

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PASSENGER MOVEMENT CHARGE COLLECTION
AMENDMENT BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Science and Technology,
Senator the Hon. Peter Cook)



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OUTLINE

This Bill, together with the Passenger Movement Charge Amendment Bill 1995 (the Charge Bill), completes the package of legislative measures introduced last year following the Government's 1994 Budget initiative to replace the existing \$25 departure tax with a \$27 passenger movement charge (PMC) to fully offset the cost of customs, immigration and quarantine processing at Australia's borders and the cost of issuing short-term visitor visas.

The legislation passed by the Parliament last year as Acts Nos. 146 and 159 of 1994 set the new rate of charge at \$27 in respect of departures from Australia after 1 January 1995. At the time that legislation was being considered by the Parliament, the Government also made known its intention to commence negotiations with international air and sea passenger carriers to have them collect the PMC as part of their ticketing arrangements, thereby removing the need for departure tax stamp booths at international departure points.

As part of that new collection regime, this Bill will replace the existing 24 narrowly defined categories of exemption from PMC liability with 12 broadly defined categories of exemption; both to facilitate collection of the PMC by airlines and shipping companies and to clarify the operation of the new collection scheme. In particular, item 4 of the Schedule to the Bill provides that a person departing from Australia will not have to pay the \$27 PMC in relation to his or her departure, where that person is:

- under 12 years of age; or
- a traditional inhabitant of the Torres Strait travelling in connection with traditional activities; or
- a member of the defence force of another country (or that person's family) who departs from Australia in the course of his or her duty on a military aircraft or ship; or
- the crew member of an aircraft or ship, or a member of his or her family, or a crew member who is being repositioned; or
- a passenger who is in transit, or departs Australia after entering because of an emergency or other circumstance beyond his or her control; or
- a foreign diplomatic or consular staff member; or
- a person travelling to Area A of the Australia - Indonesia Zone of Cooperation in the Timor Sea in accordance with the Timor Gap Treaty; or
- a passenger on a cruise-type journey which involves multiple departures from Australia, where the PMC has already been paid in respect of a previous departure during the course of that journey.

FINANCIAL IMPACT STATEMENT

The direct financial impact of the measures proposed in this Bill are expected to result in the following increases to Revenue, in present dollar values:

- i) redefinition of transit passengers - increase for 1995-96 of \$1.5 million;
- ii) abolition of various exemptions - increase for 1995-96 of \$300,000.

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NOTES ON CLAUSES

Clause 1 - Short Title

1. This is a machinery clause providing for the Bill to be cited as the *Passenger Movement Charge Collection Amendment Act 1995*.

Clause 2 - Commencement

2. This clause provides for the Bill to commence on 1 July 1995.

Clause 3 - Amendment of the *Passenger Movement Charge Collection Act 1978*

3. This clause provides for the substantive amendment of the *Passenger Movement Charge Collection Act 1978* (the Collection Act) in accordance with the applicable items of the Schedule to the Bill and that the other items of the Schedule, which are technical transitional provisions, have effect according to their terms.

SCHEDULE

AMENDMENT OF THE PASSENGER MOVEMENT
CHARGE AMENDMENT ACT 1978

Item 1 - Section 3 (definition of *authorised officer*)

4. This item omits the existing definition of "authorised officer" and inserts a new definition which provides that for the purposes of the Collection Act an authorised officer means an officer of Customs or any other person authorised in writing by the Chief Executive Officer of Customs. The existing definition of authorised officer requires a person to be appointed in writing by the Minister. This change in definition reflects the fact that the Administrative Arrangements Orders have been amended to give administration of the Collection Act to the Australian Customs Service.

Item 2 - Section 3 (definitions of *exempt passenger* and *vessel*)

5. The definition of 'exempt passenger' is omitted as that term is not used in the Collection Act.

6. In the existing provisions of the Collection Act, the term "vessel" is defined to include aircraft. Exemptions from the payment of the passenger movement charge (PMC) which are expressed to apply to certain passengers and crew of vessels apply equally to those persons when departing by aircraft. In the redrafted categories of exemption from PMC proposed at item 4 of the Schedule to this Bill, the terms "aircraft" and "ship" are both used in order to accommodate slight differences in

treatment of persons under some categories of exemption. For this reason the term "vessel" is no longer used and is omitted.

Item 3 - Section 3

7. This item amends the Interpretation provision in the Collection Act to define 18 terms, all of which relate to the new categories of exemption from PMC proposed in item 4 of the Schedule to this Bill.

8. In particular, the following terms are defined:

- '*Australia*' - is defined to include the Indian Ocean Territories of Christmas Island and Cocos (Keeling) Islands, but does not include any other external Territory. The effect of this definition is that for the purposes of PMC liability a departure from an Indian Ocean Territory to another country is treated in the same way as a departure from anywhere else in Australia;
- '*Area A of the Zone of Cooperation*', '*petroleum*', '*petroleum operations*' and '*Timor Gap Treaty*' - are all defined by reference to the *Petroleum (Australia - Indonesia Zone of Cooperation) Act 1990*. These terms are used in the Collection Act for the purposes of the new PMC exemption category proposed in new paragraph 5(l) of the Collection Act (item 4 of the Schedule to the Bill refers);
- '*Torres Strait Treaty*', '*traditional inhabitants*' and '*traditional activities*' - are defined by reference to the *Torres Strait Fisheries Act 1984*. The terms are used in the Collection Act for the purposes of the PMC exemption proposed in new paragraph 5(b) (item 4 of the Schedule to the Bill refers);
- '*crew member*' - is defined to include the person in charge of a ship or aircraft. This definition is for the purposes of the PMC exemption category proposed in new paragraph 5(c) (item 4 of the Schedule to the Bill refers);
- '*emergency passenger*' - is defined as a person who arrives in Australia as a passenger on a ship or aircraft only because of illness of a person on a ship, bad weather conditions or some other kind of emergency and who departs as soon as it is practicable to do so. This definition is for the purposes of the PMC exemption category proposed in new paragraph 5(i) (item 4 of the Schedule refers);
- '*positioning crew member*' - is defined for the purposes of the PMC exemption category proposed in new paragraph 5(g) (item 4 of the Schedule refers). The definition covers passengers on ships or aircraft whose departure from Australia is undertaken for the purpose of later becoming a crew member of that, or another, ship or aircraft;
- '*transit passenger*' - is defined for the purposes of the PMC exemption category proposed in new paragraph 5(h) (item 4 of the Schedule refers). In the case of passengers transiting from one aircraft to another, the definition is in terms of whether they have been immigration cleared under Section 172 of the *Migration Act 1958* because such passengers remain on the "airside" of the immigration

processing line. In the case of passengers transferring from an aircraft to a ship, these passengers always clear immigration in accordance with the *Migration Act 1958*. In these cases the definition is in terms of the duration of their stay in Australia, the period being less than 48 hours.

For both classes of transit passengers, the arrival in Australia must be for the purpose only of a journey to a place outside Australia. If, for some reason beyond the passenger's control, his or her stay in Australia is longer than 48 hours, or he or she must be immigration cleared, the exemption from PMC still applies on condition the passenger departs as soon as it is practicable to do so.

Item 4 - Section 5

9. This item repeals existing section 5 of the Collections Act which sets out 8 categories of persons exempt from the PMC and the head of power for 16 additional categories prescribed in the Passenger Movement Charge Collection Regulations. Proposed new section 5 contains 12 new broad categories of exemption with no head of power to prescribe further categories by Regulation.

New Section 5 - Persons exempt from passenger movement charge

10. New section 5 provides that the following 12 categories of persons departing Australia are exempt from PMC liability:

- (a) *Children under 12 years of age*. This is the same age as that from which airlines charge adult fares, thereby facilitating identification by airlines of persons falling into this exemption category;
- (b) *Traditional inhabitants* of the Torres Strait who depart Australia in connection with the performance of traditional activities. This category includes Papua New Guinea citizens and implements Australia's obligations under the Torres Strait Treaty to acknowledge and protect the traditional way of life, livelihood and free movement of traditional inhabitants;
- (c) *Members of defence forces of other countries* whose departure is undertaken in the course of duty and is on an aircraft or ship of a defence force. Retention of this category is in accordance with the spirit of the Status of Forces Agreement arrangements;
- (d) *Spouses and children under 18 years of age* of a foreign defence force member to whom category (c) applies and who depart Australia in the company of that member. This category maintains the current exemption for dependents of foreign defence force members;
- (e) *Crew members* of ships and aircraft departing Australia on that ship or aircraft;
- (f) *Spouses and children under 18 years of age* of working crew members travelling on board the same ship. This small class of persons includes, for

example, a captain's spouse who lives on board the ship, is only in Australia as that is where the ship has travelled and may never leave the ship. The cost of administrative procedures to be put in place to collect the PMC (for such a small class of persons) would outweigh the revenue collected;

- (g) *Positioning crew members.* This category is defined (definition at item 3 of the Schedule refers) to include passengers on ships or aircraft whose departure from Australia is for the purpose of later becoming a crew member of that or another ship or aircraft. The category covers, for example, airline crew who travel on board an international flight from Sydney to Honolulu for the purpose of taking over as crew on the Honolulu to Los Angeles leg of the journey;
- (h) *Transit passengers.* These passengers are defined in the new definition proposed at item 3 of the Schedule to this Bill. The definition recognises the fact that the only reason such passengers are departing Australia is because it is en route to a final destination in a place outside Australia;
- (i) *Emergency passengers.* This class of passengers is defined at item 3 of the Schedule. The definition recognises that these people are only departing Australia because they arrived in Australia for reasons beyond their control;
- (j) *Passengers on cruise or fly/cruise type journeys* which involve multiple departures from Australia where the charge has already been paid in respect of a previous departure. These passengers are exempt on the second and subsequent departures as they have already paid the PMC for what can be characterised as a single journey;
- (k) *Diplomatic and Consular Representatives* and members of certain International Organisations. These persons are exempt by operation of the *Consular Privileges and Immunities Act 1972*, the *Diplomatic Privileges and Immunities Act 1967* and the *International Organisations (Privileges and Immunities) Act 1963*;
- (l) *Passengers departing for Area A of the Zone of Cooperation* in connection with prospecting for petroleum or undertaking petroleum operations. This category will cover workers departing for installations in Area A, who would otherwise now be liable for PMC by virtue of the amendment to section 5 of the *Passenger Movement Charge Act 1978* proposed in item 1 of the Passenger Movement Charge Amendment Bill 1995.

Item 5 - Subsection 7(1)

11. This item omits existing subsection 7(1) of the Collection Act which gives authorised officers the power to prevent a person from departing Australia on a reasonable belief that the person has not paid the PMC. As it is considered that an

exercise of this power would be an overreaction to a situation where a \$27 charge has not been paid, the power is to be removed.

Item 6 - Subsection 7(2)

Item 7 - Subsection 8(3) and (4)

12. Item 6 and item 7 amend sections 7 and 8, respectively, of the Collection Act to insert "or her" after each occurrence of the word "his", in accordance with the Commonwealth's current gender neutral drafting policy.

Item 8 - Subsection 10(4)

13. This item redrafts subsection 10(4) of the Collection Act which was inserted in 1994 after a Senate amendment designed to prevent the Government making arrangements with airlines to collect PMC in respect of departures before 1 July 1995. The present subsection prevents arrangements from applying "... in respect of the departure from Australia, before 1 July 1995, of any person on an *international flight*" (emphasis added). The term "international flight" is not used elsewhere in the Act and could lead to problems determining whether or not a person travelling to an external territory before 1 July with the intention of continuing that journey to another country after 1 July is on an "international flight".

14. To avoid the need for a complicated transitional provision, subsection 10(4) has been redrafted using the terminology of the remainder of the Collection Act to prevent arrangements from applying "... in respect of any person departing Australia for another country on an aircraft before 1 July 1995".

Item 9 - Subsection 11(2)

15. This item effects a technical amendment to subsection 11(2) of the Collection Act so that a reference to a person's exempt status under section 5 is correctly cited.

Item 10 - Transitional

16. Subitem 10(1) saves the operation of the Collection Act as in force before 1 July 1995 in respect of departures before that date. This provision preserves the Commonwealth's ability to recover any unpaid PMC from passengers as well as passengers' rights to obtain refunds in respect of pre 1 July 1995 departures which might have been exempt from PMC liability.

17. Subitem 10(2) relates to exemption stamps supplied before 1 July 1995 in respect of a departure after 1 July 1995. Most passengers in possession of an exemption stamp supplied before 1 July 1995 will have established their exempt status by reference to the existing 24 categories of exemption. The effect of subitem 10(2) is that if a passenger, in possession of such a stamp, departing on or after 1 July is in fact not exempt under the proposed 12 new categories, they are to be treated as exempt.

18. The passenger, airline check-in staff and Customs officers will be able to rely on the exempt stamp at face value and not be required to re-establish the passenger's exempt status.