

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

TRANSPORT AND COMMUNICATIONS LEGISLATION
AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

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

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



**TRANSPORT AND COMMUNICATIONS LEGISLATION
AMENDMENT BILL 1990**

OUTLINE

This Bill makes amendments to 15 Acts administered within the Transport and Communications portfolio:

Air Navigation Act 1920;
Air Navigation (Charges) Act 1952;
Australian Airlines (Conversion to Public Company) Act 1988;
Broadcasting Act 1942;
Civil Aviation Act 1988;
Civil Aviation Amendment Act 1990;
Federal Airports Corporation Act 1986;
Federal Airports Corporation Amendment Act 1990;
Motor Vehicles Standards Act 1989;
Navigation Act 1912;
Protection of the Sea Legislation Amendment Act 1986;
Protection of the Sea (Prevention of Pollution from Ships) Act 1983;
Ships (Capital Grants) Act 1987;
Telecommunications Act 1989;
Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989.

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

Air Navigation Act 1920:

The amendment to this Act is to remove some doubt about the validity of the regulations made under the Act which relate to the investigation of air accidents.

Air Navigation (Charges) Act 1952:

The amendment to this Act is to align the penalty provisions which apply to unpaid charges with similar provisions in the *Civil Aviation Act 1988*.

Australian Airlines (Conversion to Public Company) Act 1988:

The amendment to this Act corrects a minor drafting error.

Broadcasting Act 1942:

The amendments to this Act will -

- . enable the Secretary to the Department of Community Services and Health to delegate the power under the Act

to approve the text of advertisements relating to medicines to the Proprietary Medicines Association of Australia; and

- . include a definition of the term "medicine" in the Act to clarify what types of products require approval for their advertisements.

Civil Aviation Act 1988:

The amendments to this Act:

- . correct a technical defect in the definition of "aircraft" to ensure that the Civil Aviation Authority (CAA) has its intended power to recover certain liabilities which were incurred in the past;
- . modify provisions, commencing on 24 November 1990, relating to the carriage of dangerous goods and which require air cargo to be accompanied by a declaration of contents, to accommodate circumstances in which it would not be practical to require a declaration be given or that it accompany the cargo;
- . provide for the making of regulations to provide for payment of an on-the-spot fine for alleged breaches of specified provisions of the Civil Aviation Regulations as an alternative to prosecution; and
- . extend the functions of the CAA to include carrying out activities to protect the environment from the effects of aircraft operations. The amendments also specify that the CAA is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction to carry out such activities, as the costs of such activities are to be borne by the aviation industry. These amendments give effect to a Government undertaking to the House of Representatives Select Committee on Aircraft Noise.

Civil Aviation Amendment Act 1990:

The amendment to this Act corrects a minor drafting error.

Federal Airports Corporation Act 1986:

The amendments to this Act extend the functions of the Federal Airports Corporation (FAC) to include carrying out activities to protect the environment from the effects of aircraft operations. The amendments also specify that the FAC is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction to carry out such activities, as the costs of such activities are to be borne by the aviation industry. These amendments give effect to

a Government undertaking to the House of Representatives Select Committee on Aircraft Noise.

Federal Airports Corporation Amendment Act 1990:

The amendment to this Act corrects a minor drafting error.

Motor Vehicles Standards Act 1989:

The amendments to this Act clarify the Minister's power to authorise the placing of compliance plates on non-standard vehicles where the non-compliance is trivial or inconsequential, and make minor administrative changes.

Navigation Act 1912:

The amendments to this Act clarify the regulation-making power in relation to the Marine Council and introduce provisions to discourage the abuse of alcohol and other drugs by seafarers on board ship.

Protection of the Sea Legislation Amendment Act 1986:

The amendment to this Act corrects a minor drafting error.

Protection of the Sea (Prevention of Pollution from Ships) Act 1983:

The amendment to this Act corrects a deficiency in the provision enabling analysts to give evidence by certificate rather than orally.

Ships (Capital Grants) Act 1987:

The amendment to this Act makes an amendment to simplify and expedite the approval of grants.

Telecommunications Act 1989:

The amendments to this Act will -

- . extend the Minister's power to give written directions to AUSTEL relating to the issuing of customer equipment permits and cabling licences, to enable directions to be given which relate to the varying and cancelling of such permits and licences;
- . create an offence where a person fails to comply with a written notice from AUSTEL to disconnect customer equipment for which there is no permit;
- . require a person selling customer equipment for which there is no permit in force to notify the customer of that fact in the form prescribed by regulations;

- . enable a carrier to apply to the Federal Court for relief where a person has customer equipment connected to a telecommunications network contrary to a notice from AUSTEL requiring its disconnection and the network is damaged or the carrier suffers loss;
- . enable AUSTEL to wholly or partly waive application fees to enable persons with disabilities to have specially designed equipment approved for connection to the network without the normal fee, and to enable fees to be waived for registered charities and public benevolent institutions; and
- . exempt AUSTEL from Commonwealth, State and Territory taxes.

Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989:

The amendments to this Act correct minor drafting errors.

FINANCIAL IMPACT STATEMENT

There will be no significant effects on Commonwealth expenditure or revenue resulting from the proposed amendments.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. This clause provides for the proposed Act to be cited as the *Transport and Communications Legislation Amendment Act 1990*.

Clause 2 - Commencement

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

PART 2 - AMENDMENT OF THE AIR NAVIGATION ACT 1920

Clause 3 - Principal Act

3. This clause provides that, in this Part, "Principal Act" means the *Air Navigation Act 1920*.

Clause 4 - Regulations

4. Subclause 4(1) omits subsection 26(1AA) of the Principal Act. Subsection 26(1AA) provides that the regulation-making power under the Principal Act does not extend to a matter in relation to which the Civil Aviation Authority has functions or where regulations may be made under the *Civil Aviation Act 1988*. Regulations may be made under the *Civil Aviation Act* for the purpose of carrying out or giving effect to the provisions of the Chicago Convention relating to safety. The Chicago Convention includes provisions relating to air accident investigation. There is therefore some doubt about the validity of the regulations relating to air accident investigations made under the Principal Act. The repeal of subsection 26(1AA) will remove any doubt that regulations relating to air accident investigations may be made under the Principal Act.

5. The omission of subsection 26(1AA) will, by virtue of subclause 2(2), be taken to have commenced on 1 July 1988 which is the date that subsection was inserted into the Principal Act. The retrospective omission will ensure that regulations previously made under the Principal Act, which relate to air accident investigation, are valid and that there exists a valid statutory basis under the Principal Act to conduct inquiries into air accidents which occurred prior to the proposed Act receiving the Royal Assent and after the insertion of subsection 26(1AA) into the Principal Act.

6. In order that no rights will be adversely affected or liabilities imposed by the retrospective repeal of subsection 26(1AA), subclause 4(2) provides that conduct engaged in before the proposed Act receives the Royal Assent but after the insertion of subsection 26(1AA) will not be taken to become an offence as a result of the retrospective amendment.

PART 3-AMENDMENT OF THE AIR NAVIGATION (CHARGES) ACT 1952

Clause 5 - Principal Act

7. This clause provides that, in this Part, "Principal Act" means the *Air Navigation (Charges) Act 1952*.

Clause 6 - Air navigation charges

8. This clause modifies subsection 5(2) of the Principal Act by substituting it with proposed subsections 5(2) and 5(2A). Subsection 5(1) of the Principal Act provides that charges are payable for the use by aircraft of certain aerodromes. Subsection 5(2) provides that when a charge is not paid within 28 days after the day on which it became due and payable then a penalty, calculated on the amount of the charge remaining unpaid, is to be added to the original charge. As the Civil Aviation Authority collects these charges on behalf of the Commonwealth in addition to its own charges (which are set in the *Civil Aviation Act 1988*), it is therefore desirable that the charging provisions of the Principal Act are consistent with those of the Civil Aviation Act. To achieve this, this clause modifies subsection 5(2) of the Principal Act to provide that the penalty-free period may be set by regulation. That is, this clause provides that a penalty is to be added to a charge if the charge is not paid within 28 days, or such other period as is prescribed, after the day on which the charge became due and payable.

9. To overcome another inconsistency between the charging provisions of the Principal Act and those of the Civil Aviation Act, this clause further modifies subsection 5(2) of the Principal Act to provide that the penalty on the amount of the charge remaining unpaid need not be calculated on a strictly monthly basis. That is, this clause provides that the penalty is to be calculated for each month or part of a month, or for such other period (such as a day) as is prescribed, during which the charge is unpaid.

PART 4 - AMENDMENTS OF THE BROADCASTING ACT 1942

Clause 7 - Principal Act

10. This clause provides that, in this Part, "Principal Act" means the *Broadcasting Act 1942*.

Clause 8 - Interpretation

11. Section 4 of the Principal Act provides definitions of terms used in, and rules for the interpretation of, the Principal Act.

12. This clause inserts a definition of the term "medicine" in subsection 4(1). The term "medicine" is currently undefined in the Act. It is used in section 100 which prevents a licensee broadcasting an advertisement relating to a medicine unless the text has been approved by the Secretary to the Department of Community Services and Health or the Minister on appeal from the Secretary's decision. The new definition will make it easier to determine whether products such as ointments, lotions, eye drops, throat lozenges, suppositories, nasal sprays, etc are medicines for the purposes of section 100. The new definition refers to a drug within the meaning of the Therapeutic Goods Regulations, but does not include "drugs" that under paragraph 3(2)(b) of the *Therapeutic Goods Act 1989* would not be taken to be for use in humans. Subclause 2(3) ensures that clause 8 commences either on the day the Bill receives Royal Assent or immediately after the Therapeutic Goods Act commences, whichever is later. The alternative commencement is included because the definition refers to the Therapeutic Goods Act and Regulations. The commencement of that Act is dependent on both Houses of Parliament approving the Regulations. Accordingly, clause 8 should not commence until that Act has commenced.

Clause 9 - Special provisions relating to advertisements

13. Subsection 100(7) of the Act enables the Secretary to the Department of Community Services and Health to delegate the power to approve the text of advertisements relating to medicine to a medical officer of a State.

14. A Public Service Board Review of Drug Evaluation Procedures which reported in 1987 recommended, among other things, that self-regulation of advertising of therapeutic goods occur for a two year trial period. The Proprietary Medicines Association of Australia (PMAA) has agreed to participate in approving the text of advertisements for medicines and has set in place administrative arrangements for assessing the advertisements.

15. Subclause 9(1) omits subsection 100(7) and substitutes a new subsection which continues to enable the delegation of the power to approve the text of such advertisements to a medical officer of a State and also enables delegation to the PMAA. In case the PMAA changes its name or another body of a similar kind wishes to participate in approving advertisements for medicines, the new subsection also enables delegation to a body carrying out research into medicines or formed to represent the interests of manufacturers or distributors of medicines.

16. Subclause 9(2) is a savings provision which continues in force under new subsection 100(7) any delegation to a medical officer of a State which was in force under the old subsection.

PART 5 - AMENDMENTS OF THE CIVIL AVIATION ACT 1988

Clause 10 - Principal Act

17. This clause provides that, in this Part, "Principal Act" means the *Civil Aviation Act 1988*.

Clause 11 - Long title

18. This clause amends the long title of the Principal Act to reflect the non-safety functions of the CAA, particularly the environmental protection works to which the present amendments relate.

Clause 12 - Interpretation

19. This clause amends the definition of "aircraft" in section 3 of the Principal Act. The present definition provides, in part, that for purposes of Division 2 of Part VI of the Principal Act (ie, the Division which deals with charges and statutory liens) "aircraft" means a machine, craft or object of a kind prescribed for purposes of that Division.

20. No kinds of aircraft had been prescribed for purposes of the definition, but fees and charges have been determined and statutory liens have been registered. This was done because the need to make regulations was not realised. The amendment to the definition will remove the requirement for aircraft to be prescribed. As an interim measure, regulations have been made (Statutory Rules 1990, No. 310), with effect from 28 September 1990, to prescribe kinds of aircraft. Those regulations will cease to have effect when the amendment to the definition comes into operation.

21. The amendment to the definition of "aircraft" will, by virtue of subclause 2(4), be deemed to have commenced on 15 June 1988, the date that the definition of "aircraft" in the Principal Act came into operation. This will have the effect of validating determinations by the CAA setting fees and charges for purposes of Division 2 of Part VI of the Principal Act and validating subsequent action taken with respect to statutory liens. While this amendment will have a retrospective effect, it will not impose new liabilities retrospectively. All persons affected by the amendment have already ordered their affairs on the basis that the charging and recovery powers of the CAA have been validly authorised by law.

Clause 13 - Functions of Authority

22. This clause amends section 9 of the Principal Act by inserting a new subsection (1A) which specifies that the functions of the CAA include carrying out activities to protect the environment from the effects of, and the effects associated with, the operation and use of aircraft.

23. In order to ensure constitutional validity, the amendment applies only in relation to aircraft in the course of trade and commerce with other countries or among the States; aircraft operated by trading, financial or foreign corporations within the meaning of paragraph 51(xx) of the Constitution; aircraft operating in a Territory, between Territories or between a Territory and State; aircraft which land at, or take off from, any place acquired by the Commonwealth for public purposes; and Commonwealth aircraft.

24. This clause also amends subsection 9(4) of the Principal Act to provide that the environmental functions of the CAA contained in subsection 9(1A) may be performed at the discretion of the Authority.

Clause 14 - Insertion of new section - Performance of functions of Authority

25. This clause inserts a new section 9A requiring the CAA to endeavour to perform its functions, other than its regulatory functions under paragraph 9(1)(a), in a manner that ensures that, as far as is practicable, the environment is protected from the effects of, and the effects associated with, the operation and use of aircraft.

Clause 15 - Directions

26. This clause amends subsection 12(1) of the Principal Act to extend the Ministerial power of direction in relation to the CAA's powers as well as its functions, and inserts a new subsection (4) to provide that the CAA must comply with a Ministerial direction.

Clause 16 - Repeal of section and substitution of new section - Statements of the contents of cargo

27. This clause repeals the existing section 23A of the Principal Act and replaces it with a new section 23A. The existing 23A, which commences on 24 November 1990, requires that all cargo carried on board an aircraft be accompanied by a declaration of its contents.

28. Proposed new subsection 23A(1) provides that the regulations may require a person who consigns any cargo for carriage on an aircraft to make a statement concerning the contents of that cargo. It is intended that the regulations will accommodate circumstances in which it may

not be practical or desirable for a statement to be made or for it to accompany the cargo. Proposed new subsection 23A(2) provides that it is an offence (with a maximum penalty of \$3,000) for a person to consign cargo for carriage on an aircraft unless the cargo is accompanied by any statement required by the regulations or the person responsible for the delivery of the cargo has been given a statement. Proposed new subsection 23A(3) provides that a person must not knowingly or recklessly make a false statement in purported compliance with the regulations. A person who breaches this provision is liable to a term of imprisonment of up to 2 years.

29. The amendment provided for by clause 16 is, by virtue of subclause 2(5), deemed to have commenced on 24 November 1990, the commencement date of the existing section 23A.

Clause 17 - Reimbursement of cost of complying with directions

30. This clause amends section 48 of the Principal Act to provide that the CAA is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction to carry out activities to protect the environment from the effects of, and the effects associated with, the operation and use of aircraft. It is intended that the cost of such activities be borne by the aviation industry.

31. The amendment to section 48 will commence on a date to be fixed by Proclamation. It is intended that the Proclamation should coincide with the commencement of legislation, proposed to be introduced in the 1991 Autumn Sittings of Parliament, which will enable the CAA to recover costs of environmental activities from industry. If not proclaimed within 6 months, the amendment to section 48 will be repealed.

Clause 18 - Charges for services and facilities

32. This clause makes minor amendments to section 66 of the Principal Act. Paragraph 18(a) replaces "it" in subsection 66(4) by "the proposed determination" to clarify the meaning of that subsection.

33. Paragraphs 66(b) and (c) replace 2 references to "Authority" with "Board". These 2 amendments were missed when the Principal Act was amended by the Civil Aviation Amendment Act 1990.

34. The amendments provided for by clause 18 are, by virtue of subclause 2(8), deemed to have come into operation on 20 June 1990, the commencement date of relevant provisions of the Civil Aviation Amendment Act 1990.

Clause 19 - Regulations, etc

35. This clause inserts a new paragraph 3(q) into section 98 of the Principal Act. The new paragraph will enable a person who is alleged to have contravened a specified provision of the regulations to pay a specified penalty to the CAA as an alternative to prosecution. That penalty would not exceed one-fifth of the maximum penalty payable by a person who is prosecuted for a breach of the specified regulation.

PART 6 - AMENDMENTS OF THE FEDERAL AIRPORTS CORPORATION ACT 1986

Clause 20 - Principal Act

36. This clause provides that, in this Part, "Principal Act" means the *Federal Airports Corporation Act 1986*.

Clause 21 - Performance of functions of Corporation

37. This clause amends section 7 of the Principal Act by inserting a new paragraph (2)(ca) to require the FAC to endeavour to perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects of, and the effects associated with, the operation and use of aircraft operating to and from Federal airports.

Clause 22 - Extent of functions of Corporation

38. This clause amends section 8 of the Principal Act by inserting a new paragraph (1)(da) which provides that the functions of the FAC extend to carrying out activities to protect the environment from the effects of, and the effects associated with, the operation and use of aircraft operating to and from Federal airports.

Clause 23 - Reimbursement for financial detriment suffered as a result of declarations

39. This clause corrects a typographical error in section 27A of the Principal Act. By virtue of subclause 2(9), this amendment will be deemed to have commenced on 1 July 1990, the date on which section 27A was inserted into the Principal Act.

Clause 24 - Reimbursement of cost of complying with directions

40. This clause amends section 42 of the Principal Act to provide that the FAC is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction to carry out activities to protect the environment from the effects of, and the effects associated with, the operation and use

of aircraft operating to and from Federal airports. It is intended that the cost of such activities be borne by the aviation industry.

41. The amendment to section 42 will commence on a date to be fixed by Proclamation. It is intended that the Proclamation should coincide with the commencement of legislation, proposed to be introduced in the 1991 Autumn Sittings of Parliament, which will enable the FAC to recover costs of environmental activities from industry. If not proclaimed within 6 months, the amendment to section 42 will be repealed.

PART 7 - AMENDMENTS OF THE MOTOR VEHICLE STANDARDS ACT 1989

Clause 25 - Principal Act

42. This clause provides that, in this Part, "Principal Act" means the Motor Vehicle Standards Act 1989.

Clause 26 - Interpretation

43. This clause makes a minor amendment to the definition of "nonstandard" to accommodate the offence provisions of the Act following on from the proposed new section 10 (see clause 28).

Clause 27 - Procedures for testing vehicles

44. This clause amends section 9 of the Principal Act to empower the Minister to determine procedures to be followed in the testing and inspection of both the equipment used for the manufacture of road vehicles or vehicle components and the facilities used for testing and inspecting the equipment used for that manufacture. Procedures determined by the Minister under section 9 are disallowable instruments for the purposes of the Acts Interpretation Act 1901.

Clause 28 - Repeal of section and substitution of new section - Compliance plates

45. This clause repeals the existing section 10 of the Principal Act and introduces a new section 10. The present section 10 enables the Regulations to prescribe arrangements under which compliance plates may be placed on vehicles to indicate that the vehicles comply with the national standards. The proposed new section 10 will also do this, but in addition will empower the Minister to authorise the affixing of a plate to a vehicle even if the vehicle does not comply with the national standards, as long as the Minister is satisfied that the non-compliance is minor and inconsequential.

Clause 29 - Powers of inspectors

46. This clause amends section 27 of the Principal Act to empower inspectors appointed under the Principal Act to inspect premises to find out whether procedures determined by the Minister under section 9 are being complied with.

Clause 30 - Application for review

47. This clause amends section 39 of the Principal Act to render decisions of the Minister under the proposed new section 10 reviewable by the Administrative Appeals Tribunal.

PART 8 - AMENDMENTS OF THE NAVIGATION ACT 1912

Clause 31 - Principal Act

48. This clause provides that, in this Part, "Principal Act" means the *Navigation Act 1912*.

Clause 32 - Persons unsuitable for engagement

49. This clause amends the present section 47 of the Principal Act to meet possible deficiencies identified in a recent proceeding before the Administrative Appeals Tribunal. The proposed new subsection 47(3) will counter a suggestion that some parts of the regulations previously made pursuant to the present section 47 prescribe not "principles" as the existing subsection 47(3) states, but "rules". To make it abundantly clear that the regulations may direct a particular outcome if particular circumstances exist, the Clause also inserts a new subsection 47(4) which provides that the regulations may provide that in particular circumstances the Marine Council must declare a person unsuitable for engagement as a seafarer, as distinct from the general situation where the Council has a discretion as to whether to do so or not. The Clause also provides that regulations already made for the purposes of the present subsection 47(3) will continue to be valid.

Clause 33 - Insertion of new section - Abuse of alcohol and other drugs

50. This clause inserts a new section 386A into the Principal imposing severe penalties for the offence of being under the influence of alcohol or another drug to the extent that a seafarer's ability to carry out his or her duty is affected. Where impairment caused by alcohol or another drug results in death or injury to another person, or loss of or damage to the ship or its cargo, the penalty will be a maximum prison sentence of two years. The proposed section is intended to discourage the abuse of alcohol and other drugs on board ship.

PART 9 - AMENDMENT OF THE PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) ACT 1983

Clause 34 - Principal Act

51. This clause provides that, in this Part, "Principal Act" means the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Clause 35 - Evidence of analyst

52. This clause amends the present section 31 of the Principal Act to correct a deficiency noted in a similar provision in the *Customs Act 1901*. The provisions are intended to expedite prosecutions by providing for the evidence of analysts to be given by certificate rather than orally before the Court. However, neither one presently makes any provision for the certificate to include details of the manner in which the specimen to which the certificate relates was conveyed to the analyst, and the analyst could therefore be required to give oral evidence as to these matters. The proposed amendment corrects this by providing for the certificate to include details of the container and means of identification of the sample, and other similar matters. It further provides, in proposed new subsection 33(6), that the analyst may not be called to give oral evidence unless at least four days' notice is given to the prosecution, or a court orders that the analyst be required to be called.

PART 10 - AMENDMENT OF THE SHIPS (CAPITAL GRANTS) ACT 1987

Clause 36 - Principal Act

53. This clause provides that, in this Part, "Principal Act" means the *Ships (Capital Grants) Act 1987*.

Clause 37 - Interpretation

54. This clause amends the definitions of "ship" and "tanker" in the Principal Act in such a way as to include a ship or tanker under construction. The purpose of the amendments is to enable special categories to be created under section 6 of the Principal Act for special classes of ships where such ships are under construction. Special categories are required where, due to the size or specialised nature of the ship, the maximum crew levels specified in the Act are not appropriate. The creation of the category prior to the completion of the ship enables the shipowner to have ample notice of the ship's maximum crew size which is not to be exceeded if it is to be eligible for a grant. A grant is not payable under the Act until a ship has entered service.

PART 11 - AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1989

Clause 38 - Principal Act

55. This clause provides that, in this Part, "Principal Act" means the *Telecommunications Act 1989*.

Clause 39 - Minister may give directions to AUSTEL

56. This clause amends subsection 111(1) of the Principal Act to allow the Minister to issue written directions to AUSTEL relating to the varying and cancelling of permits for the connection of customer equipment to a telecommunications network or of licences for the performance of cabling work. The amendment extends the power the Minister already has under subsection 111(1) to issue written directions to AUSTEL in relation to the issuing of customer equipment permits and cabling licences.

Clause 40 - Insertion of new section - Disconnection of customer equipment for which there is no permit

57. This clause inserts new section 114A after section 114 of the Principal Act. Section 114A creates an offence for a person to fail to comply with a written notice given by AUSTEL requiring the person to disconnect customer equipment connected to a telecommunications network, which that person has under his or her control and in respect of which a permit for connection, issued by AUSTEL under section 118 of the Principal Act, is not in force. Subparagraph 114A(c)(i) requires AUSTEL to give the person written notice that a permit is not in force. Subparagraph 114A(c)(ii) provides for the notice to inform the person that he or she is to disconnect the equipment within 7 days after the notice is given, or within such longer period as is specified in the notice. The penalty for the offence is \$12,000. Section 4K of the *Crimes Act 1914* operates to make an offence under section 114A a continuing offence until the notice given by AUSTEL is complied with.

Clause 41 - Sale or supply of customer equipment for which there is no permit

58. This clause amends section 115 of the Principal Act to provide that a person must not sell or supply customer equipment, that he or she knows or ought reasonably to know is customer equipment for which there is no permit in force, to another person without first informing the other person in writing, in the form prescribed by the regulations, that there is no permit in force. Section 115 previously did not require the person selling or supplying the customer equipment to inform the other person in writing. The penalty for the offence remains at \$12,000.

Clause 42 - Action for unauthorised connection to telecommunications network of customer equipment or customer cabling

59. This clause amends section 143 of the Principal Act by inserting a new subparagraph 143(1)(a)(ia) and by substituting a new paragraph 143(1)(b) to provide a carrier with an additional ground for applying to the Federal Court for relief where there is damage to a network operated by the carrier or where the carrier operating the network incurs a loss or liability. The additional ground for relief complements the requirement under section 114A of the Principal Act to disconnect customer equipment, for which there is no permit, from a telecommunications network.

60. Subparagraph 143(1)(a)(ia) together with paragraph 143(1)(b) allow a carrier, in addition to the existing grounds, to apply for relief to the Federal Court where a person has under his or her control customer equipment connected to a telecommunications network that, contrary to section 114A, has not been disconnected from the network and where as a result of the equipment not being disconnected or being used after it was required to be disconnected, damage is caused to the network or the carrier operating the network incurs a loss or liability.

Clause 43 - Insertion of new section - AUSTEL may waive fees

61. This clause inserts after section 180 of the Principal Act new section 180A which provides that AUSTEL may, in its discretion, on behalf of the Commonwealth, wholly or partly waive fees that would otherwise be payable for applications, of the kind specified in subsection 4(2) of the *Telecommunications (Application Fees) Act 1989*, made to AUSTEL under the *Telecommunications Act 1989*.

62. The *Telecommunications (Application Fees) Regulations* fix the fees payable for the different kinds of applications. These fees range from between \$100 and \$500. The applications in respect of which fees are payable include applications for the connection of customer equipment to a telecommunications network. As a result of concern about the fees expressed by community organisations representing the disabled who need specifically designed equipment to be connected to a telecommunications network, such as amplification equipment, it is proposed that AUSTEL should have the discretion to waive any application fee, in whole or part. It is intended that AUSTEL would only waive fees in special circumstances, such as where disabled persons or groups representing these people would be disadvantaged or in the case of registered charities and public benevolent institutions.

Clause 44 - Insertion of new section - Liability to taxation

63. This clause inserts after section 181 of the Principal Act new section 181A which deals with the liability of AUSTEL to taxation.

64. New subsection 181A(1) provides that AUSTEL is not subject to taxation imposed under a law of the Commonwealth, a State or a Territory or to sales tax.

65. New subsection 181A(2) provides that regulations may be made which provide that the exemption given to AUSTEL under subsection 181A(1) do not apply in relation to taxation under a specified law.

66. Subclause 2(12) provides that clause 44 is to commence on 1 July 1989. AUSTEL is a regulatory body on which the imposition of taxation and sales tax would be inappropriate. Accordingly the exemption contained in clause 44 from laws imposing taxation and sales tax is to commence retrospectively from the date on which AUSTEL was established.

PART 12 - AMENDMENTS OF OTHER ACTS

Clause 45 - Amendments of other Acts

67. This clause provides that the Acts specified in the Schedule to the Bill are amended as specified in the Schedule. The Schedule provides for minor amendments to the *Australian Airlines (Conversion to Public Company) Act 1988*, the *Civil Aviation Amendment Act 1990*, the *Federal Airports Corporation Amendment Act 1990*, the *Protection of the Sea Legislation Amendment Act 1986* and the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989* to correct minor drafting errors. By virtue of subclause 2(13), the amendments to these Acts are deemed to have commenced on the commencement dates of the provisions being amended.

