidy; and the restriction on the transfer of mortgage of vessels to overseas interests.

Two amendments common to the Australian Shipping Commission Amendment Bill 1982 are

- (a) the Minister will be empowered to approve particular classes of contracts over \$2,000,000 to enable the Australian National Line to enter into operational contracts; and
- (b) Fares and freight rates are to be determined by the Commission by reference to principles approved by the Minister; these principles can only be varied with the approval of the Minister.

DESCRIPTION

- Clause 1: Title clause.
- Clause 2: Amendments to definitions section of Principal Act. Consequential amendments to definitions to take account of changes to statutory positions.
- Clause 3: Updates wording relating to body corporate.
- Clause 4: Reconstitutes composition of Commission without changing total number of Commissioners. The new provision will recognise that the Commission comprises 7 Commissioners namely Chairman, Deputy Chairman (previously Vice Chairman ) and Managing Director together with four other Commissioners. The Commissioners, other than the Managing Director, will be non-executive Commissioners. Non-executive Commissioners shall be appointed on a part-time basis by the Governor-General, whereas the Managing Director shall be appointed by the Governor-General on a full time basis. The Minister for Transport will determine the terms and conditions (other than remuneration and allowances) of Commissioners. It also allows for the continuation of existing appointments to the Commission.
- Clause 5: Repeals existing provisions of the Principal Act relating to periods of appointment for Commissioners, appointment of Acting Chairman and Commissioners, leave of absence and remuneration for Commissioners, resignations and dismissal of Commissioners, and meetings of the Commission.

Provides for appointment of Commissioners for a period of not more than 5 years. The provisions relating to appointment of Acting Chairman, Acting Deputy Chairman and Acting Commissioner have been made consistent, and provide for these acting appointments not to exceed 12 months, and for the first time provides for an Acting Deputy Chairman. The Managing Director is not to be appointed as either Acting Chairman or Acting Deputy Chairman. The leave, remuneration, resignation, termination of appointment and disclosure of interest provisions have also been updated. The provisions relating to meetings of the Commission have been updated to put the onus for arranging meetings on the Commission as a whole rather than the Chairman alone. This clause also inserts a provision enabling the Commission to delegate its powers, similar to that found in other Acts covering statutory authorities.

Clause 6: Extends functions of Commission to allow Commission to provide services incidental to its functions. It removes doubt whether the Commission can, for example, hire out management expertise or spare computing facilities.

Clause 7: Amends the powers of the Commission to enable it to enter into contractual arrangements up to \$2 million without prior Ministerial approval.

Also allows the Minister to approve either specific contracts or classes of contracts in excess of \$2 million.

This clause also makes it necessary for the Commission to seek Ministerial approval to financial leases.

Clause 8: Repeals existing provisions relating to provision of shipping services in the public interest, financial policy, duties of the Commission and rates of charges. The new provisions relating to duties of the Commission impose on it a need to operate in a manner which accords with sound commercial practice, consistent with any directions given to it by the Minister and consistent with the need to achieve its financial targets.

The provision relating to directions has been widened to enable the Minister to direct the Commission in respect of performing any of its functions or duties or in the exercise of its powers. It will however also entitle the Commission to reimbursement for any extra costs associated with complying with these directions.

The provisions relating to the determination of freight rates will require the Commission to determine its freight rates in accordance with principles approved by the Minister.

The Commission will be able to alter the principles by which it charges for its services or a service, but the alteration will be subject to Ministerial approval. This clause also inserts a new provision which requires the Commission to undertake corporate planning and any plans which are prepared will be required to be updated at least annually.

Clause 9: Removes the requirement for all officers of the Commission to be British subjects.

Clause 10: Repeals present provisions relating to terms and conditions of employment. The new provisions will enable the Commission to determine the terms and conditions of employment, including salary, of officers appointed by the Commission, and will provide for the Managing Director to be chief executive officer of the Commission.

Clause 11: Combines previous provisions relating to the definition of the capital of the Commission and the method by which it is increased or decreased.

Clause 12: Provides the basis by which the Commission will determine its financial policy. The new provision will enable the Commission to determine its financial target for a financial year, subject to the Minister's concurrence.



Similarly, the Commission will be able to determine the level of dividend which should be paid in respect of a particular year's operation, subject to the Minister's concurrence.

Clause 13: Deletes inappropriate wording in the present provision relating to interest on borrowings from the Commonwealth as such comparisons cannot presently be meaningfully undertaken between the Commission and privately owned undertakings.

Clause 14: Repeals existing provisions relating to borrowings other than from the Commonwealth, and the provision of guarantees.

These provisions are updated to ensure the Commission can undertake, with the approval of the Treasurer the range of borrowings available.

The updated provisions will also enable the Treasurer to guarantee the borrowings and enable the Commission to offer as security for the borrowings the whole or any part of its assets. It will also be able to offer the Commonwealth security in return for Commonwealth guarantees.

Clause 15: Enables the Commission to apply the profits of a particular year in such manner as it thinks fit after the determination of a dividend, if any.

- Clause 16: Updates existing provisions relating to application of surplus money of the Commission. Also provides for Division 2 of Part XI of the Audit Act to apply to ANL. This part of the Audit Act provides for uniform provisions on reporting, auditing, investment of funds, keeping of accounts. These provisions are already separately incorporated in the Principal Act.
- Clause 17: Updates existing provision.
- Clause 18: Relocates in the Principal Act an existing provision on the preparation of estimates.
- Clause 19: Division 5 of Part II of the Principal Act is repealed as those provisions are now covered by clause 16, under the Audit Act provisions.
- Clause 20: Relocates in the Principal Act an existing requirement for the Commission to inform the Minister of the conduct of its operations.
- Clause 21: Repeals section enabling Minister for Transport to purchase and dispose of ships acquired from the Commission or any other person. Repeals section which restricts the transfer or mortgage of ships without the approval of the Minister for Transport. Repeals existing by-laws provision. Repeals existing regulation provision. Inserts an updated by-laws and regulation provision.
- Clause 22: Formal and minor amendments.



