

1991

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRANSPORT AND COMMUNICATIONS LEGISLATION  
AMENDMENT BILL, 1991

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Transport  
and Communications, the Hon. Kim Beazley, MP)



**TRANSPORT AND COMMUNICATIONS LEGISLATION  
AMENDMENT BILL 1991**

**1. GENERAL OUTLINE AND FINANCIAL IMPACT**

**General outline**

1.1 The Transport and Communications Legislation Amendment Bill 1991 (the Bill) will amend the following Acts administered, either wholly or partly, within the Transport and Communications portfolio:

- . Australian Maritime Safety Authority Act 1990
- . Australian National Railways Commission Act 1983
- . Civil Aviation Act 1988
- . Federal Airports Corporation Act 1986
- . Navigation Act 1912
- . Parliamentary Proceedings Broadcasting Act 1946
- . Trade Practices Act 1974

1.2 The amendments do not introduce substantial new policy schemes but contain provisions aimed at enhancing existing schemes, improving mechanisms for implementing them, correcting drafting problems, or repealing obsolete provisions, as summarised below.

**Australian Maritime and Safety Authority Act 1990**

1.3 The amendment to this Act corrects a minor drafting error.

**Australian National Railways Commission Act 1983**

1.4 The amendment to this Act will ensure that the Commission has the power to enter into a number of financial management risk transactions such as interest rate swaps, fixed rate agreements, options and futures contracts.

**Civil Aviation Act 1988**

1.5 The amendments to this Act:

- . give effect to certain recommendations of the Air Safety Regulation Review Task Force, in particular, by prohibiting a number of activities (including the flying of unregistered aircraft; operating without a

licence, certificate or other authority; and purporting to issue a licence, certificate or other authority unless authorised to do so) and providing a procedure whereby persons convicted of offences against the Act or the regulations may be excluded by the Court from any previously authorised activity;

- . clarify an earlier amendment that the Authority is liable to pay income tax;
- . ensure that the Authority has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and futures contracts;
- . clarify the Authority's powers in relation to statutory liens; and
- . remove any legal doubt about the Authority's power to delegate safety functions under the Civil Aviation Regulations to industry bodies.

#### **Federal Airports Corporation Act 1986**

##### **1.6 The amendments to this Act:**

- . enable the Commonwealth to transfer to the Corporation undeveloped sites which have been acquired by the Commonwealth for airport development and enable the Corporation to construct airports at those sites; and
- . clarify an earlier amendment that the Corporation is liable to pay income tax.

#### **Navigation Act 1912**

1.7 The amendments to this Act make specific provision for fishing fleet support vessels, enable licensing of pilots for operation in certain parts of the Great Barrier Reef, correct some minor drafting errors, make some "housekeeping" amendments, clarify the application of the Act and repeal some obsolete provisions.

#### **Parliamentary Proceedings Broadcasting Act 1946**

1.8 The amendments to this Act give the same protection to persons televising Parliamentary proceedings, and televising them from a record of proceedings, as is currently given to persons broadcasting them by radio or broadcasting them from a sound recording. The amendments also extend the protection to the radio and television broadcasting of the proceedings of a Parliamentary Committee.

## Trade Practices Act 1974

### 1.9 The amendments to this Act:

- . relieve shipping conferences from the need to register schedules of freight rate charges or variations of freight rate charges;
- . permit a charge to be made for the registration of changes to the particulars of an ocean carrier agent;
- . increase the maximum level of fees which can be set by regulation; and
- . repeal some obsolete provisions.

### Financial impact

1.10 The Bill will have no significant effect on Commonwealth expenditure or revenue.

1.11 The amendments to the *Civil Aviation Act 1988* and the *Federal Airports Corporation Act 1986* dealing with the liability of those organisations to pay income tax simply clarify earlier amendments to this effect.

1.12 A small addition to Commonwealth revenues will result from the full recovery of administrative costs which will be permitted for the increase in the maximum level of fees charged for processing applications and requests made under Part X of the Trade Practices Act.

## 2. NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short title

2.1 This clause provides for the proposed Act to be cited as the *Transport and Communications Legislation Amendment Act 1991*.

#### Clause 2 - Commencement

2.2 This clause provides that, with some exceptions, the amending provisions will commence on the day the proposed Act receives the Royal Assent. The provisions which commence on other dates, and the reasons for this, are explained in the notes on those provisions.

### PART 2 - AMENDMENTS OF THE AUSTRALIAN NATIONAL RAILWAYS COMMISSION ACT 1983

2.3 The purpose of these amendments is to ensure that the Commission has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and futures contracts. Many Government Business Enterprises routinely make use of such transactions, as do many private business organisations, to minimise their exposure to adverse interest rate variations. A recent judgment of the House of Lords raised doubts about the power of similar Government enterprises in the United Kingdom. Legal advice indicated that there is a possibility of this decision being followed by Australian courts.

2.4 The amendments will commence on the date of commencement of the Principal Act (17 February 1984) to remove any doubt about as to the Commission's power in the past to engage in the kinds of transactions contemplated by the amendment. No person will be disadvantaged by this retrospectivity.

#### Clause 3 - Principal Act

2.5. This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the *Australian National Railways Commission Act 1983*.

#### Clause 4 - Interpretation

2.6 This clause inserts two new definitions in section 3 of the Principal Act.

#### Clause 5 - New section 62A

2.7 This clause inserts a new section 62A authorising the Commission to enter into financial contracts for hedging purposes. The Minister is empowered to make guidelines, binding on the Commission, for the exercise of its power to enter into hedging contracts. Examples are given of the matters for which provision may be made by the guidelines.

2.8 The reference to "contracts of a kind approved in writing by the Minister" is not intended to authorise the Commission to engage in transactions not otherwise within the Commission's powers. It is included to enable the Minister to resolve any doubt in the minds of financiers in cases where the Commission proposes to enter into a transaction described in different words from those set out in proposed subsection 62A(6), but which is nevertheless clearly within the general description of a hedging transaction as otherwise authorised by the proposed new section 62A and the Commission's existing powers.

### PART 3 - AMENDMENTS OF THE CIVIL AVIATION ACT 1988

2.9 The Bill contains a number of miscellaneous amendments to the Civil Aviation Act 1988. The purposes of these amendments are principally to:

- . give effect to certain recommendations of the Air Safety Regulation Review Task Force, in particular, by prohibiting a number of activities (including the flying of unregistered aircraft; operating without a licence, certificate or other authority; and purporting to issue a licence, certificate or other authority unless authorised to do so) and providing a procedure whereby persons convicted of offences against the Act or the regulations may be excluded by the Court from any previously authorised activity;
- . clarify an earlier amendment that the Authority is liable to pay income tax;
- . ensure that the Authority has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and futures contracts;
- . clarify the Authority's powers in relation to statutory liens; and

remove any legal doubt about the Authority's power to delegate safety functions under the Civil Aviation Regulations to industry bodies.

#### Clause 6 - Principal Act

2.10 This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the Civil Aviation Act 1988.

#### Clause 7 - Interpretation

2.11 This clause inserts a number of new definitions in section 3 of the Principal Act.

#### Clause 8 - New sections 20AA, 20AB and 20AC

2.12 This clause inserts new sections 20AA, 20AB and 20AC in the Principal Act:

- . new section 20AA prohibits the flying of unregistered aircraft and aircraft in respect of which no certificate of airworthiness or maintenance release is in force (but is not intended to displace the operation of regulation 282 of the Civil Aviation Regulations);
- . new section 20AB prohibits a person from performing any duty that is essential to the operation of an Australian aircraft during flight time unless that person holds the appropriate licence, certificate or other authority; and
- . new section 20AC prohibits a person for issuing a licence, certificate or other authority unless authorised to do so.

2.13 Each of these matters is considered to be serious. Accordingly, new sections 20AA, 20AB and 20AC each impose a maximum penalty of 2 years imprisonment.

2.14 These amendments give effect to recommendations made by the Air Safety Regulation Review Task Force in its Second Report on air safety regulation issues.

#### Clause 9 - New sections 30A, 30B and 30C

2.15 This clause inserts new sections 30A, 30B and 30C in the Principal Act. The new sections introduce a procedure whereby persons convicted of offences against the Principal Act or the regulations made thereunder may be excluded by the Court from any aviation activity which is the subject of a licence, certificate or other authority. At present, Courts may only impose a fine or a term of

imprisonment for a breach of the Principal Act or the Regulations.

2.16 The scheme is structured as follows:

- . new section 30A empowers the Court to exclude a person convicted of an offence against the Principal Act or the regulations from any activity authorised by a licence, certificate or other authority;
- . new section 30B provides a mechanism whereby a person in respect of whom an exclusion order has been made may apply to the Court for the termination or variation of an exclusion order, and requires the Authority to be a party to any proceedings on the application; and
- . new section 30C requires the Court to provide the Authority with details of any orders, terminations and variations.

2.17 These amendments give effect to recommendations made by the Air Safety Regulation Review Task Force in its Second Report on air safety regulation issues.

#### Clause 10 - Exemption from tax

2.18 This clause amends section 55 of the Principal Act by providing that the Authority is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

2.19 Section 55 of the Principal Act was amended by section 25 of the *Civil Aviation Amendment Act 1990* (No. 25 of 90) to provide that, with effect from 1 July 1991, the exemption in subsection 55(1) from liability to pay tax under Commonwealth law does not apply to income tax.

2.20 However, in view of paragraph 23(d) of the *Income Tax Assessment Act 1936*, which exempts public authorities constituted under any Act from income tax, the amendment may not be sufficient to remove the CAA's exemption from the payment of income tax.

2.21 This clause inserts a new subsection 55(2A) which provides that the CAA is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

2.22 By virtue of subsection 2(4), this amendment will be deemed to have commenced on 1 July 1991, the date from which the CAA began paying income tax. While this amendment will have a retrospective effect, it will not impose new liabilities retrospectively as the CAA has commenced paying income tax on the basis that the earlier amendment was valid.



#### **Clause 11 - Insertion of new section**

2.23 This clause inserts a new section 62A authorising the Authority to enter into financial contracts for hedging purposes. The Minister is empowered to make guidelines, binding on the Authority, for the exercise of its power to enter into hedging contracts. Examples are given of the matters for which provision may be made by the guidelines.

2.24 The reference to "contracts of a kind approved in writing by the Minister" is not intended to authorise the Authority to engage in transactions not otherwise within the Authority's powers. It is included to enable the Minister to resolve any doubt in the minds of financiers in cases where the Authority proposes to enter into a transaction described in different words from those set out in proposed subsection 62A(6), but which is nevertheless clearly within the general description of a hedging transaction as otherwise authorised by the proposed new section 62A and the Authority's existing powers.

2.25 This amendment, including the new definitions in section 3, will commence on the date of commencement of the Principal Act (1 July 1988) to remove any doubt about as to the Authority's power in the past to engage in the kinds of transactions contemplated by the amendment. No person will be disadvantaged by this retrospectivity.

#### **Clause 12 - Imposition of statutory lien**

2.26 This clause amends section 69 of the Principal Act by clarifying that the Authority can impose a statutory lien on an aircraft if a penalty in respect of a charge has not been paid, notwithstanding that the charge itself has been paid.

#### **Clause 13 - New section 78A**

2.27 This clause inserts a new section 78A prohibiting a person from removing, from Australian territory, an aircraft which that person knows, or has reasonable grounds to believe, is the subject of a statutory lien.

#### **Clause 14 - Regulations**

2.28 This clause amends section 98 of the Principal Act by inserting a new subsection 98(3B) which provides that nothing in paragraph 9(1)(a), subsection 13(4) or section 94 of the Principal Act prevents regulations from being made which provide for the delegation of the Authority's functions or powers to a person who is not an officer of the CAA.

2.29 This amendment removes any legal doubt about the Authority's power to delegate certain air safety functions

under the Civil Aviation Regulations to industry bodies as has been done for at least the last 30 years.

2.30 This amendment will commence on the date of commencement of the Principal Act (1 July 1988) to remove any doubt about as to the Authority's power in the past to delegate certain air safety functions to industry bodies. No person will be disadvantaged by this retrospectivity.

#### **PART 4 - AMENDMENTS OF THE FEDERAL AIRPORTS CORPORATION ACT 1986**

2.31 The Bill makes two amendments to the *Federal Airports Corporation Act 1986* principally to:

- . enable the Commonwealth to transfer to the Corporation undeveloped sites which have been acquired by the Commonwealth for airport development and enable the Corporation to construct airports at those sites (this is achieved by introducing the concept of a "Federal airport development site" and clarifying that the FAC's functions include the power to construct airport infrastructure at such a site prior to its declaration as a Federal airport); and
- . clarify an earlier amendment that the Authority is liable to pay income tax.

#### **Clause 15 - Principal Act**

2.32 This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the *Federal Airports Corporation Act 1986*.

#### **Clause 16 - Interpretation**

2.33 This clause inserts a new definition of "Federal airport development site" in section 3 of the Principal Act.

#### **Clause 17 - Functions of the Corporation**

2.34 This clause amends section 6 of the Principal Act by inserting a new paragraph 6(aa) which provides that the functions of the FAC include establishing airports at Federal airport development sites. Legal advice indicated that, in the absence of a provision of this kind, the power in paragraph 9(2)(f) to construct, or arrange for the construction of, buildings and facilities at Federal airports or places that are to be Federal airports, might not extend to the establishment of airports.

### Clause 18 - Extent of functions of Corporation

2.35 Subsection 8(2) of the Principal Act delineates the division of responsibilities between the Department and the FAC, making it clear that the Department retains responsibility for the national planning of airports, including the investigation of and the need for additional Federal airports, their location and their development and establishment. Paragraphs 8(2)(f) and (g) provide that the functions of the FAC do not extend to:

- . the investigation of the need for additional Federal airports and the desirability of replacing existing Federal airports with new Federal airports; and
- . the preparation of plans for, and the establishment of, airports that are to be Federal airports.

2.36 This clause amends section 8 of the Principal Act by adding a new subsection 6(2A) which provides that nothing in paragraphs 8(2)(f) or (g) is to be taken to prevent the FAC from establishing airports at Federal airport development sites under paragraph 6(aa).

### Clause 19 - New sections 26A, 26B and 26C

2.37 This clause inserts three new sections into the Principal Act dealing with Federal airport development sites:

- . new section 26A empowers the Minister to declare a place to be a Federal airport development site, and spells out the requirements of such a declaration;
- . new section 26B empowers the Minister to make declarations varying a Federal airport development site, including a declaration that a place is to cease to be a Federal airport development site, and spells out the requirements of such a declaration; and
- . new section 26C clarifies that if a declaration under either section 25 or 26 of the Principal Act is made in respect of a place which is a Federal airport development site, that place ceases to be a Federal airport development site.

### Clause 20 - Vesting of land

2.38 This clause amends Section 28 of the Principal Act, which vests Commonwealth land forming a Federal airport or part of a Federal airport in the FAC, by adding 3 new subsections which essentially repeat the existing

requirements in respect of Federal airport development sites:

- . new subsection 28(3) provides that where Commonwealth land becomes a Federal airport development site the land is vested in the FAC without any conveyance, transfer or assignment;
- . new subsection 28(4) clarifies that the reference to land in subsection 28(3) includes all rights, title and interests in the land; and
- . new subsection 28(5) enables a declaration to exclude land from vesting in the FAC.

**Clause 21 - Corporation holds Federal airports, and Federal airport development sites, for the Commonwealth**

2.39 This clause amends Section 29 of the Principal Act, which provides that land forming a Federal airport or part of a Federal airport is held by the FAC for an on behalf of the Commonwealth, by repeating this requirement in respect of Federal airport development sites.

**Clause 22 - Transfer of assets**

2.40 This clause amends Section 32 of the Principal Act, which provides for the transfer to the FAC of Commonwealth-owned assets used at or in relation to a Federal airport, by inserting a new subsection 32(2A) which repeats this provision in respect of Federal airport development sites.

**Clause 23 - Exemption from taxation**

2.41 This clause amends section 45 of the principal Act by providing that the Corporation is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

2.42 Section 45 of the Principal Act was amended by paragraph 23(1)(b) of the *Federal Airports Corporation Amendment Act 1990* to provide that, with effect from 1 July 1991, the exemption in subsection 45(1) from liability to pay tax under Commonwealth law does not apply to income tax.

2.43 However, in view of paragraph 23(d) of the *Income Tax Assessment Act 1936*, which exempts public authorities constituted under any Act from income tax, such an amendment may not be sufficient to remove the FAC's exemption from the payment of income tax.

2.44 This clause inserts a new subsection 45(1AB) which provides that the FAC is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

2.45 This amendment will be deemed to have commenced on 1 July 1991, the date from which the FAC is paying income tax. While this amendment will have a retrospective effect, it will not impose new liabilities retrospectively as the FAC is already paying income tax.

#### Clause 24 - Annual report

2.46 This clause amends section 65 of the Principal Act by requiring the FAC to include, in its annual report, details of any income, expenditure or other financial transactions in relation to each Federal airport development site.

### PART 5 - AMENDMENTS OF THE NAVIGATION ACT 1912

2.47 The Bill contains a number of miscellaneous amendments to the Navigation Act 1912. The purposes of these amendments are principally to:

- . make specific provision for fishing fleet support vessels;
- . enable licensing of pilots for operation in certain parts of the Great Barrier Reef;
- . correct some minor drafting errors;
- . make some "housekeeping" amendments;
- . clarify the application of the Act; and
- . repeal some obsolete provisions.

#### Clause 25 - Principal Act

2.48 This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the Navigation Act 1912.

#### Clause 26 - Application of Act

2.49 This clause amends section 2 of the Principal Act, which defines the limits of the application of the Principal Act. The amendments will exclude from the operation of the Principal Act:

- . fishing fleet support vessels (unless a declaration is made under proposed new section 8AB); and
- . voyages between two ports in the same external Territory.

2.50 As the Principal Act stands at present, a voyage between two ports in the same external Territory is an overseas voyage. This is illogical and inconvenient, since a voyage between two ports in the same State is not an overseas voyage, and there is no reason why a voyage between two ports in the same external territory should be treated differently from one within a State. The Principal Act is therefore amended to remove such voyages from the class of overseas voyages.

2.51 The exclusion of fishing fleet support vessels is explained further below.

#### **Clause 27 - Interpretation**

2.52 This section introduces into the Principal Act a new definition of "fishing fleet support vessel", and a number of subsidiary definitions. A fishing fleet support vessel is a vessel which accompanies a fishing fleet and provides supplies of food and fuel, medical facilities, and storage for the catch for the fishing fleet.

2.53 Fishing vessels are generally not subject to the Principal Act unless making an overseas voyage. However, fishing fleet support vessels are presently trading ships for the purposes of the Principal Act, and they are thus subject to a different regime of control than the fishing vessels they serve. The insertion of proposed paragraph 2(1)(ba) will exclude fishing fleet support vessels from the operation of the Principal Act.

#### **Clause 28 - New section 8AB**

2.54 This clause inserts a new section 8AB which empowers the Minister to declare in writing that, notwithstanding section 2, the Principal Act applies to a fishing fleet support vessel which is not proceeding on an overseas voyage.

#### **Clause 29 - Regulations with respect to qualifications of masters, officers, seamen and pilots**

2.55 This clause amends section 15 of the Principal Act both to clarify the drafting and to confer on the Australian Maritime Safety Authority the power to set standards of competence for pilotage in the Great Barrier Reef Marine Park Area and issue licences to pilots. The Great Barrier Reef Marine Park Act 1975 was recently amended to provide for compulsory pilotage of certain kinds of ships in certain parts of the Great Barrier Reef Marine Park. The Principal Act is therefore to be amended to permit standards, licensing requirements, and conditions for pilots to be set by regulation.

**Clause 30 - Alterations etc. of ships and  
cancellation of certificates**

2.56 This clause re-makes an amendment to section 190A of the Principal Act intended to have been made by the *Transport Legislation Amendment Act 1988*.

2.57 Section 190A of the Principal Act provides for the giving of notice of alterations or damage to a ship. The intended amendment was to have provided increased penalties for non-compliance but was misdescribed in the 1988 Act, and accordingly has not been incorporated in the latest reprint of the Principal Act.

2.58 The amendments have been drafted afresh, taking the opportunity to modernise the style of the provisions as amended. The proposed amendments introduce no changes of substance beyond those made by the 1988 Act.

**Clause 31 - Offences with respect to subdivision  
load line marks**

2.59 This clause re-makes an amendment to section 191B of the Principal Act intended to have been made by the *Transport Legislation Amendment Act 1988*.

2.60 Section 191B of the Principal Act requires non-Safety Convention ships once marked with load lines to be kept so marked. The intended amendment was to have provided increased penalties for non-compliance but was misdescribed in the 1988 Act, and accordingly has not been incorporated in the latest reprint of the Principal Act.

2.61 The amendments have been drafted afresh, taking the opportunity to modernise the style of the provisions as amended. The proposed amendments introduce no changes of substance beyond those made by the 1988 Act.

**Clause 32 - Commencement of repeal of Part IX**

2.62 The former Part IX related to marine inquiries, and has now been replaced by regulations made under the authority of paragraph 425(1)(ea) of the Principal Act. The short title of the amending Act (the *Transport and Communications Legislation Amendment Act (No.2) 1989*) which repealed the former Part IX was incorrectly quoted in the Proclamation of the commencement of that Act, and the proposed section will remove any doubt as to whether the amending provision has come into force or not.

**PART 6 - AMENDMENTS OF THE PARLIAMENTARY  
PROCEEDINGS BROADCASTING ACT 1946**

2.63 The *Parliamentary Proceedings Broadcasting Act 1946* (the Principal Act) provides for the regulation of the broadcasting of proceedings of the Houses of Parliament.

2.64 Section 15 of the Principal Act prevents legal action being taken against a person for broadcasting by radio or broadcasting from a sound recording any portion of the proceedings of either House (and gives a similar protection for broadcasting by radio or television any portion of a joint sitting).

2.65 Section 16 of the Principal Act prevents a rule in section 117 of the *Broadcasting Act 1942*, which requires the identification of certain particulars when broadcasting political matter at the request of another person, from applying to broadcasting by radio or broadcasting from a sound recording any portion of the proceedings of either House (and broadcasting by radio or television any portion of a joint sitting).

2.66 This Part makes amendments to the Principal Act to:

- . give the same protection to the televising of Parliamentary proceedings as is currently provided for radio broadcasting; and
- . extend the exemption to the rule in section 117 of the *Broadcasting Act* to the televising of Parliamentary proceedings; and
- . extend the protections to the radio and television broadcasting of proceedings of Parliamentary Committees.

2.67 By virtue of clause 2(8), this Part is taken to have commenced on 21 August 1990. The amendments are given a retrospective commencement to coincide with the date on which the televising of the Senate began.

**Clause 33 - Principal Act**

2.68 This clause is an interpretive rule which provides that, in this Part, 'Principal Act' means the *Parliamentary Proceedings Broadcasting Act 1946*.

**Clause 34 - Interpretation**

2.69 Section 3 of the Principal Act provides definitions of terms used in, and rules for the interpretation of, the Principal Act.



2.70 This clause makes a minor amendment to subsection 3(3) of the Principal Act consequential upon the substitution of new sections 15 and 16 in that Act by the following clause.

#### Clause 35 - Substitution of new sections

2.71 This clause repeals sections 15 and 16 of the Principal Act and substitutes new sections.

2.72 Section 15 of the Principal Act prevents any action or proceeding, civil or criminal, from being brought against any person for broadcasting by radio or broadcasting from a sound recording (or in relation to a joint sitting, televising or televising from a recording) any portion of the proceedings of either House or a joint sitting).

2.73 New section 15 re-enacts this rule, but extends it to:

- . the televising of any part of the proceedings of both Houses;
- . the televising of any part of the proceedings of both Houses from a recording of the proceedings;
- . broadcasting by radio or televising any part of the proceedings of a Parliamentary Committee; and
- . broadcasting from a sound recording or televising from a recording any part of the proceedings of a Parliamentary Committee.

2.74 Section 117 of the *Broadcasting Act 1942* requires the ABC, the SBS and licensees and permit holders under that Act to identify certain particulars when broadcasting particular matter at the request of another person. Section 16 of the Principal Act prevents section 117 from applying in the same circumstances in which section 15 of the Principal Act applies.

2.75 New section 16 re-enacts the rule in the current section 16 and extends it to the same circumstances to which the rule in section 15 is being extended.

#### PART 7 - AMENDMENTS OF THE TRADE PRACTICES ACT 1974

2.76 These amendments will relieve shipping conferences from having to register schedules of freight rate charges, or variations of freight rate charges. The Principal Act presently requires shipping conferences to register

conference agreements, but it was never intended that this should apply to schedules of publicly available freight rate charges. As the Principal Act stands, it appears that shipping conferences must register a varying conference agreement each time the freight rate charges are varied. This would impose a heavy cost burden on the shipping conferences, and a significant administrative burden on the Government, without corresponding benefit to Australian exporters. The Act is therefore amended to relieve shipping conferences of the obligation to register freight rate charges, or variations of conference agreements which vary only the freight rate charged.

2.77 Other amendments will permit a fee to be charged for the variation of an ocean carrier agent's particulars, and increase the maximum level of fees which can be set by regulation. Some obsolete provisions will also be repealed.

#### **Clause 36 - Principal Act**

2.78 This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the Trade Practices Act 1974.

#### **Clause 37 - Interpretation**

2.79 This clause amends section 10.02 of the Principal Act by inserting a definition of the term "freight rate charges" as meaning the parts of a conference agreement that specify outward freight rates.

#### **Clause 38 - New section 10.17A**

2.80 This clause inserts a new section 10.17A, exempting the making of the freight rate charges of a conference agreement, and conduct which gives effect to them, from the operation of section 45 of the Principal Act. Section 45 of the Principal Act prohibits agreements or conduct which have the effect of substantially lessening competition. New section 10.17A is parallel to existing section 10.17.

#### **Clause 39 - New section 10.18A**

2.81 This clause inserts a new section 10.18A, exempting conduct of a party to a conference agreement from the operation of section 47 so far as the conduct gives effect to the freight rate charges of a conference agreement. Section 47 of the Principal Act prohibits "exclusive dealing".

2.82 Proposed section 10.18A will not have the effect of authorising conferences to engage in "product forcing", which is prohibited by subsections 47(6) and 47(7) of the Principal Act. "Product forcing" is a commercial practice

whereby a corporation agrees to supply goods and services, or gives more favourable terms, to a customer only if the customer agrees to acquire goods or services from the corporation; or whereby a corporation refuses to supply goods or services, or gives less favourable terms, to a customer unless the customer agrees to acquire goods or services from the corporation.

2.83 Proposed new section 10.18A is parallel to existing section 10.18.

**Clauses 40 and 41 - Copy of agreement to be filed with application etc**

2.84 These two clauses amend subsections 10.27(1) and 10.32(1), and insert new subsections 10.27(1A), 10.27(1B), 10.32(1A) and 10.32(1B).

2.85 The combined effect of all of these amendments is that when a shipping conference is filing documents for provisional registration (under section 10.27) or final registration (under section 10.32) of a conference agreement, the copies of the agreements, and any separate memorandum of the agreements setting out any terms not in writing, filed with the Registrar need not include the freight rate charges.

**Clause 42 - Application also to be made for registration of varying conference agreements**

2.86 This clause amends section 10.39 of the Principal Act.

2.87 If an application has been made for provisional or final registration of a conference agreement, and before registration is completed the agreement is varied, section 10.39 of the Principal Act requires application to be made for the provisional registration of the varying agreement.

2.87 The amendment eliminates the necessity to seek registration of the varying agreement where only the freight rate charges are varied.

**Clause 43 - Application to be made for registration of varying conference agreements**

2.89 This clause amends section 10.42 of the Principal Act.

2.90 If a registered conference agreement is varied, section 10.42 of the Principal Act requires application to be made within 30 days after the variation for the provisional registration of the varying agreement.

2.91 The amendment eliminates the necessity to seek registration of the varying agreement where only the freight rate charges are varied.

## PART 8 - OTHER AMENDMENTS

### Clause 44 - Other amendments

2.92 This clause provides that the Acts specified in the Schedule to the Bill are amended as specified in the Schedule. The Schedule provides for minor amendments to the *Australian Maritime Safety Authority Act 1990*, the *Federal Airports Corporation Act 1986*, the *Navigation Act 1912* and the *Trade Practices Act 1974*. These amendments correct minor drafting errors, make amendments consequential upon the substantive amendments made in the other Parts and make minor "housekeeping" amendments.

2.93 The amendment of the *Australian Maritime Safety Authority Act 1990* corrects a minor drafting error and will be deemed to have commenced on 1 January 1991.

2.94 The amendments of the *Federal Airports Corporation Act 1986* are consequential upon the substantive amendments in Part 4 of the Bill. They clarify that, with some minor exceptions, the Corporation has the same powers in relation to Federal airport development sites as it has in relation to Federal airports.

2.95 The amendments of the *Navigation Act 1912* will:

- . insert a definition of "Coordinated Universal Time", which has now internationally replaced Greenwich Mean Time;
- . repeal section 165, which prescribes the making of a report not required for any purpose under the Principal Act and is thus superfluous;
- . amend section 206T, to exempt fishing vessels from the requirement to carry certain safety equipment. At present they are required to do so because they are included in the definition of "cargo ship" in section 187A of the Principal Act. However, the international convention (the SOLAS Convention) which prescribes the safety equipment to be carried on board ship, the requirements of which are applied to Australian vessels by the Principal Act, does not apply to fishing vessels, and the Principal Act is therefore to be amended to exempt Australian fishing vessels from the requirements of the Convention;
- . amend section 221 to correct a drafting error;

- . amend subsection 267S(5) to delete a reference to the Minister which is no longer required now that the Principal Act is administered by the Australian Maritime Safety Authority;
- . substitute a reference to Coordinated Universal Time for a reference in section 269B to Greenwich Mean Time;
- . correct minor drafting errors in sections 405N and 405P; and
- . amend subsection 425(1) to ensure that the power to conduct marine inquiries, in line with Australia's obligations under the relevant international conventions, extends to Australian ships not otherwise subject to the Act.

2.96 The amendments to sections 221, 405N and 405P replace amendments formerly attempted but misdescribed in the amending Acts. The amendments will therefore take effect on the date of the former amendments. Industry has arranged its affairs on the basis of the Act as intended to have been amended, and consequently there will be no adverse effect on any person as a result of the retrospective commencement.

2.97 The amendment to section 425 will be taken to have come into force on 3 September 1990, the date on which Part IX of the Principal Act was repealed. This amendment is consequential on the repeal of Part IX (see paragraph 2.62 above) and corrects an oversight in the Act which repealed that Part. There will be no disadvantage suffered by any person as a result of the retrospectivity.

2.98 The amendments of the *Trade Practices Act 1974* will:

- . permit a charge to be made for the registration of changes to the particulars of an ocean carrier agent;
- . increase the maximum level of fees which may be set by regulation;
- . repeal sections 150, 151, 152 and 153 of the Principal Act which provided certain transitional provisions following on repeal of the former *Restrictive Trade Practices Act 1971* and the *Trade Practices Act 1965* and which have no present application.





