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HOUSE OF REPRESENTATIVES

TRANSPORT AND COMMUNICATIONS LEGISLATION
AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Transport and
Communications, Senator the Hon. Graham Richardson)

**TRANSPORT AND COMMUNICATIONS LEGISLATION
AMENDMENT BILL 1992**

GENERAL OUTLINE

The Transport and Communications Legislation Amendment Bill 1992 (the Bill) will amend the following Acts administered within the Transport and Communications portfolio:

- . *Air Navigation Act 1920*
- . *Broadcasting Act 1942*
- . *Radio Licence Fees Act 1964*

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

Air Navigation Act 1920

The Bill makes a number of miscellaneous amendments to the *Air Navigation Act 1920*. The purpose of these amendments is to:

- . replace the existing general offence provision in section 22 of the Act with specific offence provisions and penalties;
- . clarify the provisions relating to international airline licences, permissions and approvals; and
- . amend the regulation-making power in section 26 of the Act, firstly, to enable regulations to be made providing for on-the-spot fines for specific offences and, secondly, to remove the power to prescribe a term of imprisonment in regulations.

Broadcasting Act 1942

The amendments of the *Broadcasting Act 1942* correct minor drafting defects and anomalies arising from the *Broadcasting Amendment Act (No. 2) 1991*. The amendments will:

- . make minor changes to provisions in the *Broadcasting Act* which allow AM commercial radio services to convert to FM, to apply them to certain AM commercial radio services which, although they mainly broadcast on AM, also have FM translators which broadcast to certain parts of their service area on FM (this will ensure

that the licensees of such AM services will be able to apply to convert to FM);

- correct a minor drafting anomaly in paragraph 80B(2)(b) of the Broadcasting Act.

Radio Licence Fees Act 1964

The amendments of the *Radio Licence Fees Act 1964* correct anomalies arising from the *Radio Licence Fees Amendment Act 1991* which would have resulted in certain commercial radio licensees not having their annual licence fees halved.

FINANCIAL IMPACT

The amendments of the *Broadcasting Act 1942* and the *Radio Licence Fees Act 1964* correct anomalies arising from amendments in the *Broadcasting Amendment Act (No. 2) 1991* and the *Radio Licence Fees Amendment Act 1991*. Accordingly, the amendments will ensure that the financial impact identified for those Acts will be achieved. In particular, the amendments to the *Radio Licence Fees Act* will ensure that the expected financial impact (a decrease in Commonwealth revenue of \$8 million in the 1991-92 financial year) for the halving of annual licence fees for commercial, supplementary and remote licences occurs.

The other amendments will have no significant effect on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the proposed Act to be cited as the *Transport and Communications Legislation Amendment Act 1992*.

Clause 2 - Commencement

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 - AMENDMENTS OF THE AIR NAVIGATION ACT 1920

The purpose of these amendments is to:

- . replace the existing general offence provision in section 22 of the Act with specific offence provisions and penalties;
- . clarify the provisions relating to international airline licences, permissions and approvals. At present, the Act deals with the grant of international airline licences, permissions and approvals to foreign aircraft, while complementary provisions in relation to Australian aircraft are contained in the regulations. The amendments amalgamate these provisions into the Act; and
- . amend the regulation-making power in section 26 of the Act, firstly, to enable regulations to be made providing for on-the-spot fines for specific offences and, secondly, to remove the power to prescribe a term of imprisonment in regulations.

Clause 3 - Principal Act

This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the *Air Navigation Act 1920*.

**Clause 4 - International aircraft to land
and take off from designated airports**

This clause amends section 10 of the Principal Act by inserting a new subsection 10(2).

Section 10 currently provides that aircraft arriving in, and departing from, Australian territory shall land at, or take off from, designated international airports.

New subsection 10(2) clarifies that it is an offence to fly in contravention of this section and sets a penalty of \$5,000. The level of penalty reflects that currently available under the general penalty provision in section 22.

Clause 5 - International airline licences

This clause makes a number of amendments to section 12 of the Principal Act.

Subsection 12(1) currently prohibits foreign aircraft from operating scheduled international air services over or into Australian territory without an international airline licence. Subregulation 191(4) of the Air Navigation regulations contains substantially similar provisions in relation to Australian aircraft.

The amendments to subsection 12(1) have the effect that both foreign and Australian aircraft operating a scheduled international air service over, into or out of Australian territory require an international airline licence.

The amendments insert a new subsection 12(1A) which clarifies that it is an offence to fly in contravention of this section and sets a penalty of \$100,000. The level of penalty reflects the severity of the breach which is, in effect, a breach of a bilateral air services agreement. It is intended to ensure that owners, operators and pilots of scheduled international airlines are aware of the consequences and significance of flying in contravention of subsection 12(1). A lesser penalty of, say \$5,000, would have no impact on the commercial viability or activity of a scheduled international carrier and, consequently, would be of little value as a deterrent.

The amendments also insert a new subsection 12(1B) into the Principal Act reflecting the provisions currently contained in regulation 196 of the Air Navigation Regulations. That regulation enables the holder of an international airline licence to enter into a contract or arrangement with another person under which that other person may operate the service for which the licence is issued if that contract or arrangement is approved by the Secretary. The effect of this amendment is to prohibit a scheduled

international operation over, into or out of Australia without the authority of either an international airline licence or an agreement with a licensee which has been approved by the Secretary.

The amendments to subsection 12(1) and new subsection 12(1B) will commence on a day to be fixed by Proclamation to enable consequential amendments to the Air Navigation Regulations, in particular the repeal of subregulation 191(4) and regulation 196. If not proclaimed within 6 months, the amendments will commence on the first day after the end of the period.

Clause 6 - Suspension or cancellation of international airline licences

This clause amends section 13 of the Principal Act by providing that the Secretary's powers to vary, suspend or cancel an international airline licence applies to foreign and Australian aircraft alike.

Section 13 currently applies only to foreign aircraft, whereas regulation 195 of the Air Navigation Regulations contains substantially similar provisions in relation to Australian aircraft. The effect of the amendment is to amalgamate these provisions.

The amendments to section 13 will commence on a day to be fixed by Proclamation to enable consequential amendments to the Air Navigation Regulations, in particular, the repeal of regulation 195. If not proclaimed within 6 months, the amendments will commence on the first day after the end of that period.

Clause 7 - New Section 13A

This clause inserts a new section 13A in the Principal Act which deals with non-scheduled international flights by Australian aircraft. Currently, non-scheduled international flights by Australian aircraft may be approved by the Secretary in accordance with either section 17 of the Principal Act (a "catch-all" provision) or regulation 192 of the Air Navigation Regulations whereas non-scheduled international flights by foreign aircraft may be approved by the Secretary or the Minister under sections 14 and 15 of the Principal Act respectively. The effect of this amendment is that approvals for all non-scheduled operations by foreign and Australian aircraft alike are contained in the Act.

New subsection 13A(2) clarifies that it is an offence to fly in contravention of this section and sets a penalty of \$5,000. The level of penalty reflects that currently

available under the general penalty provision in section 22.

New subsections 13A(3) and 13A(4) enable the Secretary, by written instrument, to permit categories of commercial non-scheduled flights to be exempted from the requirement of obtaining prior permission. New section 18 of the Principal Act requires details of such permits to be published in the Civil Aviation Authority's Aeronautical Information Publication.

New section 13A will commence on a day to be fixed by Proclamation to enable consequential amendments to the Air Navigation Regulations, in particular, the repeal of regulation 192. If not proclaimed within 6 months, the amendments will commence on the first day after the end of that period.

**Clause 8 - Non-scheduled flights by aircraft
possessing nationality of a Contract State**

This clause amends section 14 of the Principal Act to enable the Secretary, by written instrument, to permit categories of commercial non-scheduled flights to be exempted from the requirements of obtaining prior permission. New section 18 of the Principal Act requires details of such permits to be published in the Civil Aviation Authority's Aeronautical Information Publication.

New subsection 14(3) clarifies that it is an offence to fly in contravention of this section and sets a penalty of \$5,000. The level of penalty reflects that currently available under the general penalty provision in section 22.

**Clause 9 - Non-scheduled flight by foreign aircraft
not possessing nationality of Contracting State**

This clause amends section 15 of the Principal Act to enable the Secretary, by written instrument, to permit categories of commercial non-scheduled flights to be exempted from the requirements of obtaining prior permission. New section 18 of the Principal Act requires details of such permits to be published in the Civil Aviation Authority's Aeronautical Information Publication.

New subsection 14(2A) ensures visibility in relation to tariffs. The provision makes it absolutely clear that the Minister has the power to direct that charges shall be not less than such amounts as he or she directs. This subsection is substantially similar to subsection 14(5) of the Act.

New subsection 15(2B) clarifies that it is an offence to fly in contravention of this section and sets a penalty of \$5,000. The level of penalty reflects that currently available under the general penalty provision in section 22.

**Clause 10 - Aircraft on international flights
to comply with laws**

This clause amends section 16 of the Principal Act by providing that compliance with the provision of all applicable Australian laws is a statutory condition of any licence, permission or approval under the Act.

**Clause 11 - Aircraft on international flights
to have permission**

This clause amends section 17 of the Principal Act to enable the Secretary, by written instrument, to permit categories of commercial non-scheduled flights to be exempted from the requirement of obtaining prior permission. New section 18 of the Principal Act requires details of such permits to be published in the Civil Aviation Authority's Aeronautical Information Publication.

New subsection 17(1A) clarifies that it is an offence to fly in contravention of this section and sets a penalty of \$5,000. The level of penalty reflects that currently available under the general penalty provision in section 22.

Clause 12 - New Section 18 - Publication of determinations

This clause inserts a new section 18 into the Principal Act requiring the Secretary to cause any permits issued under sections 13, 14, 15 and 17 of the Principal Act to be included in the Aeronautical Information Publications published pursuant to section 18 of the *Civil Aviation Act 1988*.

Clause 13 - Carriage of Munitions

This clause amends section 19 of the Principal Act by adding a new subsection 19(3) which clarifies that it is an offence to carry munitions or implements of war except with the written permission of the Minister.

New subsection 19(3) sets a penalty of \$5,000 which reflects that currently available under the general penalty provision in section 22. The level of this penalty is currently under examination by the Department as part of an

overall review of the aviation security provisions of the Principal Act and the Air Navigation Regulations.

Clause 14 - Repeal of section 22

This clause repeals section 22 of the Principal Act. Section 22 is a general offence provision which has been replaced by specific offence provisions in relation to each offence in the Principal Act.

This amendment is in accordance with Commonwealth criminal law policy. General offence provisions have been the subject of adverse comment by courts in that they fail to provide any indication of the relative seriousness of the offences and providing no guidance in the exercise of the discretion of the a sentencing court. They have also been criticised as being unhelpful in determining whether an offence has actually been committed, that is, determining whether a particular provision creates an obligation with criminal sanctions or is purely administrative.

Clause 15 - Regulations

This clause makes two amendments to subsection 26(2) of the Principal Act.

Paragraph 26(2)(k) is amended by removing the power to make regulations prescribing a term of imprisonment for a breach of the regulations. This amendment is in accordance with Commonwealth criminal law policy. Offences which are regarded as serious enough to warrant a penalty of imprisonment will be contained in the Act rather than the regulations.

New paragraph 26(2)(l) will enable a person who is alleged to have contravened a specified provision of the regulations to pay a specified penalty 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 3 - AMENDMENTS OF THE BROADCASTING ACT 1942

Part 3 makes minor amendments to the Broadcasting Act to correct drafting defects and anomalies arising from the changes in the 1991 Regional Radio Program amendments. Accordingly, the commencement of Part 3 is made retrospective to immediately after the commencement of those amendments.

Clause 2(4) provides for Part 3 to be taken to have commenced immediately after the commencement of the

Broadcasting Amendment Act (No. 2) 1991 (other than sections 19, 20 and 21 of that Act which commence on a different date).

Clause 16 - Principal Act

This clause provides that in Part 3, 'Principal Act' means the Broadcasting Act 1942.

Clause 17 - Interpretation

Section 4 of the Broadcasting Act contains definitions of terms used in, and rules for the interpretation of, that Act.

Subsection 4(14) of the Broadcasting Act provides a rule for interpreting when a licence is an AM commercial radio licence for the purposes of the Act. In brief, the licence must be a commercial radio licence and the licence warrant must authorise medium frequency (ie AM) transmission, but not very high frequency (ie FM) transmission.

A small number of non-metropolitan AM commercial radio licences in Australia provide in their licence warrants for transmission of FM signals by means of translator stations which operate in addition to the main AM transmitter.

This clause amends subsection 4(14) to recognise that the licence warrant for an AM commercial radio service can authorise either medium frequency transmission only or medium frequency coupled with very high frequency transmission.

This amendment, together with the amendments in clauses 18 and 20, will ensure that licensees of non-metropolitan AM commercial radio licence services who have FM translators will be able to apply under subsection 89D(5A) of the Broadcasting Act for conversion to FM.

Clause 18 - Interpretation

Subsection 80(1) of the Broadcasting Act contains definitions of terms used in Part IIIB of the Act which contains the licensing provisions of the Act.

This clause makes a minor change to the definition of 'non-metropolitan FM commercial radio licence' in subsection 80(1) to clarify that the licence warrant for a non-metropolitan FM commercial radio licence authorises very high frequency (ie FM) transmission only (and accordingly may not authorise medium frequency (ie AM) transmission). This amendment is consequential upon the amendment in clause 17.

Clause 19 - Whether service provided under a licence is commercially viable

Section 80B of the Broadcasting Act contains a rule for interpreting when a service provided under a licence is commercially viable. Paragraph 80B(2)(b) requires the Tribunal to disregard the effect of certain undertakings given to the Tribunal by a licensee when considering commercial viability.

This clause makes a minor technical amendment to paragraph 80B(2)(b) of the Broadcasting Act to clarify the paragraph by removing a minor inconsistency with paragraph 80B(2)(a).

Clause 20 - Licence warrants

Subsection 89D(5A) of the Broadcasting Act enables the holder of a non-metropolitan AM commercial radio licence to seek to convert to FM by applying for a variation of the technical conditions of the licence warrant so as to authorise transmission by way of FM frequency.

This clause makes a minor technical amendment to subsection 89D(5A) consequential upon the amendment in clause 17.

PART 4 - AMENDMENTS OF THE RADIO LICENCE FEES ACT 1964

Clause 2(5) provides that sections 21, 22, 23 and 24 are taken to have commenced on 1 January 1992. The amendments in those provisions correct anomalies in the provisions of the *Radio Licence Fees Amendment Act 1991* which provided for the halving of annual licence fees payable by commercial, supplementary and remote radio licensees. Anomalies in the original amendments result in certain licensees not having their fees effectively halved. The amendments ensure that those fees will be halved, and are made retrospective to 1 January 1992 to ensure that all affected licensees gain the benefit of the amendments in relation to their fees payable in 1992.

Clause 21 - Principal Act

This clause provides that in Part 4, 'Principal Act' means the *Radio Licence Fees Act 1964*.

Clause 22 - Amount of Fees

Subsection 6(2) of the Principal Act sets out the formulae for calculating the annual licence fee payable in respect of a commercial, remote or supplementary radio licence.

Section 6 of the *Radio Licence Fees Amendment Act 1991* amended the formulae in subsection 6(2) of the Principal Act to halve the percentage of gross earnings payable annually in respect of such a licence.

Due to a drafting oversight, one of the figures in paragraph 6(2A)(e) was not halved, with the result that certain licensees did not have their licence fees effectively halved. This clause corrects the formula in paragraph 6(2A)(e).

By subclause 2(5), this clause commences retrospectively on 1 January 1992 to ensure that all affected licensees gain the benefit of the amendments in relation to fees payable in 1992. Clause 25 contains a transitional provision which ensures that if any licensees have paid the higher fee before the amendments receive Royal Assent, the Tribunal must repay the excess.

Clause 23 - Change of accounting period - effect on fees payable

This clause makes a similar amendment to section 6A of the Principal Act to that made by clause 22 to section 6 of the Principal Act. The amendment is consequential to the amendment in clause 22.

Clause 24 - Transitional provision for old system licences

There are two commercial radio licences that are in force under the *Broadcasting and Television Act 1942*, as in force immediately before 1 January 1986, and which are known as old system licences.

Old system licences are subject to licence fees under the *Broadcasting Stations Licence Fees Act 1964*, as in force immediately before 1 January 1986, which has continued application by virtue of section 11 of the *Broadcasting Stations Licence Fees Amendment Act 1985*.

This clause applies the amendments in sections 3, 6 and 8 of the *Radio Licence Fees Amendment Act 1991*, and the amendments in clauses 22 and 23, to the licence fees for old system licences. This will ensure that annual licence fees are halved for those licences.

By subclause 2(5), this clause commences retrospectively on 1 January 1992 to ensure that both affected licensees gain

the benefit of the amendments in relation to fees payable in 1992.

Clause 25 - Refunds of overpayments

This clause is a transitional provision which ensures that if a licensee pays an annual licence fee between 1 January 1992 and the date of Royal Assent for this Bill, and as a result of the provisions of this Bill a lesser amount would have been payable, the Tribunal must pay the amount of the difference back to the licensee.

This provision applies to both licensees affected by the changes in clauses 22 and 23 and old system licensees affected by clause 24.



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