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THE PARLIAMENT OF THE COMMONWEALTH
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HOUSE OF REPRESENTATIVES

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Transport and Communications,
the Honourable Ralph Willis, MP)

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OUTLINE

This Bill makes a number of essentially technical amendments to the following Acts:

- . Air Navigation (Charges) Act 1952;
- . Airports (Surface Traffic) Act 1960;
- . Australian Centennial Roads Development Act 1988;
- . Broadcasting Act 1942;
- . Interstate Road Transport Act 1985; and
- . Telecommunications Act 1975.

Air Navigation (Charges) Act 1952

The Air Navigation (Charges) Act provides for the payment of charges in respect of the use by aircraft of Commonwealth aerodromes or aerodromes for which financial assistance is provided by the Commonwealth. The Act also provides for payment of penalties if charges are not paid within 28 days.

Charges and penalties may be remitted or refunded in prescribed circumstances. The amendments in Part 2 of the Bill provide a right of review by the Secretary of a decision not to remit or refund a charge or penalty and for review by the Administrative Appeals Tribunal of the Secretary's decision following the Secretary's review of the original decision.

The amendment gives effect to an undertaking given by Mr Morris as Minister for Transport and Communications Support to the Senate Committee on Regulations and Ordinances.

Airports (Surface Traffic) Act 1960

The Airports (Surface Traffic) Act 1960 provides for control of surface traffic at airports. Section 16 of that Act provides that proceedings for the prosecution of an offence under the Act or the regulations shall not be instituted except with the consent of the Secretary or a person authorised by the Secretary. Section 16 was intended to prevent unmeritorious private prosecutions. Since enactment of the Director of Public Prosecutions Act 1983, the provision has become superfluous. As the Director of Public Prosecutions has the power to take over and discontinue private prosecutions, the provision serves no useful purpose. It is to be repealed by the amendment in Part 3 of the Bill.

Australian Centennial Roads Development Act 1988

The Australian Centennial Roads Development Act 1988 provides for the funding for a program of financial assistance for land transport, in succession to earlier statutory schemes. Funds are provided for the Trust Fund set up under the Act by a designated share of the levy payable to the Commonwealth on motor spirit and diesel fuel. The initial rate is set in the Act, but new rates may be determined by the Minister from time to time, subject to a guaranteed minimum funding level until 30 June 1991.

The determination of a new rate is made by the Minister in writing. At present the written determination need only be published in the Gazette. During the passage of the Bill through the Senate in the 1988 Budget sittings Senator Evans gave an undertaking to introduce an amendment to make each such determination a disallowable instrument. The proposed amendment in Part 4 of the Bill has the effect that a determination is to be treated as a Regulation for the purposes of tabling and disallowance.

Broadcasting Act 1942

The proposed amendment to section 89D of the Broadcasting Act 1942 will remedy an oversight in the preparation of those provisions in the Broadcasting Legislation Amendment Act 1988 which introduced the new streamlined scheme of limited licences. The result of the oversight is that this new scheme does not allow for limited licence services to be broadcast via satellite. It was intended that the ancillary capacity on the transmissions employed for broadcasting remote television services via satellite could be used for additional services including those provided under limited licences. This would increase the range of services available in remote areas and assist the viability of the remote television service licensees. The amendment in Part 5 of the Bill makes it clear that limited licences can be granted (if and when appropriate) for services which involve transmissions via AUSSAT satellites.

Interstate Road Transport Act 1985

The Interstate Road Transport Act provides for the operation of the Federal Interstate Registration Scheme (FIRS).

The introduction of FIRS on 1 January 1987 ensured that vehicles registered solely to undertake interstate trade and commerce made a reasonable contribution to the road wear costs they generated. This overcame an anomaly that existed under previous State schemes where these vehicles paid only nominal registration charges.

The Scheme is administered on behalf of the Federal Government by the States and Territories. All revenue collected under FIRS is returned to the States and Territories for the maintenance and upkeep of roads used by vehicles registered under the Act.

Instalment Payments

The amendments in Part 6 are to formalise an administrative arrangement introduced on 1 August 1988 which allows owners of the heaviest vehicles registered under FIRS to pay their registration charges in instalments of 1, 3 or 6 months. The arrangements for instalment payments were introduced after a commitment was given by Senator Evans as Minister for Transport and Communications at the time of the Yass blockade.

Overloaded Vehicles

Amendments made to the Interstate Road Transport Act in 1988 provided for the registration of Federal vehicles in specific mass limit categories. This enabled the application of a uniform heavy vehicle mass limit across Australia for Federal vehicles with a resultant efficiency gain for the road transport industry.

The Attorney-General's Department has recommended the proposed amendments to put beyond doubt the authority under the Act for regulations relating to detection and treatment of overloaded vehicles.

Telecommunications Act 1975

The proposed amendment to the Telecommunications Act 1975 allow Telecom to validate a number of routine zonal and telex changes which have been inadvertently implemented without By-law authorisation.

Routine changes to Telecom's zoning arrangements typically arise when obsolete exchanges are replaced by modern exchanges and the boundaries of charging zones, which relate to the location of exchanges, are consequently changed. Zoning determines charges and changes to zones require amendments to the By-laws. Telecom have identified a number of instances, dating back to 4 May 1980, where zone changes were implemented without proper authorisation in By-laws. Telecom has also identified a number of instances where new exchanges were installed or old exchanges closed without proper authorisation in the Telecommunications (Telex Charging Areas) By-Laws.

Part 7 of the Bill will provide Telecom with a "window" of 3 months in which it can make by-laws with retrospective effect to correct those errors and oversights. This fulfils an undertaking given to the Senate Standing Committee on Regulations and Ordinances by the Minister for Telecommunications and Aviation Support, Mr Punch.

FINANCIAL IMPACT STATEMENT

The Bill does not involve any additional expenditure by the Commonwealth or additional revenue for the Commonwealth.

Telecom advise that the effect of the variations to the charging regimes cannot be measured for any individual customer. However, Telecom also advise that customers are generally better off because the variations have been generally brought about because of the replacement of manual exchanges by automatic exchanges; this has resulted in a general reduction in the charges imposed on customers.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. This clause provides that the title of the amending Act will be the Transport and Communications Legislation Amendment Act 1989.

Clause 2 - Commencement

2. This clause provides that the amending Act will commence on the day on which it receives the Royal Assent.

PART 2 - AMENDMENTS OF THE AIR NAVIGATION (CHARGES) ACT 1952

Clause 3 - Principal Act

3. This clause identifies the Air Navigation (Charges) Act 1952 as the Principal Act for purposes of Part 2.

Clause 4 - Interpretation

4. This clause adds two new definitions to the interpretation provision of the Principal Act. "Decision" is defined to have the same meaning as in the Administrative Appeals Tribunal Act 1975. "Reviewable decision" is defined to mean a decision under section 5A of the Principal Act, that is a decision relating to the remission or refund of charges due, or penalties payable, under the Act.

Clause 5 - Remissions and refunds of charges and penalties

5. This clause amends section 5A of the Principal Act to provide that only the Secretary or a person authorised by the Secretary may authorise the remission or refund of charges due or penalties payable under the Act.

Clause 6 - Insertion of new sections 5B and 5C

6. This clause inserts new section 5B which provides for the review of decisions and new section 5C which provides for the statements to accompany the notification of decisions.

5.

7. New subsection 5B(1) provides that a person affected by a decision relating to the refund or remission of charges or penalties may request the Secretary to reconsider the decision. The request for reconsideration must be made within 28 days of the decision coming to the person's notice or within such further period allowed by the Secretary.

8. New subsection 5B(2) provides that a request for reconsideration should set out the grounds on which reconsideration is sought.

9. New subsection 5B(3) requires the Secretary to reconsider a decision within 28 days of receiving a request for reconsideration, and to either affirm, revoke or vary the decision within that 28 days.

10. New subsection 5B(4) requires the Secretary to inform the person who requested reconsideration of the results of the reconsideration and the reasons for the decision reached.

11. New subsection 5B(5) provides that applications may be made to the Administrative Appeals Tribunal for review of decisions that have been affirmed or varied by the Secretary.

12. New subsection 5C(1) provides that a person who makes a decision relating to the refund or remission of charges or penalties, in notifying interested persons of the decision, is required to inform those persons of their rights to seek review.

13. New subsection 5C(2) provides that a notice informing a person that the Secretary has affirmed or varied a decision relating to the refund or remission of charges or penalties is required to include a statement that an affected person may apply to the Administrative Appeals Tribunal for review of the Secretary's decision.

14. New subsection 5C(3) provides that failure to notify a person of his or her review rights does not affect the validity of a decision.

PART 3 - AMENDMENT OF THE AIRPORTS (SURFACE TRAFFIC) ACT 1960

Clause 7 - Principal Act

15. This clause identifies the Airports (Surface Traffic) Act 1960 as the Principal Act for purposes of Part 3.

Clause 8 - Repeal of section 16

16. This clause repeals section 16 of the Principal Act which requires the approval of the Secretary or a person authorised by the Secretary for the institution of proceedings for an offence under the Act or the Regulations.

PART 4 - AMENDMENTS TO AUSTRALIAN CENTENNIAL ROADS DEVELOPMENT ACT 1988

Clause 9 - Principal Act

17. This clause provides that, for the purposes of Part 4, the Principal Act is the Australian Centennial Roads Development Act 1988.

Clause 10 - Determination in relation to charge rate

18. Amends the Principal Act to provide for Parliamentary scrutiny of determinations of charge rate. The clause provides that a determination is a disallowable instrument, thus invoking provisions of the Acts Interpretation Act 1901 relating to tabling and disallowance.

19. Paragraph (b) of Clause 10 provides that the provisions of paragraph 48(1)(b) of the Acts Interpretation Act do not apply. These provisions relate to Commencement and are unnecessary because commencement of the determination is provided for in subsection 10(5) of the Principal Act.

PART 5 - AMENDMENTS TO THE BROADCASTING ACT 1942

Clause 11 - Principal Act

20. This clause provides that for the purposes of Part 5, the Principal Act is the Broadcasting Act 1942.

Clause 12 - Licence warrants

21. This clause amends section 89D of the Principal Act by inserting new paragraph (bb) in subsection (3) to allow the broadcast of a limited licence service by transmitters which may include a transmitter on an AUSSAT satellite. This clause also makes a consequential amendment to paragraph (3)(ba).

PART 6 - AMENDMENTS TO THE INTERSTATE ROAD TRANSPORT ACT 1985

Clause 13 - Principal Act

22. This clause defines "Principal Act" for the purposes of Part 6 as the Interstate Road Transport Act 1985.

Clause 14 - Registration of motor vehicles, etc

23. Clause 14 is the first of a series of proposed amendments to permit registration fees to be paid by instalments. This clause amends section 9 of the Principal Act to permit registration of a vehicle or trailer where the application is accompanied by either the full registration charge, or the amount of one of more instalments plus any prescribed administration fee.

Clause 15 - Cancellation or suspension of registration

24. This clause amends section 11 of the Principal Act to permit a Registration Authority (a State or Territory Registrar of Motor Vehicles or equivalent officer) to cancel or suspend the registration of a vehicle or trailer where instalments of registration charges are not paid on or before the due date for payment, or where a cheque for payment of any such charge or instalment is dishonoured.

Clause 16 - Regulations may make further provision with respect to registered motor vehicles, etc

25. This clause amends section 13 of the Principal Act to confirm the validity of certain regulations made under the authority of the Principal Act.

26. Regulations 12I and 12K of the Interstate Road Transport Regulations give inspectors under the Principal Act the power to direct vehicles or trailers to a weighing station to be weighed, and the power to direct that an overloaded vehicle be unloaded to a degree sufficient to bring it within prescribed mass limits. Section 13 of the Principal Act presently specifies various matters which may be provided for by Regulations in respect to the safety, maintenance and insurance of vehicles and trailers, but doubts have been expressed as to whether section 13 is sufficiently wide to cover regulations relating to enforcement of mass limits. The proposed amendment clarifies this doubt by specifically providing that regulations under the Principal Act may provide for weighing and if necessary unloading vehicles and trailers for the purpose of ensuring that they comply with mass limits.

Clause 17 - Repeal of section 14 and substitution of new section 14

27. This clause amends section 14 of the Principal Act to clarify that both registration charges and advances on account of such charges are payable by the person who is owner of the vehicle or trailer when the charge or advance falls due. This provision is significant where vehicle ownership is transferred during a registration period.

Clause 18 - When charge due and payable

28. This clause amends section 16 of the Principal Act to provide for the due date for payment of instalments of registration charges. The effect of the proposed amendment is that instalments fall due in accordance with proposed section 17A (see clause 20, below).

Clause 19 - Advance on account of charge

29. This clause amends section 17 of the Principal Act, which relates to advances on account of registration charges, to provide for payment of instalments.

30. Advances on account of registration charges are payable where a vehicle or trailer owner elects to nominate an actual distance amount as the basis of the charge, as provided for in section 15 of the Principal Act. Such a nomination may not be made unless the vehicle or trailer is fitted with a charge measuring device.

Clause 20 - Payment of charge etc by instalments

31. This clause amends the Principal Act by inserting proposed new section 17A, permitting payments of registration charges in respect of prescribed vehicles and trailers by instalments, and providing that the number, amount and due date of the instalments (other than the first) may be set by regulations.

32. Proposed subsections (4), (5) and (6) provide that the first instalment is due on or before the date of registrations that the remaining instalments are due on the day prescribed for the purpose by the regulations; and that for the purposes of the proposed section, a reference to a registration charge includes advances payable pursuant to section 17 of the Principal Act.

PART 7 - AMENDMENTS TO THE TELECOMMUNICATIONS ACT 1975

Clause 21 - Principal Act

33. This clause provides that for the purposes of Part 7, the Principal Act is the Telecommunications Act 1975.

Clause 22 - By-Laws

34. This clause provides that section 111 of the Principal Act is amended by adding a new subsection (5). The new subsection will provide Telecom with a power to make retrospective by-laws relating to charges for telecommunications services within Australia. This power will only exist for a period of 3 months from the date of commencement of the Act. The earliest date of effect permitted is 4 May 1980.











