

1995

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

TRANSPORT LEGISLATION AMENDMENT
BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport,
the Honourable Laurie Brereton MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED



TRANSPORT LEGISLATION AMENDMENT BILL 1994

OUTLINE

The Bill amends the following Acts administered within the Transport portfolio:

Air Navigation Act 1920
Australian Maritime Safety Authority Act 1990
Australian National Railways Commission Act 1983
Civil Aviation (Carriers' Liability) Act 1959
Federal Airports Corporation Act 1986
Motor Vehicle Standards Act 1989
Navigation Act 1912
Protection of the Sea (Civil Liability) Act 1981
Protection of the Sea Legislation Amendment Act 1986
Ships (Capital Grants) Act 1987

The amendments do not introduce substantial new policy schemes, but contain provisions aimed at improving mechanisms for the administration and delivery of existing policies, as described below.

Air Navigation Act 1920

The Bill ensures that the articles of association of an Australian international airline (other than Qantas) conform with section 1109L of the Corporations Law in order that they might be eligible to participate in the Clearing House Electronic Subregister System (CHESS). Eligibility to participate in CHESS is currently also a prerequisite for obtaining listing and quotation of companies and their securities on the Australian Stock Exchange.

Australian Maritime Safety Authority Act 1990

The Bill provides for the Minister to notify the Authority of his or her views on the appropriate strategic direction for the Authority and the performance of its functions, establishes failure to provide information to the Minister or his or her nominee as a ground for termination of the appointment of members of the Authority, provides for the payment of interim dividends and empowers the Authority to appoint the Chief Executive Officer and Acting Chief Executive Officer.

The Bill also amends the Act to transfer the employment of staff from the *Public Service Act 1922* to the Authority. The Authority will determine the terms and conditions of service of its staff.

Australian National Railways Commission Act 1983

The Bill provides for the Minister to notify the Commission of his or her views on the appropriate strategic direction for the Commission and the performance of its functions, establishes failure to provide information to the Minister or his or her nominee as a ground for termination of the appointment of members of the Commission, provides for the payment of interim dividends and empowers the Commission to appoint the Managing Director and Acting Managing Director.

The Bill also amends the Act to allow for financial targets to be set as a specified rate of return on assets as well as a dollar figure.

Civil Aviation (Carriers' Liability) Act 1959

The Bill increases to \$500,000 the liability limits in respect of passenger death or injury for Australian international carriers (defined to include both scheduled and charter operations).

Federal Airports Corporation Act 1986

The Bill provides for the Minister to notify the Corporation of his or her views on the appropriate strategic direction for the Corporation and the performance of its functions, establishes failure to provide information to the Minister or his or her nominee as a ground for termination of the appointment of members of the Board of the Corporation, provides for the payment of interim dividends and empowers the Board to appoint the Chief Executive Officer.

Motor Vehicle Standards Act 1989

The Bill amends the Act to replace the existing regime of issuing compliance plates with a number of categories of identification plates. The Bill also empowers the Minister to approve the placing of identification plates on vehicles, provides for the notification of approvals and specifies particular offences relating to identification plates.

In addition, the Bill allows the Minister to incorporate into the national standards determined under the Act standards produced by recognised international standards organisations, including subsequent amendment to those international standards.

Navigation Act 1912

The Bill amends Part IV of the Navigation Act which provides for the inspection and certification of ships under the provisions of both the International Convention for the Safety of Life at Sea 1974 and the International Convention on Load Lines 1966. The amendments give effect to a resolution of the International Maritime Organisation permitting the early implementation of the system of ship survey and certification that is harmonised between both Conventions.

The Bill also removes a seaman's entitlement to wages where there is a duplication of a right to compensation under the *Seafarers Rehabilitation and Compensation Act 1992*.

The Bill also amends Part VII of the Act to incorporate the terms and principles adopted by the International Maritime Organisation in its International Convention on Salvage 1989. They replace the current provisions, which are based on pre-Federation United Kingdom legislation and the 1910 Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea. The proposed changes provide greater incentives for salvage, to encourage more timely salvage operations and assist in the protection of the environment.

The Bill provides an objective standard and prescribed forms of testing of the level of impairment by alcohol or any other drug for the purposes of section 386A which makes it an offence for the master of a ship or a member of the crew of a ship to be under the influence of alcohol or other drug to the extent that their capacity to carry out their duties is impaired.

In addition to the above amendments, the Bill removes sexist language from the Act.

Protection of the Sea (Civil Liability) Act 1981

The Bill removes sexist language from this Act.

Protection of the Sea Legislation Amendment Act 1986

The Bill will enable Australia to implement the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969. This Convention is designed to ensure that compensation is available to persons who suffer oil pollution damage as a result of maritime casualties involving oil carrying ships. The 1992 Protocol increases the liability limits and extends the scope of the Convention. It replaces an earlier Protocol adopted in 1994 which, because of particularly onerous entry into force requirements, is unlikely to enter into force internationally.

Ships (Capital Grants) Act 1987

The Bill amends the Act to define the procedure for demanding the repayment of an overpayment of a grant, and includes a definition of 'part of a grant year' for the purposes calculating the amount to be repaid.

FINANCIAL IMPACT STATEMENT

The financial accountability amendments to the *Australian Maritime Safety Authority Act 1990*, the *Australian National Railways Commission Act 1983* and the *Federal Airports Corporation Act 1986* provide for the payment of interim dividends by 15 June in the year to which the dividends relate. The final amount of revenue payable to the Commonwealth will not be increased by the provisions but an interim payment of those dividends will be received by the Commonwealth up to eight months earlier than is currently the case.

The remaining amendments are not expected to have a significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1 - Short title

1. Provides for the Act to be cited as the *Transport Legislation Amendment Act 1994*.

Clause 2 - Commencement

Subclause 2(1) provides that, subject to subclauses (2), (3), (4), (5) and (5A), the Bill commences on the day on which it receives the Royal Assent.

Subclause 2(2) provides that the amendments in Items 1, 4, 5, 14 and 15 of Part F of Schedule 1 (amendments to the *Motor Vehicle Standards Act 1989*) commence on a day or days to be fixed by Proclamation.

Subclause 2(3) provides that items 1 to 7 of Part B of Schedule 1 (amendments to the *Australian Maritime Safety Authority Act 1990*) Part C of Schedule 1 (amendments to the *Australian National Railways Commission Act 1983*) and Part E of Schedule 1 (amendments to the *Federal Airports Corporation Act 1986*) commence on the day on which the Bill receives the Royal Assent or on the same day as the *Financial Management and Accountability Act 1994* commences, whichever is the later.

Subclause 2(4) provides that items 4 and 28 to 36 of Part G of Schedule 1 (amendments to the *Navigation Act 1912*) commence on a day or days to be fixed by Proclamation, not earlier than the day on which the instrument of acceptance of the Protocol of 1988 relating to the International Convention on Load Lines, 1966, is lodged by Australia with the Secretary-General of the International Maritime Organisation.

Subclause 2(5) provides that items 5 to 12 and 14 to 27 of Part G of Schedule 1 (amendments to the *Navigation Act 1912*) commence on a day or days to be fixed by Proclamation, not earlier than the day on which the instrument of acceptance of the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, is lodged by Australia with the Secretary-General of the International Maritime Organisation.

Subclause 2(5A) provides that items 37 to 54 and item 58, of Part G of Schedule 1 (amendments to the *Navigation Act 1912*), relating to the implementation of the International Convention on Salvage, 1989, shall commence on a day to be fixed by Proclamation.

Subclause 2(6) provides that items 1, 4, 5, 14 and 15 of Part F of Schedule 1 (amendments to the *Motor Vehicle Standards Act 1989*) are to commence 6 months after the Bill receives the Royal Assent if they are not proclaimed within that period.

Subclause 2(7) provides that if items 37 to 54 and item 58, of Part G of Schedule 1 (amendments to the *Navigation Act 1912*), are not proclaimed within 6 months of the date of the International Convention on Salvage, 1989, entering into force for Australia, then they shall commence one day after the expiration of that 6 month period.

Clause 3 - Amendments of Acts

This clause provides that the Acts specified in Schedule 1 are amended as set out in Schedules 1 and 2.

Clause 4 - Transitional - Australian Maritime Safety Authority (AMSA) staff

Subclause 4(1) provides that a person employed by AMSA under Public Service Act terms and conditions prior to the commencement of amendments to section 55 of the *Australian Maritime Safety Authority Act 1990* (item 8 of Part B of Schedule 1) is to be taken to be appointed by AMSA on the same terms and conditions.

Clause 5 - Certain declarations, orders, regulations and approvals under the *Motor Vehicle Standards Act 1989* to continue in force

Clause 5 provides that certain declarations, orders, regulations and approvals made under the *Motor Vehicle Standards Act 1989* continue in force as if made under that Act as amended by this Bill.

Clause 6 - Application provision relating to the *Navigation Act 1912*

This clause provides that a power exercised by the Australian Maritime Safety Authority under section 329 of the *Navigation Act 1912*, as in force immediately before the repeal of Division 6 of Part VII of that Act, is taken, after that repeal, to have been exercised under section 314A of that Act as amended by this Bill.

Clause 7 - Application provision relating to the *Ships (Capital Grants) Act 1987*

This clause provides that amendments of sections 3 and 7 of the *Ships (Capital Grants) Act 1987* do not apply in respect of a ship which was under construction or subject to an arrangement for purchase prior to the commencement of those amendments.

Clause 8 - Application of amendments relating to appointments

This clause provides for the application of provisions relating to the appointment of certain officers in the Australian Maritime Safety Authority, Australian National Railways Commission and the Federal Airports Corporation.

They are to apply to the first appointment made after the commencement of the provisions and to subsequent appointments.

Clause 9 - Application of amendments relating to interim dividends

This clause provides for the application of interim dividends for the Australian Maritime Safety Authority, Australian National Railways Commission and the Federal Airports Corporation to be determined by the date of commencement of the new sections. If the sections commence on the first day of a financial year, the amendments apply to that financial year and subsequent financial years. Otherwise, the amendments apply to the first financial year that starts after commencement of the sections and to subsequent financial years.

Clause 10 - Removal of sexist language

This clause provides that the *Navigation Act 1912* and the *Protection of the Sea (Civil Liability) Act 1981* have been further amended to remove sexist language as set out in Schedule 3.

SCHEDULE 1

AMENDMENT OF ACTS

PART A

AMENDMENTS OF THE AIR NAVIGATION ACT 1920

The purpose of these amendments is to ensure that the articles of association of an Australian international airline (other than Qantas) conform with s 1109L of the Corporations Law. This section provides that "the issuing body in relation to a quoted security or quoted rights must not refuse or fail to register, or give effect to, a proper SCH (Security Clearing House) transfer of the security or right". It is necessary that Australian international airlines conform with this provision of the Corporations Law in order that they might be eligible to participate in the Clearing House Electronic Subregister System (CHESS). Eligibility to participate in CHESS is currently also a prerequisite for obtaining listing and quotation of companies and their securities on the Australian Stock Exchange.

The *Air Navigation Act 1920* (the Principal Act) will continue to require that the articles of association of an Australian international airline (other than Qantas) impose restrictions on ownership and issue of shares which result in foreign airlines having relevant interests in their shares. These requirements will be enforced by limitations on new share issues and by the directors of an Australian international airline (other than Qantas) having a power to disenfranchise or require the sale of shares.

The amendments do not apply to Qantas, which is subject to substantially similar requirements in the *Qantas Sale Act 1992*.

Item 1 - Paragraph 11A(2)(a)

This item omits the requirement in paragraph 11A(2)(a) of the Principal Act that the articles of association of an Australian international airline (other than Qantas) include restrictions on the transfer of shares so as to prevent foreign airlines having relevant interests in shares in that airline that exceed 35% of the total value of its issued share capital.

Item 2 - Paragraph 11A(2)(b)

This item omits the requirement in paragraph 11A(2)(b) of the Principal Act that the articles of association of an Australian international airline (other than Qantas) include restrictions on the transfer of shares so as to prevent an individual foreign airline having relevant

interests in shares in that airline that exceed 25% of the total value of its issued share capital.

Item 3 - Subparagraph 11A(2)(c)(iii)

This item makes a minor technical amendment in consequence of the removal of subparagraph 11A(2)(c)(iv).

Item 4 - Subparagraph 11A(2)(c)(iv)

This item removes subparagraph 11A(2)(c)(iv) which requires that the articles of association of an Australian international airline (other than Qantas) confer powers on the directors to refuse to register a transfer of shares so as to enforce the ownership and control requirements.

PART B

**AMENDMENT OF THE AUSTRALIAN MARITIME SAFETY
AUTHORITY ACT 1990**

Item 1 - Subsection 9(3)

This item provides that the Authority cannot be reimbursed following a redirection under new section 38A relating to the payment of interim dividends.

Item 2 - New Sections 9A and 9B

This item inserts a new section 9A into the Act which allows the Minister, from time to time, to notify the Authority of his or her views on the appropriate strategic direction of the Authority and the manner in which it should perform its functions.

Notices under this section would assist the Minister to exercise strategic control over the Authority without altering its functions or powers as provided by the Act.

Notices would allow the Minister to put to the Authority in general terms the Government's expectations as owner on, for example, the appropriate balance between its functions, its appropriate strategic direction at turning points in its history, the standard to which its individual functions should be performed (eg. world best practice) or the principles of its operations.

Notices would not affect the Authority's responsibility for business strategies and management.

The Authority is to take account of notices in performing its functions and preparing its corporate plan. To ensure transparency, the Authority is to summarise in its annual report the notices given in the year and the action taken during the year because of notices given under this section in that or earlier years.

This item also inserts a new section 9B into the Act which provides that the Minister may direct the Authority to give to his or her nominee, on request, documents or information relating to the operations of the Authority. The Authority must comply with such a direction.

A nominee is a person whose responsibilities or duties include advising the Minister about the performance and strategies of the Authority.

The section is intended to facilitate, for example, the provision of information to consultants employed by the Minister to review the Authority's operations. It is intended to provide protection for members of the Authority whose fiduciary duty might otherwise prevent the provision of information.

Particulars of directions given in a financial year are to be included in the Authority's annual report for that year.

Item 3 - New Subsection 21(3A)

This item inserts a new subsection 21(3A) into the Act which provides an additional ground on which the Minister may terminate the appointment of all or specified members of the Authority.

The Minister may terminate appointments if he or she is of the opinion that there has been a failure to comply with:

- . new section 9B, under which the Minister may direct the Authority to give documents and information to the Minister's nominee; or
- . designated sections of the *Commonwealth Authorities and Companies Act 1994* on preparing interim financial statements and supplying them to the Minister, notifying the Minister of significant events and keeping the Minister informed.

Item 4 - Subsection 38(3)

The opportunity has been taken to correct an incorrect cross-reference in subsection 38(3).

Item 5 - New Section 38A

This item inserts a new section 38A into the Act which provides for the payment of interim dividends by the Authority by 15 June in the financial year to which the dividend relates. The section mirrors, as far as possible, section 38 providing for the payment of dividends.

The payment of interim dividends reflects common commercial practice.

Items 6-8

The amendments to subsections 49(1) and 54(1) provide for the Chief Executive Officer and the Acting Chief Executive Officer to be appointed by the Authority itself rather than by the Minister after receiving a recommendation from the Authority.

The amendments reflect the intention that the Authority is to have absolute responsibility for its performance. The appointment of suitable persons to these posts is a key factor influencing performance.

The amendment to section 52 provides for the Chief Executive Officer to resign by writing to the Authority rather than the Minister.

Item 9 - Section 55

This item repeals section 55 of the Act and inserts a new section 55 which provides that the appointment and employment of the staff of the Australian Maritime Safety Authority will be under conditions that are determined in writing by the Authority.

Item 10 - Section 60

This item provides that directions under new section 38A, relating to the payment of interim dividends, be gazetted within 21 days.

PART C

**AMENDMENTS OF THE AUSTRALIAN NATIONAL RAILWAYS COMMISSION
ACT 1983**

Item 1 - New Sections 20A and 20B

This item inserts a new section 20A into the Act which allows the Minister, from time to time, to notify the Commission of his or her views on the appropriate strategic direction of the Commission and the manner in which it should perform its functions.

Notices under this section would assist the Minister to exercise strategic control over the Commission without altering its functions or powers as provided by the Act.

Notices would allow the Minister to put to the Commission in general terms the Government's expectations as owner on, for example, the appropriate balance between its functions, its appropriate strategic direction at turning points in its history, the standard to which its individual functions should be performed (eg. world best practice) or the principles of its operations.

Notices would not affect the Commission's responsibility for business strategies and management.

The Commission is to take account of notices in performing its functions and developing its objectives, strategies and policies. To ensure transparency, the Commission is to summarise in its annual report the notices given in the year and the action taken during the year because of notices given under this section in that or earlier years.

This item also inserts a new section 20B into the Act which provides that the Minister may direct the Commission to give to his or her nominee, on request, documents or information relating to the operations of the Commission. The Commission must comply with such a direction.

A nominee is a person whose responsibilities or duties include advising the Minister about the performance and strategies of the Commission.

The section is intended to facilitate, for example, the provision of information to consultants employed by the Minister to review the Commission's operations. It is intended to provide protection for members of the Commission whose fiduciary duty might otherwise prevent the provision of information.

Particulars of directions given in a financial year are to be included in the Commission's annual report for that year.

Item 2 - New Subsection 32(3A)

This item inserts a new subsection 32(3A) into the Act which provides an additional ground for terminating the appointment of all or specified Commissioners.

The Minister may propose termination if he or she is of the opinion that there has been a failure to comply with the new section 20B, under which the Minister may direct the Commission to give documents and information to the Minister's nominee.

Items 3-5

The amendments to subsections 36A(1), 36A(2) and 36F(1) provide for the Managing Director and the Acting Managing Director to be appointed by the Commission itself rather than by the Minister after receiving a recommendation from the Commission.

The amendments reflect the intention that the Commission is to have absolute responsibility for its performance. The appointment of suitable persons to these posts is a key factor influencing performance.

Items 6-7 - New Subparagraph 55(1)(a)(ia)

These items insert a new subparagraph 55(1)(a)(ia) into the Act which provides that the financial target for the Commission, currently expressed as a dollar amount, can also be expressed as a rate of return on the Commission's assets.

Item 8 - New Section 57A

This item inserts a new section 57A into the Act which provides for the payment of interim dividends by the Commission by 15 June in the financial year to which the dividend relates. The section mirrors, as far as possible, section 57 providing for the payment of dividends.

The payment of interim dividends reflects common commercial practice.

PART D

**AMENDMENTS OF THE CIVIL AVIATION (CARRIERS LIABILITY) ACT
1959**

The *Civil Aviation (Carriers' Liability) Act 1959* (the Principal Act) gives effect to the 1929 Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, the 1955 Hague Protocol to the Warsaw Convention and the 1961 Guadalajara Supplementary Convention (collectively referred to as "the Warsaw Convention"). Amongst other things, the Warsaw Convention limits the liability of carriers in respect of passenger death or injury.

The purpose of these amendments is to increase to \$500,000 (or its equivalent in SDRs) the liability limits in respect of passenger death or injury for Australian international carriers (defined to include both scheduled and charter operations). The Bill also makes related amendments to Part IV of the Principal Act which deals with the liability of domestic carriers and foreign international carriers operating into and out of Australia whose States of registry are not parties to the Warsaw Convention (non-Convention carriers).

The passenger liability limit for domestic and non-Convention carriers was increased to \$500,000 by regulation in October 1994.

Australia cannot impose higher liability limits in respect of foreign international carriers whose State of registry are parties to the Warsaw Convention.

Item 1 - New Section 11A

This item inserts a new section 11A into Part II of the Principal Act which deals with carriage to which the Warsaw Convention as amended by the Hague Protocol applies. New section 11A increases the internationally applicable liability limits in respect of passenger death or injury for Australian international carriers to a minimum of 260,000 SDRs. This amount is approximately equivalent to \$500,000. These liability limits may be increased either by regulation or by the carrier and the passenger contracting for a higher level.

Item 2 - New Section 21A

This item inserts a new section 21A (substantially identical to new section 11A) into Part III of the Principal Act which deals with carriage to which the Warsaw Convention applies.

Item 3 - Subsection 26(1) - definition of "domestic carrier"

This item inserts a new definition of "domestic carrier" into subsection 26(1) of the Principal Act. It is intended that this definition capture foreign aircraft operating domestically within Australia.

Item 4 - Subsection 31(1)

This item replaces the expression "carrier" with "domestic carrier". This has the effect of separating the liability regimes applying to domestic carriers (expressed as \$500,000) and non-Convention carriers (expressed as 260,000 SDRs).

Items 5 and 5 - Paragraphs 31(1)(a) and 31(1)(b)

These items amend subsection 31(1) of the Principal Act to provide that the liability of domestic carriers is limited to \$500,000 unless increased by regulation or by the carrier and the passenger contracting for a higher level. The passenger liability limit for all Part IV carriers were increased to \$500,000 by regulation in October 1994. This amendment ensures that liability of domestic carriers will never be limited to less than \$500,000.

Item 7 - Paragraph 31(1)(c)

This item makes a minor drafting adjustment.

Item 8 - New subsection 31(1A)

Item 8 inserts a new subsection 31(1A) which provides that the liability of non-Convention carriers is limited to 260,000 SDRs. New subsection 31(1A) is substantially

identical with subsection 31(1) as amended by items 4-6 above.

PART E

AMENDMENTS OF THE *FEDERAL AIRPORTS CORPORATION ACT 1986*

Item 1 - New Subsection 19(2C)

This item inserts a new subsection 19(2C) into the Act which provides an additional ground on which the Minister may terminate the appointment of all or specified members of the Board of the Corporation (other than the Chief Executive Officer).

The Minister may terminate appointments if he or she is of the opinion that there has been a failure to comply with the new section 42B, under which the Minister may direct the Corporation to give documents and information to the Minister's nominee.

Existing section 58B provides that the Chief Executive Officer holds office during the Board's pleasure.

Item 2 - New Sections 42A and 42B

This item inserts a new section 42A into the Act which allows the Minister, from time to time, to notify the Corporation of his or her views on the appropriate strategic direction of the Corporation and the manner in which it should perform its functions.

Notices under this section would assist the Minister to exercise strategic control over the Corporation without altering its functions or powers as provided by the Act.

Notices would allow the Minister to put to the Corporation in general terms the Government's expectations as owner on, for example, the appropriate balance between its functions, its appropriate strategic direction at turning points in its history, the standard to which its individual functions should be performed (eg. world best practice) or the principles of its operations.

Notices would not affect the Board's responsibility for business strategies and management.

The Corporation is to take account of notices in performing its functions and developing its objectives, strategies and policies. To ensure transparency, the Corporation is to summarise in its annual report the notices given in the year and the action taken during the year because of notices given under this section in that or earlier years.

This item also inserts a new section 42B into the Act which provides that the Minister may direct the Board to give to his nominee, on request, documents or information relating to the operations of the Corporation. The Board must comply with such a direction.

A nominee is a person whose responsibilities or duties include advising the Minister about the performance and strategies of the Corporation.

The new section is intended to facilitate, for example, the provision of information to consultants employed by the Minister to review the Corporation's operations. It is intended to provide protection for members of the Board whose fiduciary duty might otherwise prevent the provision of information.

Particulars of directions given in a financial year are to be included in the Corporation's annual report for the year.

Item 3 - New Section 46A

This item inserts a new section 46A into the Act which provides for the payment of interim dividends by the Corporation by 15 June in the financial year to which the dividend relates. The section mirrors, as far as possible, section 46 providing for the payment of dividends.

The payment of interim dividends reflects common commercial practice.

Item 4 - Subsection 58(1)

This item amends subsection 58(1) of the Act to provide for the Chief Executive Officer to be appointed by the Board itself rather than by the Minister after receiving a recommendation from the Board.

This amendment reflects the intention that the Board is to have absolute responsibility for the performance of the Corporation. The appointment of a suitable person to this post is a key factor influencing performance.

Existing section 59 provides for the Board to appoint an Acting Chief Executive Officer.

PART F

AMENDMENTS OF THE MOTOR VEHICLE STANDARDS ACT 1989

Item 1 - Subsection 5(1) - definition of "compliance plate"

The definition of compliance plate in subsection 5(1) is being deleted. The definition will be included in the category of plates determined in section 10 as amended.

Item 2 - Subsection 5(1) - definition of "imported vehicle"

The definition of "imported vehicle" is being clarified to apply to road vehicles imported on or after 1 July 1989. There is no change in its effect from that of the existing definition.

Item 3 - Subsection 5(1) - definition of "road motor vehicle"

The definition of "road motor vehicle" is being amended to omit the power of the Minister to declare vehicles not to be road motor vehicles for the purposes of the Act. This power is being transferred to the proposed section 5B.

Item 4 - Subsection 5(1) - definition of "nonstandard"

The definition of "nonstandard" is being amended to clarify that it means vehicles or components that do not meet national standards determined under section 7. The definition does not include vehicles with minor and inconsequential non compliance for which approval has been given under proposed sub section 10A(2) to fix an identification plate.

Item 5 - Subsection 5(1) - definition of "road vehicle"

The definition of "road vehicle" is amended to include partly completed road vehicles. This will allow plates to be placed on vehicles at different stages of their manufacture. In order to be consistent with proposed section 5B the definition does not include those vehicles excluded from the definition by the Minister.

Item 6 - Subsection 5(1) - definition of "standard vehicle"

To be consistent with the amended definition of "nonstandard" the definition of a "standard vehicle" is amended to include vehicles with minor and inconsequential non compliance for which approval has been given under proposed sub section 10A(2).

Item 7 - Subsection 5(1)

New definitions of "identifications plate" and "placement" are being included in section 5 in order to be consistent with other amendments to the Act.

"Identification plate" means a plate indicating the status of a vehicle in relation to the national standards. This definition is an element of the improved vehicle certification system, for which provision is made in the proposed sections 10 to 10B (inserted by item 14), will enable a range of plates to be used, instead of the traditional compliance plate.

The definition of placement recognises that plates may be fixed to road vehicles in a variety of ways, including engraving, not just by physical attachment of a plate.

Item 8 - Subsection 5(2)

The existing subsection 5(2) which provides for Ministerial declarations of vehicles which are excluded from the definition of road motor vehicle to be disallowable instruments, is being omitted. The requirement for disallowance however, is maintained however, under proposed section 5B.

Item 9 - New Sections 5A and 5B

This item inserts proposed sections 5A and 5B.

Proposed section 5A clarifies that the provisions of the Act apply to types and classes of vehicle and individual vehicles, unless otherwise specified.

Proposed section 5B allows the Minister to determine that classes of vehicles are not "road vehicles" for the purposes of the Act (new subsection 5B(1)). As outlined under item 8, above, this provision effectively replaces subsection 5(2), including the requirement for Parliamentary scrutiny and disallowance. In addition, the Minister may declare that certain specified vehicles are not "road vehicles" (new subsection 5B(2)). Such declarations must be notified in the Gazette.

Item 10 - Section 7

Section 7 is being amended to provide for national standards to be made by determinations instead of by orders as in the existing provision. This makes the section consistent with the remainder of the Act.

Item 11 - New Section 7A

Proposed paragraph 7A(1)(a) allows the Minister to incorporate, by reference into the national standards determined under the Act, documents that set out standards produced by the Economic Commission for Europe,

the International Electrotechnical Commission, the International Organisation for Standardisation or the Standards Association of Australia or by any other organisation that is determined by the Minister. Such determinations are disallowable instruments. Paragraph 7A(1)(b) allows for the automatic inclusion in the national standards of all subsequent amendments to the standards which are incorporated by reference.

Item 12 - Subsection 9(1)

Section 9 in its present form only applies to manufacturers and importers. The amendment removes this restriction allowing the determination of procedures in relation to testing, inspections and record keeping which will apply to both private sector operators and the administrations of the legislation.

Item 13 - Heading to Part 3

The Heading of Part 3 is changed to "Certification and Approval" to more accurately reflect the coverage of these provisions.

Item 14 - New Sections 10, 10A and 10B

This item repeals section 10 of the Act and replaces it with new sections 10, 10A and 10B which expands the previous section 10, which only dealt with compliance plates.

Proposed subsection 10(1) provides that procedures and arrangements for the placement of plates on vehicles or vehicle components may be determined by the Minister. Previously such arrangements were made by regulation. It should be noted however that such Ministerial determinations remain subject to Parliamentary scrutiny and disallowance (proposed subsection 10(3)).

Proposed subsection 10(2) provides that the matters which may be the subject of a Ministerial determination under subsection 10(1) include, in particular:

- the categories of identifications plates (paragraph 10(2)(a)) and the content and form of identification plates (paragraph 10(2)(b)). There may be a wide range of identification plate in contrast to the existing section which only allows for compliance plates. Compliance plates will be a category of identification plate;
- the arrangements may specify the information and technical data which has to be supplied to establish compliance eg. completion of certain tests to prove that a vehicle meets a standard (paragraph 10(2)(c))
- the arrangements for the manufacture and supply of plates (paragraph 10(2)(f)) and the method of the

placement of plates on vehicles (paragraph 10(2)(g)).

These requirements are currently contained in administrative circulars and their inclusion in legislative instruments which are subject to external scrutiny will allow greater access to the law and improve administration.

Proposed section 10A replaces the existing subsections 10(2) and 10(3). Subsection 10A(1) provides the Minister must approve the placement of identification plates on vehicles which comply with the national standards. Subsection 10A(2) allows vehicles and components which do not comply with the national standards to be fitted with an identification plate if the Minister is satisfied that the non compliance is only in minor and inconsequential respects.

Subsection 10A(3) allows for the Minister to approve the placement of plates on vehicles which do not comply with the national standards in other than minor or inconsequential respects, if the Minister is satisfied that those vehicles or components are safe to use under specified conditions.

Subsection 10A(4) provides that authority for the placement of compliance plates may be subject to written conditions determined by the Minister.

Under the proposed subsection 10B(1) the Minister is obliged to specify the conditions in writing where a plate has been fixed under the above sections subject to any conditions.

Proposed subsection 10B(2) provides that if approval to place identification plates is given under subsections 10A(2) or 10A(3) in respect of noncomplying vehicles or components, a statement must be provided specifying the national standards which are not satisfied and any conditions, including the reasons for the imposition of such conditions, that have to be met.

Proposed subsection 10B(4) provides that an identification plate placed on a vehicle under subsection 10A(3) (ie. nonstandard vehicles with other than minor noncompliance) section must state that the vehicle is non standard and that conditions are applicable. This is contrast to the existing requirements which only allow for a standard compliance plate to be fixed, allowing the view to be formed that the vehicle does comply with national standards.

Item 15 - Section 11

The section is being amended to refer to identification plates instead of compliance plates.

Item 16 - Section 12

This item repeals section 12 of the Act and inserts a new section 12 which provides for a number of particular offences relating to dealings with identification plates. These include:

- providing false or misleading information in an application for authority to place an identification plate on a vehicle or component (paragraph 12(a));
- manufacturing or supplying a plate without authority (paragraph 12(b));
- placing a device purporting to be an identification plate, or an identification plate on a vehicle or component without authority (paragraph 12(c) and (d) respectively); and
- placing a plate on a vehicle or component in no breach of relevant conditions (paragraph 12(e)).

Item 17 - Section 13

This provision is a technical amendment to section 13 to make it consistent with amendments to other sections.

Item 18 - New Section 13A

New section 13A creates a number of offences to be inserted into the Act. Essentially these offences replace those provided for by section 16 which is repealed (item 24 below).

Subsection 13A(1) provides that a person must not knowingly or recklessly modify a standard vehicle in a way that makes it non standard.

Subsection 13A(2) prohibits a person from handing over a standard vehicle to a person for modification in a way that makes that vehicle non standard.

Subsection 13A(3), however, provides that a person may modify or hand over a vehicle for modification in such a way that makes the vehicle non standard in prescribed circumstances or with the written approval of the Minister. Such approval may be subject to written conditions determined by the Minister (subsection 13A(4)).

Items 19 and 20 - Subsection 14(1) and paragraph 14(1)(b)

These items make technical amendments to section 14 to make the terminology and numbering of that section consistent with the remainder of the Act.

Item 21 - Subsection 14(2)

This provision omits subsection 14(2) from the Act. In effect it is replaced by new section 14A.

Item 22 - New Sections 14A and 14B

This provision inserts new section 14A which provides an exception to the prohibition against supply to the market of nonstandard vehicles in section 14 in prescribed circumstances or where the supply of the vehicle has the written approval of the Minister. Subsection 14A(2) provides that any approval may be subject to written conditions determined by the Minister.

New section 14B provides that a person may supply a new vehicle to the market even though it does not comply with a local standard as defined. In essence this provision relocates the previous section 21, which is now repealed (item 30 below).

Items 23 to 30

These provisions make technical amendments to sections 15, 17A, 18, 19, 20 and 21 to repeal sections which are no longer necessary, and substitute relevant terms for superseded references (ie. identification instead of compliance plates).

Item 31 - Section 23

Section 23, which provides for delegation by the Minister, is being amended to exclude from the range of functions and powers under the Act that may be delegated to the Administrator (an officer of the Department) the following powers and functions:

- . the power to determine that vehicles of a particular class or description are not road motor vehicles under new subsection 5B(1);
- . the power to determine national standards under section 7;
- . the power to determine organisations whose documents may be incorporated by reference under new section 7A;
- . the procedures and arrangements for determining whether road vehicles or components comply with the Act under section 9;

- . the power to determine procedures and arrangements for the placement of identification plates under section 10 as amended; and
- . the power under section 11 to cancel an authority.

Items 32 to 35

These provisions amend sections 24, 27, 28 and 29 to replace superseded references with terms consistent with the remainder of the Act. In particular references to orders are replaced with references to determinations and references to compliance plates are omitted and replaced with identification plates.

Items 36 and 37

These provisions amend section 31 and subsection 34(3) by making technical changes to ensure these provisions are consistent with current drafting practice.

Items 38 to 40

These provisions amend section 37 and 39 by substituting outdated references to compliance plates and regulations with references to identification plates and determinations where appropriate.

Item 41 - Paragraph 42(c)

This amendment substitutes ten penalty units for a reference to a fine of \$1,000 consistent with current drafting practice.

PART G

AMENDMENTS OF THE NAVIGATION ACT 1912

Item 1 - Subsection 83(2)

This clause corrects a previous drafting error in subsection 83(2).

Item 2 - New Subsections 132(6A)-(6D)

Section 132 provides an entitlement to full wages for a seafarer who is left on shore because of illness, hurt or injury until the seafarer recovers or until the expiration of 3 months, whichever occurs first. This entitlement currently applies whether the illness, hurt or injury would be covered by workers compensation benefits or, in other employment, by award-based sick leave entitlements.

The *Seafarers Rehabilitation and Compensation Act 1992* (the SRC Act) which commenced on 24 June 1993 provides incapacity benefits equivalent to normal earnings for the

first 45 weeks for incapacity. Accordingly, in monetary terms, the benefits payable under the SRC Act are now equivalent to the benefits payable under section 132. The purpose of the amendments to section 132 is to ensure that a seafarer who suffers an injury arising out of, or in the course of, employment receives benefits under the SRC Act. Wages benefits under section 132 would then be restricted to seafarers who suffer illness, hurt or injury from other causes.

The new subsection 132(6A) provides that a seafarer has no entitlement to wages under section 132 if the seafarer is entitled to compensation under Division 3 of Part 2 of the SRC Act (that is, the seafarer is entitled to weekly benefits under the SRC Act).

New subsection 132(6B) provides that an injured seafarer may be taken to have an entitlement to weekly benefits under the SRC Act even though the seafarer has neither given notice of an injury nor made a claim under the Act. New subsection 132(6C) provides that if, in accordance with new subsection 132(6A), the owner (this term includes the operator) of the ship considers that an injured seafarer is entitled to weekly benefits under the SRC Act and consequently intends not to pay wages to the seafarer, the owner must advise the seafarer accordingly. New subsection 132(6D) provides that a notice of the owner's intention to not pay wages is not to be taken as a determination by the owner that the seafarer is entitled to compensation under the SRC Act.

Because benefits are not payable under the SRC Act unless a claim for compensation is made, the effect of the new subsections will be to encourage seafarers with compensable injuries to make early notifications and claims under the SRC Act.

If a seafarer has made a claim under the SRC Act but is subsequently unable to establish an entitlement under that Act (because of illness, hurt or injury was determined as not being of a compensable nature), the entitlement to wages under section 132 would then automatically apply, backdated to when the seafarer left the ship because of illness, hurt or injury.

Item 3 - New Section 172A

This item inserts new section 172A that requires the master of a ship to report to the Australian Maritime Safety Authority the making of an entry in the official log book relating to an occurrence under the code of conduct in the prescribed manner and within a prescribed time.

The amendment is designed to ensure that all serious breaches of discipline are reported in a timely manner.

Item 4 - Subsection 187A(1) - definition of "the Load Line Convention"

This item amends subsection 187A(1) in relation to the definition of the International Convention on Load Lines 1966 so that a reference to the Convention in the Act will include the provisions of the 1988 Protocol to that Convention that have been accepted by Australia.

Item 5 - Subsection 187A(1) - definition of "the Safety Convention"

This item amends subsection 187A(1) in relation to the definition of the International Convention for the Safety of Life at Sea 1974 so that a reference to the Safety Convention in the Act will include the provisions of the 1978 and 1988 Protocols to that Convention that have been accepted by Australia.

Item 6 - Subsection 187A(1) - definition of "cargo ship safety radiotelegraphy certificate"

This item amends subsection 187A(1) to remove the definition of a cargo ship safety radiotelegraphy certificate as such certificates are no longer issued.

Item 7 - Subsection 187A(1) - definition of "cargo ship safety radiotelephony certificate"

This item amends subsection 187A(1) to remove the definition of a cargo ship safety radiotelephony certificate as such certificates are no longer issued.

Item 8 - Subsection 187A(1) - definition of "the Protocol of 1978 relating to the Safety Convention"

This item amends subsection 187A(1) to remove the separate definition of the Protocol of 1978 to the Safety Convention consequent to the amendment of the definition of the Safety Convention in item 5 above.

Item 9 - Subsection 187(1)

This item amends subsection 187A(1) to insert definitions of "cargo ship safety certificate"- a new certificate to be issued under the harmonisation provisions, and "cargo ship safety radio certificate"- that will replace the two types of radio certificates mentioned in items 6 and 7 above.

Item 10 - Section 187E

This item amends section 187E by omitting reference to the 1978 Protocol consequential to the amendment in item 8 above.

Item 11 - New Section 190AB

This item inserts a new section 190AB to empower the Australian Maritime Safety Authority to publish in a manner prescribed, information about a ship that relates to any inspection or survey of that ship.

The new section will enable AMSA to substantially meet the recommendations on publication in the Report to the House of Representatives Standing Committee on Transport and Communications and Infrastructure entitled "Ships of Shame".

Item 12 - Section 196

This item repeals section 196 of the Act and inserts a new section 196 which removes the requirement that the various certificates required under the Act must be exhibited on the ship. Such certificates now need only to be made available for inspection on board the ship.

Item 13 - Subsection 206C(2)

This item omits an out of date reference to subsection 206C(2) and inserts reference to section 25C of the *Acts Interpretation Act 1901* in relation to the requirements under the Act to comply with prescribed forms.

Items 14 and 15

These items amend Sections 206F and 206G to reflect the introduction of the cargo ship safety radio certificate described in item 9 above.

Item 16 - New Section 206GA

This item inserts a new section 206GA that provides for the issue of a cargo ship safety certificate to a ship that is taking advantage of the harmonised system of inspection and certification - the one certificate replacing a previous need to obtain three separate certificates.

Items 17 to 19

These items amend section 206L to permit another country to which the Safety Convention applies to issue, to authorise the issue of, to endorse or to authorise the endorsement of a certificate in respect of a ship registered in Australia and reflects the additional options now available under the provisions of the Safety Convention.

Items 20 to 23

These items amend section 206M to provide that a country to which the Safety Convention applies may request the Australian Maritime Safety Authority to issue, to

authorise the issue of, to endorse or to authorise the endorsement of a certificate required to be held by a ship registered in that country and reflects the additional options now available under the provisions of the Safety Convention.

Item 24 - Section 206N

This item repeals section 206N of the Act and inserts a new section 206N which provides that a certificate remains in force for the period specified thereon. In order to adequately reflect the revised rules in the Convention in relation to the duration of certificates, the detailed requirements will be provided in regulations.

Item 25 - Section 206P

This item repeals section 206P of the Act and inserts a new section 206P which provides for the extension of certificates. In order to adequately reflect the revised rules in the Convention relating to the extension of certificates, the detailed requirements will be provided in regulations.

Item 26 - Section 206Q

This item repeals section 206Q of the Act and inserts a new section 206Q which provides that the master of a ship must ensure that any certificates issued under the provisions of the Safety Convention must be on board the ship and available for inspection at any reasonable time.

The amendment reflects a change to the Convention requirements that previously required certificates to be exhibited on the ship as well.

Item 27 - Subparagraph 206T(1)(b)(iii)

This item omits subparagraph 206T(1)(iii) and inserts a new subparagraph 206T(1)(b)(iii) which provides for the "cargo ship safety radio certificate".

Items 28 and 29

These items amend subsection 218(1) and paragraph 222(a) respectively to reflect the change of name of the load line certificate in the Load Line Convention.

Item 30 - Subsection 224(1)

This item replaces subsection 224(1) and provides for the revised rules in the Load Line Convention in relation to the duration of certificates. The detailed requirements will be provided in regulations.

Item 31 - Subsection 225(1)

This item repeals subsection 225(1) to reflect the change in the Load Line Convention removing the requirement for certificates to be exhibited on the ship.

Item 32 - Subsection 225(2)

This item amends subsection 225(2) to bring the penalty provision into line with current policy.

Item 33 - Paragraph 226(1)(a)

This item amends paragraph 226(1)(a) to reflect the change of name of the load line certificate in the Load Line Convention.

Item 34 - Subsection 226(1)

This item amends subsection 226(1) to provide that the Australian Maritime Safety Authority may issue, authorise the issue of, endorse or authorise the endorsement of a load line certificate at the request of a Load Line Convention country and reflects the additional options now available under the provisions of the Load Line Convention.

Item 35 - Subsection 226(2)

This item amends subsection 226(2) to provide that in respect of an Australian ship to which the Load Line Convention applies the Australian Maritime safety Authority may request the government of a Load Line Convention country to issue or endorse an international load line certificate. This amendment reflects the additional options now available under the provisions of the Load Line Convention.

Item 36 - Subsection 227(1)

This item amends subsection 227(1) to reflect the change of name of the load line certificate in the Load Line Convention.

Item 37 - Section 294 - definition of "salvage"

This item is self-explanatory. The term "salvage" has been replaced by a new term inserted under item 34B.

Item 38 - Section 294

The current term "salvage" refers to expenses incurred in the performance of salvage services. This is replaced by the term "salvage operation" which describes an act or activity undertaken to assist a vessel or other property in danger. The new definition distinguishes between the payment for salvage and the provision of salvage services.

Key terms and definitions have been transferred from the Convention. They are "damage to the environment", "natural resources", "payment", "vessel" and "property". The definition of "payment" clarifies the basis for calculating the reward for salvage operations.

"Vessel" is defined to distinguish it from a wreck for the purposes of salvage operations.

A definition of "property" is included to clearly separate the items to be covered by Division 3 and other items not covered in that Division.

Other new terms, "Organisation", "Salvage Convention", "common understanding concerning Articles 13 and 14 of the Salvage Convention" and "Secretary-General" are self-explanatory.

Item 39 - Section 294

This item is self-explanatory. (Item 43 explains the amendment to section 315).

Items 40 and 41 - Repeal of Division 4 (Procedure in Salvage)

These items repeal Division 4 to allow salvage provisions to be incorporated within Division 3.

Item 42 - New Section 314A

This item inserts a new section 314A dealing with the removal of wrecks, which has been transferred from Division 6 without change, in order to bring the provisions covering wrecks together.

Item 43 - Sections 315 and 317

This item repeals sections 315 and 317 and inserts new sections 315 to 317. New section 315 replaces Division 4 by incorporating the principle provisions of the 1989 Convention on Salvage. It outlines the role and duties of the salver, owner and master of a vessel and establishes the conditions for fixing the reward, including apportionment between salvors and arrangements for special compensation.

Provisions dealing with the salvage of persons which currently form part of Section 315 are replaced by Article 16 of the Convention.

A new section 316 has been added to exclude the application of the Division (ie. Salvage) in certain instances, namely:

- . off-shore industry fixed structures and industry mobile units that are on location and engaged in the exploration or production of natural resources;
- . where salvage operations take place in inland waters and involve vessels which are of inland navigation;
- . where salvage operations take place in inland waters and do not involve a vessel as defined (item 38 above, refers); or
- . where salvage operations involve property that is maritime cultural property of prehistoric, archaeological or historical interest and is situated on the seabed.

The section also allows State and Territory Governments to separately address issues of salvage in areas subject to their jurisdiction such as inland waterways.

New section 317 enables the salvage provisions to apply to a wide variety of vessels.

Item 44 - Subsection 317A(2)

Section 317A(2) is amended to omit the upper monetary penalty of \$20,000.

Item 45 - Subsection 317A(3)

This item is self-explanatory.

Item 46 - Division 4

Division 4 is repealed and new provisions inserted in Section 315 - (see item 43 above).

Item 47 - Division 6

Division 6 is repealed and its provisions transferred to Section 314A.

Item 48 - Heading to Division 7

This item is self-explanatory

Item 49 - Section 329A

The term "postal article" is being replaced under item 51 (below) by a more precise definition.

Item 50 - Subsection 329(1)

This item omits references to Division 6 and parts of Division 4 to effect the restructure of the salvage and wreck provisions under new Divisions.

New terms designed to clarify the salvage provisions replace earlier references.

Item 51 - Section 329B

Section 329B(3) provides a clearer definition of 'article in the course of post', replacing the definition of 'postal article' under section 329A.

Items 52 to 54

These items introduce new terms, which provide more accurate descriptions of aspects of salvage.

Items 55 - New Section 385

This item inserts a new section 385 into the Act that provides definitions of terms used in sections 386B to 386J inclusive.

Item 56 - New Sections 386B-386J

This item inserts new sections 386B to 386J inclusive.

Section 386B provides that a master or seaman while on board a ship who exceeds a specified blood alcohol limit is guilty of an offence.

There are separate blood alcohol limits for persons on duty (.04 grams of alcohol per 100 millilitres of blood) and for persons not on duty (.08 grams of alcohol per 100 millilitres of blood) - subsection 386B(2).

The blood alcohol content of a person may be determined by a test of the person's breath by an approved operator using a breath analysis device in a manner prescribed or by analysis of the person's blood or urine by an approved laboratory - Subsection 386B(3).

Section 386C provides that a person authorised by the Australian Maritime Safety Authority may require, by notice in writing, a master or seaman to undergo a medical examination, provide a breath sample or provide a urine or blood sample where the authorised person has reasonable cause to believe that the capacity of the master or seaman to perform their duties is impaired because of alcohol or other drugs or that the master or seaman exceeds the specified blood alcohol content.

Section 386D provides that a person is guilty of an offence if the person fails to provide a breath sample as required or fails/refuses to provide a sample in accordance with the reasonable directions of the operator of a breath analysis machine.

Section 386E provides that a person who refuses to submit to a medical examination, fails or refuses to provide a urine sample to a medical practitioner, or to permit a

blood or urine sample to be taken by a medical practitioner has committed an offence. The section provides a defence to an offence where refusal is on the grounds of religious or other conscientious grounds or on medical grounds.

Section 386F provides that a person required to undergo a test or medical examination or to provide a sample shall not prior to undertaking that requirement consume alcohol or any drug. It is a defence to an offence under this section where the drug taken was taken on the grounds of a reasonable belief that failure to do so could endanger life or health of the person concerned or was required by prescription issued by a medical practitioner.

Section 386G deals with the position of a master or seaman who is taking medication of any kind and intends to come on duty. It is the responsibility of the master or seaman to take reasonable steps to be satisfied that the drug will not adversely affect their ability to undertake duties. Alternatively such a master or seaman may make a declaration to a supervisor regarding the drug and the supervisor must not permit the master or seaman to perform any duties if the supervisor reasonably knows that the capacity of the master or seaman will be impaired.

Section 386H provides that it is an offence to permit or require (except on the grounds of necessity) a person to undertake or to continue duty where the person's ability is impaired by alcohol or drugs.

Section 386J provides power to make regulations:

- . To approve instruments to measure the alcohol present in a person's blood
- . To approve operators of breath analysis machines and to prescribe the procedures to be undertaken in conducting a test
- . To approve persons to whom a declaration may be given, and
- . To approve a laboratory to undertake analysis of blood or urine samples.

Item 57 - Subsection 396(1)

This item clarifies that the limitation period commences from the time of the termination of the salvage operation.

Item 58 - After Schedule 8

This item includes the terms of the International Convention on Salvage, 1989, and the Common Understanding Concerning Articles 13 and 14 of the International

Convention on Salvage, 1989, as Schedule 9 to the Navigation Act 1912.

PART H

AMENDMENTS OF THE PROTECTION OF THE SEA LEGISLATION AMENDMENT ACT 1986

Items 1 to 3

These items amend the various definitions in sections 2 and 36 to include, where necessary, a reference to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969.

Item 4 - Schedule 8

The Act is amended by including a new schedule which contains the text of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969.

The text of the Protocol is contained in Schedule 2 of the Bill.

PART J

AMENDMENTS OF THE SHIPS (CAPITAL GRANTS) ACT 1987

Item 1 - Section 3 - definition of "eligible ship"

The definition of "eligible ship" in section 3 is amended to lower the maximum crew level for vessels which qualify for grants under the Act. The maximum crew of a tanker able to be operated on a foreign voyage is reduced from 21 to 18, a tanker on a domestic voyage from 23 to 18 and a non tanker from 21 to 18. These changes bring the maximum crew numbers into line with current manning practices of the Australian trading fleet and provides an incentive for the introduction of more efficient ships into the Australian Shipping industry.

Item 2 - Paragraph 7(1)(a)

Paragraph 7(1)(a) is amended to reduce the maximum crew numbers for the statutory categories of tankers and non-tankers on voyages on foreign voyages from 21 to 18.

Item 3 - Paragraph 7(1)(b)

Paragraph 7(1)(b) is amended to reduce the maximum crew number for the statutory category of tankers on domestic voyages from 23 to 18.

Item 4 - Subsection 17(4)

This item replaces subsection 17(4) of the Act with new subsections 17(4), 17(4A) and 17(4B) which clarify the procedures for the recovery of an overpayment (by more than \$100) of a grant by enabling the Secretary to make a written demand for the repayment whether or not the grant recipient has acknowledged the overpayment.

New subsection 17(4) empowers the Secretary to demand, in writing, repayment of an overpayment of more than \$100.

New subsection 17(4A) requires the Secretary, where there has been no acknowledgment of an overpayment, to set out in the written demand the reason why in the Secretary's opinion there has been an overpayment.

Under new subsection 17(4B) the claimant becomes liable to repay the amount demanded upon receipt of the written demand for repayment.

Item 5 - Subsection 21(1)

Section 21 of the Act requires owners of ships in receipt of a grant to provide a certificate to the Secretary certifying that the maximum crew number was not exceeded and that the crew consisted of Australian residents on voyages undertaken during the previous grant year. The obligation relates to a total five year period after the grant is paid.

Subsection 21(1) is amended to ensure the reporting period includes that part of a grant year which commences on payment of the grant.

Item 6 - New subsection 21(5)

New subsection 21(5) inserts a definition of "part of a grant year" which has been incorporated into the Act by item 5 (above). It is defined as any part of a year either occurring before the first complete grant year or following the last complete year. "grant year" is already defined in section 3 as being a period of 12 months commencing on 1 April.

SCHEDULE 2

This schedule contains the text of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 (see Schedule 1, Part H, Item 4).

SCHEDULE 3

PART 1

AMENDMENTS OF THE NAVIGATION ACT 1912

This Part removes sexist language from the Act.

PART 2

**AMENDMENTS OF THE PROTECTION OF THE SEA
(CIVIL LIABILITY) ACT 1981**

This Part removes sexist language from the Act.

SCHEDULE 4

This schedule at Part A contains the text of the International Convention on Salvage, 1989, and at Part B, the Common Understanding Concerning Articles 13 and 14 of the Convention.

