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TRANSPORT LEGISLATION AMENDMENT BILL (NO. 2) 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Transport and Communications,
Senator the Hon Gareth Evans, QC)

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GENERAL OUTLINE

This is an omnibus Bill containing amendments to a number of transport-related statutes.

2. The Navigation Act 1912 (the Act) provides the Minister with a large number of discretionary powers and functions, most of them entailing administrative decisions relating to the evaluation and evidencing of the safe construction, equipping and manning of ships.

3. Under the Act the only avenue of appeal from such administrative decisions is through a Court of Marine Inquiry (CMI), except a decision to cancel or suspend a certificate issued to a seafarer, a decision to refuse to issue in respect of a ship a marine pollution certificate and a decision by Marine Council that a seafarer is unsuitable for engagement, which are reviewable by the Administrative Appeals Tribunal (AAT).

4. A CMI is an expensive process both for a complainant and the Government. Also the unqualified jurisdiction given by the Act to a CMI is no longer appropriate in view of the judicial review discretion defined and established by the Administrative Decisions (Judicial Review) Act 1977.

5. The Bill will amend the Act to limit CMI jurisdiction to marine casualty inquiries and to establish access to the AAT for the review of all appropriate administrative decisions.

6. There are some Ministerial functions in the Act which are not of an administrative nature, which do not affect the rights of individuals or for which there are more appropriate alternative avenues of appeal available. Such decisions have been excluded from the ambit of the proposed amendments.

7. Other amendments in the Bill will:

- (a) better achieve the intention of the Ships (Capital Grants) Act 1987, which is to provide assistance to major cargo carrying ships which put in place the work practice improvements developed in the shipping industry;
- (b) to clarify the meaning of the term 'high capacity aircraft' in the Airlines Equipment Act 1958 and to correct a minor drafting error;

- (c) to correct minor drafting errors in the Civil Aviation Act 1988 and the Federal Airports Corporation Act 1986;
- (d) omit a superfluous definition from the Independent Air Fares Committee Act 1981;
- (e) correct a drafting error in the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 which relaxes requirements in relation to certain ships beyond the relaxation permitted by the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL), that Act giving effect to MARPOL; and
- (f) amend provisions contained in the Protection of the Sea Legislation Amendment Act 1986 to extend Federal legislation implementing MARPOL to ships under State/NT jurisdiction until such time as States/NT put parallel legislation in place and will correct drafting deficiencies to permit the independent introduction of certain provisions.

FINANCIAL IMPACT STATEMENT

On the basis of the number of potentially eligible passenger ships on order in Australian shipyards for domestic delivery, it is estimated that the amendments of the Ships (Capital Grants) Act 1987 could save the Government up to \$6m over the next two years. No figures are available beyond 1990, but it is possible the total savings could be double this amount by 1992, when the Act expires.

There will be no significant costs, revenues or savings to the Government arising from the other amendments in the Bill.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clauses 1 and 2

1. The first two clauses of the Bill provide for the short title and commencement of the legislation.
2. Clause 2(2) will give the amendments of the Ships (Capital Grants) Act 1987 effect from the date of introduction of the Bill to prevent the intention of the amendments being defeated during passage.
3. Clause 2(3) will give the amendments of the Civil Aviation Act 1988 effect from 15 June 1988, being the commencement date of the Act, as the amendments merely correct technical drafting errors.
4. Clauses 2(4) to (8) inclusive will ensure that certain amendments of the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 will commence concurrently with the provisions they amend.
5. The remaining amendments in the Bill will commence on Royal Asset.

PART II - AMENDMENTS OF THE NAVIGATION ACT 1912

Clause 3: Principal Act

6. The Navigation Act 1912 is defined as the Principal Act.

Clause 4: Review of decisions

7. This clause will insert new Part IXA-Review of Decisions into the Principal Act. New Part IXA identifies which decisions in the Principal Act are to be subject to review by the Administrative Appeals Tribunal.

Clause 5: Other amendments in relation to review of decisions

8. Other related amendments to the Principal Act are set out in Schedule 1 of the Bill. Details of the amendments are as follows:

- (a) amendment of subsection 47(4) - To correct a cross-reference consequential on the insertion of new Part IXA;
- (b) repeal of section 192 - That section provides an avenue of appeal to a Court of Marine Inquiry (CMI) for a refusal to issue a certificate. Review of such decisions will now be available under section 377C, contained in new Part IXA;

- (c) repeal and substitution of section 210 - The section provides for the provisional detention, final detention and release of unseaworthy and substandard ships and for the review of related decisions by a CMI. New section 210 provides for review of related decisions by the AAT and otherwise improves the expression of the section;
- (d) omission of subsection 211(3) - The subsection deems CMI costs to be part of the costs of detention of a ship. The subsection is redundant following the repeal and substitution of section 210;
- (e) omission of subsection 356(2) and repeal of section 377 - Will limit CMI functions to marine casualty inquiries. The functions permitted by subsection 356(2) and section 377 are now to be discharged by the AAT;
- (f) repeal of section 405L - The section provides an avenue of appeal to a CMI for a refusal to issue a certificate. Review of such decisions will now be available under section 377K, contained in new Part IXA;
- (g) repeal of section 424AA, 424A and 424B - The sections provide an avenue of appeal to the AAT for certain decisions under the Principal Act. The sections will be redundant upon the coming into operation of sections 377C and 377D in new Part IXA; and
- (h) insertion of section 426A - The section removes any doubt that Ministerial orders are enactments for the purposes of the Administrative Appeals Tribunal Act 1975.

PART III - AMENDMENT OF THE SHIPS (CAPITAL GRANTS) ACT 1987

Clause 6: Principal Act

9. The Ships (Capital Grants) Act 1987 is defined as the Principal Act.

Clause 7: Interpretation

10. This clause will amend the definitions of 'eligible ship' and 'trading ship' to exclude ships of less than 60 metres and ships used wholly for the carriage of passengers from eligibility under the Act. The amendments will not, however, affect any application received prior to the introduction of the Bill.

PART IV - MINOR AMENDMENT OF ACTS

Clause 8: Amendments

11. Minor amendments of Acts are set out in Schedule 2. Details of the amendments are as follows:

- (a) Airlines Equipment Act 1958, amendment of subsection 11(1) - insertion of a definition of 'high capacity aircraft' to clarify the meaning of that expression in the Act and correction of a drafting error in the definition of 'regional operator';
 - (b) Civil Aviation Act 1988, amendment of subsection 3(1) - correction of a typographical error in the definition of 'Air Operators' Certificate' and correction of minor drafting errors in the Schedule containing consequential amendments of the Air Navigation Act 1920;
 - (c) Federal Airports Corporation Act 1986, amendment of subsections 55(5), 56(10) and 70(3) - correction of minor drafting errors;
 - (d) Independent Air Fares Committee Act 1981, amendment of subsection (3)(1) - omission of the definition of 'commuter operator', the term not otherwise appearing in the Act;
 - (e) Navigation Act 1912 insertion of section 267ZS - to overcome a drafting deficiency in the Protection of the Sea Legislation Amendment Act 1986 that prevents the independent introduction of various provisions; and
 - (f) Protection of the Sea (Prevention of Pollution from Ships) Act 1983:
 - (i) amendment of subsections 5(2), 26AB(1), (2), (3), (4) and (7), 26D(1), (2), (3), (4) and (10) and 26F(1), (2), (3) and (4) - The amendments will extend the Act (which give effect to MARPOL) to ships under State/NT jurisdiction, until such time as the States/NT put in place parallel legislation;
 - (ii) insertion of section 26DA - to overcome a drafting deficiency in the Protection of the Sea Legislation Amendment Act 1986 that prevents the independent introduction of various provisions; and
 - (iii) amendment of paragraphs 9(4)(b), (h) & (j) - to correct a drafting error that granted greater exemption to certain ships than is permitted by MARPOL.
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