

1989

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(NO.2) 1989

EXPLANATORY MEMORANDUM

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

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

**TRANSPORT AND COMMUNICATIONS LEGISLATION
AMENDMENT BILL (NO.2) 1989**

OUTLINE

This Bill makes amendments to 16 Acts administered within the Transport and Communications portfolio:

Air Navigation Act 1920;
AUSSAT Act 1984;
Australian Airlines (Conversion into Public Company) Act 1988;
Australian Postal Corporation Act 1989;
Australian Telecommunications Corporation Act 1989;
Broadcasting Act 1942;
Broadcasting Legislation Amendment Act 1988;
Interstate Road Transport Act 1985;
Motor Vehicle Standards Act 1989;
Navigation Act 1912;
Navigation Amendment Act 1980;
OTC Act 1946;
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.

Ships (Capital Grants) Act 1987:

The amendments are to give effect to one part of the Government's shipping industry reform strategy by extending the availability of grants for new ships to 30 June 1997 and by providing for payment of grants in respect of modifications (completed before 30 June 1992) to existing ships enabling reductions in crew levels.

The amendments also close a loophole to prevent excessive grant payments being claimed, where the claimant adopts certain financing arrangements which have the effect of adding financing and other costs to the purchase price of the ship.

Motor Vehicle Standards Act 1989:

The amendments to this Act are of an administrative nature. In particular, they provide for Customs clearance of imported vehicles; empower the Minister to make determinations of practices to be followed by manufacturers or importers of vehicles in regard to testing and record keeping; and empower the Minister to suspend or cancel an authority to affix compliance places where these practices are not followed. The amendments also bring emissions of particulate matter within the pollution

control measures under the Act (which currently apply only to emissions of gases).

The new provisions also make it possible to ban the supply of non-standard vehicles under the *Trade Practices Act 1974*.

Air Navigation Act 1920:

The amendments to this Act ensure that the regulation-making power includes aviation security matters.

Interstate Road Transport Act 1985:

The amendments of this Act will allow Regulatory Authorities of the States and Territories to link prescribed fees payable under State and Territory law to the Consumer Price Index for regulatory functions performed by such a regulatory authority; will assist in the prosecution of corporations where false or misleading information is supplied by ensuring that directors, servants or agents of a corporation are subject to adequate sanctions where an employed driver commits an offence under the Act; and provide for on-the-spot fines for mass-limit offences as an alternative to prosecution.

Navigation Act 1912:

The Bill will amend the *Navigation Act 1912* to allow a trading ship under State or Territory jurisdiction to be brought under Federal jurisdiction on application by its owner, to allow a determination of the Marine Council regarding suitability of a person for service at sea to have effect notwithstanding the fact that the person has lodged an appeal to the AAT, and to rationalise the statutory committee system within the maritime industry.

The amendments will also implement a revised agreement between the Commonwealth and the States and NT on jurisdiction for enforcement of collision regulations and replace the current provisions relating to Courts of Marine Inquiry with power for regulations to give effect to an alternative scheme of casualty investigation.

Navigation Amendment Act 1980:

This amendment repeals an unproclaimed provision which was intended to ensure that the Northern Territory was treated as a State for the purposes of the Act, but is now believed to be unnecessary.

Broadcasting Act 1942 and Broadcasting Legislation Amendment Act 1988:

There are two amendments to the *Broadcasting Act 1942*. One amendment will allow the Minister to make charges for the investigation of complaints of interference to the reception of radio and television services. The proposed change is made necessary by the increasing use of the Department's free investigation service, often in cases where the problem is with the domestic receiving installation and could easily be diagnosed by the member of the public or a local repair service. These unnecessary investigations have caused a substantial diversion of valuable Departmental technical resources from important spectrum management tasks and the investigation of genuine cases of interference.

The intention is to provide an extensive free public education program and telephone advisory service. It is expected that this will greatly reduce the need for the Department's inspectors to actually visit complainants. Only in cases where a visit is specifically requested and made will a charge be levied.

The second amendment corrects a drafting error.

The amendment to the *Broadcasting Legislation Amendment Act 1988* corrects a typographical error in Schedule 3 of that Act.

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

The Bill corrects a drafting deficiency relating to the discharge of garbage from ships in the vicinity of offshore platforms and will enable Australian ratification of Annex V of the MARPOL convention.

**AUSSAT Act 1984; Australian Postal Corporation Act 1989;
Australian Telecommunications Corporation Act 1989; OTC Act 1946:**

The amendments to these Acts correct minor drafting errors.

Telecommunications Act 1989:

The amendments to this Act permit OTC Limited to continue to provide reserved services by satellite-based facilities within the external territories and by satellite facilities or otherwise between the external territories and other places within Australia; extend an existing provision preventing the sale without notice of equipment for which there is no permit to the supply of such equipment otherwise than by sale; and make technical amendments to clarify provisions allowing for resignation of members and associate members of AUSTEL.

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

The amendments to this Act correct minor drafting errors.

Australian Airlines (Conversion to Public Company) Act 1988:

The amendment to this Act corrects a minor drafting error.

FINANCIAL IMPACT STATEMENT

All amendments are revenue-neutral except the amendments to the *Broadcasting Act 1942* and the *Ships (Capital Grants) Act 1987*.

In relation to the amendments of the *Broadcasting Act 1942*, the estimated cost of setting up a charging scheme for the investigation of interference to the reception of radio and television programs is \$100,000. The estimated net savings in the financial year 1989/90 will be approximately \$350,000.

In respect of the amendments to the *Ships (Capital Grants) Act 1987*, the extension of the grants scheme to 1997 is expected to involve a net cost to revenue of \$52m. Savings in the form of increased industry efficiency of \$80m will accrue to industry over the three years from 1989 and annual savings of \$50m are expected thereafter. The cost to revenue of the grants for modification is expected to be about \$2.4m. The savings from the amendment to prevent excessive claims is estimated at \$13m.

All the amendments can be administered within current Departmental resources.

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 (No.2) 1989*.

Clause 2 - Commencement

2. This clause provides that, with some exceptions, the amending provisions will commence on the Bill's receiving 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

Clause 3 - Principal Act

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

Clause 4 - Interpretation

4. This clause inserts a new definition of "aviation security" into subsection 3(1) of the Principal Act. This is consequent upon a reference to aviation security being inserted into subsection 26(2) of the Principal Act by clause 5.

Clause 5 - Regulations

5. This clause inserts a reference to aviation security into subsection 26(2) of the Principal Act. This removes any doubt that regulations relating to aviation security may be made under the Principal Act.

PART 3 - AMENDMENTS OF THE AUSSAT ACT 1984

Clause 6 - Principal Act

6. This clause provides that, in this Part, "Principal Act" means the *AUSSAT Act 1984*.

Clause 7 - Directors of AUSSAT

7. This clause corrects a minor drafting error in subsection 12(1) of the Principal Act by substituting a reference to the *Australian Telecommunications Corporation Act 1989* for a reference to the repealed *Telecommunications Act 1975*.

Clause 8 - Lands Acquisition Act

8. Subsection 19(1) of the Principal Act currently provides that the *Lands Acquisition Act 1989* does not apply in relation to

the acquisition of land or an interest in land by AUSSAT. The Lands Acquisition Act applies to disposal and other dealings with land and interests in land as well as their acquisition (see Part X of that Act) and the failure to refer to disposal and other dealings in section 19 is a drafting error.

9. This clause corrects the drafting error by inserting a new subsection 19(1A) to prevent the Lands Acquisition Act applying in relation to disposal and other dealings with land and interests in land by AUSSAT and makes a consequential amendment to the definition of "interest", in relation to land, in subsection 19(2).

PART 4 - AMENDMENTS OF THE AUSTRALIAN AIRLINES (CONVERSION TO PUBLIC COMPANY) ACT 1988

10. The amendment effected by this Part is to commence on the same day as the Principal Act. This is necessary because the amendment corrects a drafting error.

Clause 9 - Principal Act

11. This clause provides that, in this Part, "Principal Act" means the *Australian Airlines (Conversion to Public Company) Act 1988*.

Clause 10 - Schedule 2

12. This clause corrects a drafting error in Schedule 2 of the Principal Act by removing the incorrect citation of an Act and substituting the correct citation.

PART 5 - AMENDMENTS OF THE AUSTRALIAN POSTAL CORPORATION ACT 1989

Clause 11 - Principal Act

13. This clause provides that, in this Part, "Principal Act" means the *Australian Postal Corporation Act 1989*.

Clause 12 - Resolutions without meetings

14. This clause corrects a minor drafting error in subsection 69(2) of the Principal Act by substituting a reference to subsection (1) for an incorrect reference to subsection (2).

Clause 13 - Lands Acquisition Act

15. This clause amends section 99 of the Principal Act to provide that the *Lands Acquisition Act 1989* does not apply to Australia Post in relation to its disposal or other dealings in land or an interest in land, and to make a consequential amendment. The amendments are similar to the amendments to section 19 of the *AUSSAT Act 1984* made by clause 8 and the explanation for the amendments in the notes on that clause also applies to these amendments.

PART 6 - AMENDMENTS OF THE AUSTRALIAN TELECOMMUNICATIONS CORPORATION ACT 1989

Clause 14 - Principal Act

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

Clause 15 - Resolutions without meetings

17. This clause corrects a minor drafting error in subsection 65(2) of the Principal Act by substituting a reference to subsection (1) for an incorrect reference to subsection (2).

Clause 16 - Lands Acquisition Act

18. This clause amends section 103 of the Principal Act to provide that the *Lands Acquisition Act 1989* does not apply to Telecom in relation to its disposal or other dealings in land or an interest in land, and to make a consequential amendment. The amendments are similar to the amendments to section 19 of the *AUSSAT Act 1984* made by clause 8 and the explanation for the amendments in the notes on that clause also applies to these amendments.

PART 7 - AMENDMENTS OF THE BROADCASTING ACT 1942

Clause 17 - Principal Act

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

Clause 18 - Licence Warrants

20. This clause corrects a drafting error to remove a double reference to "limited licence" in section 89D of the Principal Act.

Clause 19 - Additional functions of Minister

21. This clause amends section 125D of the Principal Act by inserting a new subsection (4) to allow the Minister to make charges for the investigation of interference to the reception of radio and television programs.

22. Often broadcasting reception difficulties are not caused by interfering signals, but rather are attributable to factors which are quite beyond the Department's ability to correct. Two common examples would be deficiencies in the receiving installation and radio frequency emissions from electrical reticulation systems.

23. The growing tendency in recent years of the public to rely on the Department's free service of investigating reception complaints has caused a substantial diversion of extremely

valuable technical resources from the higher priority tasks of spectrum management and investigation of more genuine interference problems.

24. The introduction of charges is a small part of proposed changes to the Department's interference complaints handling procedures which will have its foundation in a public education program. A free comprehensive "self-help" information booklet will be made available as a first step in assisting members of the public to determine whether their interference problems are in their receiving systems. The booklet will encourage the public to use local repair services for certain types of problems and the local electricity authority where the problems stem from power reticulation systems.

25. The Department will also provide an improved telephone advisory service to assist the public with general enquiries and to deal with any problems that the local repair service or electricity authority cannot resolve. The public will have the choice of reporting the interference problem to the Department without requesting a visit by an inspector, in which case there will be no charge. Only where a Departmental officer pays a visit in response to a specific request, will a call-out charge be imposed.

PART 8 - AMENDMENT OF THE BROADCASTING LEGISLATION AMENDMENT ACT 1988

Clause 20 - Principal Act

26. This clause provides that, in this Part, "Principal Act" means the *Broadcasting Legislation Amendment Act 1988*.

Clause 21 - Schedule 3

27. In Schedule 3 of the Principal Act there is a reference to paragraph 89D(3)(ba) of the *Broadcasting Act 1942*, which should be a reference to paragraph 89D(3)(b). The amendment corrects this typographical error.

28. The amendment commences on the same day as the Principal Act.

PART 9 - AMENDMENTS OF THE INTERSTATE ROAD TRANSPORT ACT 1985

Clause 22 - Principal Act

29. This clause provides that, in this Part, "Principal Act" means the *Interstate Road Transport Act 1985*.

Clause 23 - Interpretation

30. This clause amends section 3 of the Principal Act by repealing subsection (11) and inserting a new subsection (11) enabling prescribed fees payable to a State or Territory

Regulatory Authority for performing registration functions to be indexed to the Consumer Price Index.

Clause 24 - Indexation of certain fee limits

31. This clause inserts a new section 4A which is to be used for determining indexation of prescribed fees under subsections 3(11) and 56(4) using the Consumer Price Index.

Clause 25 - Conduct of directors, servants or agents

32. Clause 25 adds a facilitatory provision that assists in the prosecution of corporations and their directors, servants or agents to ensure that adequate sanctions apply where an employed driver commits an offence under the Act.

Clause 26 - Regulations

33. Paragraph (a) of this clause amends the regulation-making power under the Principal Act by adding a provision authorising the regulations to enable a person who commits a mass-limit (overloading) offence to pay an on-the-spot fine as an alternative to prosecution.

34. Paragraph (b) of this clause amends subsection 56(4) of the Principal Act to ensure that prescribed fees charged by Regulatory Authorities other than fees accompanying a registration application are linked to the Consumer Price Index.

PART 10 - AMENDMENTS OF THE MOTOR VEHICLE STANDARDS ACT 1989

Clause 27 - Principal Act

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

Clause 28 - Interpretation

36. This clause amends the definition of "vehicle standards" so that standards may be made in respect of emissions of particulate matter. The current provisions apply only to the emission of gases.

37. This clause also broadens the definition of "road motor vehicle" (because the original definition proved too restrictive) to include any self-propelled vehicle permitted for on-road use. The new definition is designed to enable the Minister to exclude from the operation of the Principal Act such vehicles as tractors, agricultural and road making machinery, and other special purpose non-passenger-carrying vehicles by determination. Such a determination will be a disallowable instrument.

38. This clause also extends the definition of "manufacture" to include modification and assembly of the vehicle.

Clause 29 - Procedures for testing vehicles

39. This clause repeals section 9 of the Principal Act and replaces it. The proposed section 9 provides a power for the Minister to determine procedures for the testing and inspection of motor vehicles. These procedures must be followed by manufacturers and importers to ensure vehicles comply with national standards. As it stands, section 9 of the Principal Act places no obligation on manufacturers or importers to carry out testing of vehicles or undertake quality assurance or prudent administrative practice.

40. A determination under the proposed section will be a disallowable instrument for the purposes of the Acts Interpretation Act 1901. This means the guidelines must be laid before Parliament and are subject to disallowance, and that the making of them is notified in the Gazette and they are available to the public.

Clause 30 - Compliance plates

41. This clause repeals the existing section 10 and replaces it. The changes embodied in the proposed section 10 are necessary for the section to be workable in practice. The original drafting of the Principal Act did not allow the Minister to exercise any discretion whatsoever in determining if a vehicle should be permitted to have a compliance plate fitted. The proposed section 10 will allow regulations to be made for placement of a plate in cases where the Minister has given approval under another provision of the Principal Act for the supply or importation of a non-standard vehicle. A typical case would be one where the vehicle does not comply with a particular element of the national standards, but the noncompliance is judged to be inconsequential and not a reduction in safety.

Clause 31 - Withdrawal of compliance plate authority

42. This clause inserts a new subparagraph into subsection 11(1) enabling the Minister to cancel, vary or suspend a person's authority to place compliance plates on vehicles in circumstances where that person has failed to observe the procedures for testing and inspection as determined by the Minister in accordance with proposed new section 9.

Clause 32 - Authority to take delivery of imported vehicles

43. This clause inserts a new section 17A giving the Australian Customs Service authority to withhold the release of vehicles at the point of importation, until the provisions of the Principal Act have been complied with. It links the Principal Act to section 39 of the Customs Act 1901 and makes the release of imported vehicles from bond subject to approval by the Minister.

44. This was always the intention, and the amendment simply provides the necessary linkage to the Customs Act. An approval

to import must be granted if a vehicle has a valid compliance plate or if the Minister has given written approval for the importation of the vehicle under section 19 or 20.

Clause 33 - Importation of vehicles requiring modification

45. This clause amends section 19 of the principal Act to support the proposed section 10 (see clause 30) and makes section 19 consistent in form with sections 14, 15 and 16. It enables the Minister to give written approvals and determine conditions relating to the importation of nonstandard vehicles, including "personal imports", by migrants and residents returning to Australia with their vehicles from overseas.

Clause 34 - Delegation by Minister

46. This clause amends section 23 of the Principal Act to provide for delegation of the Minister's powers to a Senior Executive Service officer other than the Administrator. The amendment is necessary to facilitate administration of the Act in the absence of the Administrator.

Clause 35 - Appointment of inspectors

47. This clause amends section 25 of the Principal Act to provide for State and Territory statutory authorities and corporations to be included among those instrumentalities to which the Minister may extend the powers and functions of inspection. This amendment was rendered necessary because a number of State road transport authorities are now organised as statutory corporations rather than Departments.

Clause 36 - Powers of inspectors

48. This clause amends section 27 of the Principal Act to extend the powers of inspectors appointed under the Principal Act to cover imported vehicles as well as those manufactured locally. It corrects an oversight in the drafting of the Principal Act.

Clause 37 - Application of Trade Practices Act

49. This clause amends section 41 of the Principal Act to introduce a linkage with section 65C of the *Trade Practices Act 1974* which will enable the banning of nonstandard vehicles and components where these are declared unsafe by the Attorney-General. The Principal Act as it presently stands limits the linkage to recall of nonstandard vehicles.

PART 11 - AMENDMENTS OF THE NAVIGATION ACT 1912

Clause 2 - Commencement

50. Subclauses 2(4), 2(5) and 2(6) provide that the amendments to the *Navigation Act 1912* in respect of the rationalisation of statutory committees, and in respect of the investigation of marine casualties, are to come into operation on

a day or days to be fixed by proclamation to permit the making of the necessary regulations. Thereafter, if the proposed section 43 has not been proclaimed, that section is to be taken to have been repealed on the first day after the expiry of a period of six months after the day on which the Bill receives the Royal Assent. Repeal of the present Part IX without the necessary regulations having been made would result in the absence of any regime for the investigation of marine casualties. If the other amendments to the Principal Act have not been proclaimed within that period, they will automatically come into effect on the first day after the end of that period.

Clause 38 - Principal Act

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

Clause 39 - Declaration that Act applies in relation to trading ships engaged in intra-state trade

52. This clause inserts a new section 8AA enabling trading ships normally engaged in intra-state trade under State jurisdiction to come under Commonwealth jurisdiction. This will overcome the present situation where ships engaged in a mixture of intra- and inter-state trade must alternate between Federal and State requirements.

53. A declaration under the new section would be made at the request of the owner of the ship, and will also be revoked on request.

Clause 40 - Persons unsuitable for engagement

54. Section 47 of the Principal Act presently provides that the Marine Council may determine that the character of a person is such, or the conduct of a person has been such, that the person is unsuitable for engagement as a seafarer. The Marine Council makes its determinations in accordance with prescribed principles, which identify the kinds of activities or actions that may render a person unsuitable.

55. Subsection 47(4) of the Principal Act presently provides for such a determination to be set aside upon the making of an application to the Administrative Appeals Tribunal (AAT) for review of the determination. This provision unreasonably allows the continued employment in Australian ships of persons whose presence on board may be prejudicial to the safety and welfare of other seafarers.

56. Clause 40 will omit subsection (4), ensuring that a determination of the Marine Council will stand until revoked or varied by the AAT. The AAT has power under the *Administrative Appeals Tribunal Act 1975* to decide to suspend the operation of the determination pending the outcome of its review, but

suspension would not be automatic. Consequential amendments are made to subsection (5).

Clause 41 - Regulations relating to accommodation

57. Section 136 of the Principal Act presently provides for the making of regulations prescribing the accommodation to be provided on ships for seafarers, and paragraph 136 (1)(j) further provides for regulations to prescribe matters for or in relation to the submission to the Minister of plans and specifications relating to the provision or alteration of accommodation.

58. The amendment of section 136 will omit 'to the Minister' from paragraph (1)(j), which unnecessarily limits the regulation-making power in relation to the submission of plans. The intention is to enable regulations to be made requiring submission of plans to the Marine Council in accordance with the Council's new responsibilities, as described in the notes to the next clause.

Clause 42 - Crew accommodation

59. Under the Principal Act there are two tripartite bodies - the Crew Accommodation Committee (established under section 138) and the Marine Council (established under section 424) and the potential for others to be established at any time the Minister so requires (committees of advice under subsection 424(7)).

60. To simplify the regime of tripartite bodies under the Act, it is proposed that the Crew Accommodation Committee and committee of advice functions be vested in the Marine Council. This proposal has the support of the relevant industry bodies.

61. Subclause 42(1) will repeal and substitute section 138, abolishing the Crew Accommodation Committee and vesting the Committee's powers to consider ship accommodation matters in the Marine Council.

62. Subclause 42(2) will ensure the continuing effect of any order or recommendation made by the Committee as if it were an order or recommendation of the Marine Council.

63. Subclause 42(3) will ensure that any business left unfinished by the Committee is completed by the Marine Council.

Clause 43 - Interpretation

64. This clause will omit the definition of 'the Committee' (the Crew Accommodation Committee) from section 138B as a consequence of the repeal and substitution of section 138 of the Act.

Clause 44 - Collisions, lights and signals

65. This clause will amend the Act to introduce new jurisdictional arrangements agreed between the Commonwealth, States and Northern Territory (NT) Governments for the implementation of the International Convention for the Prevention of Collisions, 1972 (the Convention).

66. Paragraph 44(a) will omit subsections 258(1A) and 258(1B) of the Act and substitute the following subsections:

- subsection (2) - providing that regulations may give effect to the Convention;
- subsection (2A) - providing that the regulations apply in all waters, including State/NT waters;
- subsection (2B) - providing that the regulations extend to State/NT ships;
- subsection (2C) - clarifying that Commonwealth law does not operate to the exclusion of State/NT law giving effect to the Convention, in relation to ships in coastal and inland waters;
- subsection (2D) - ensuring that the regulations will apply to State/NT ships on the high seas;
- subsection (2E) - clarifying that Commonwealth law does not operate to the exclusion of State/NT law giving effect to the Convention, in relation to State/NT ships on the high seas; and
- subsection (2F) - ensuring that prosecutions cannot be brought under Commonwealth and State/NT law in relation to the same offence.

67. Paragraph 44(b) will insert new subsection 258(8) defining the term 'Collision regulations' for the purposes of the section.

Clause 45 - Repeal of Part IX

68. Part IX of the Act deals with the investigation of marine casualties.

69. Clause 45 will repeal Part IX of the Act to permit the establishment of a new regime of marine casualty investigation under regulations, along similar lines to that established under Part XVI of the Air Navigation Regulations. Clause 47 makes appropriate provision for the necessary regulation-making power.

70. Subclause 45(2) will ensure that regulations referred to above are capable of including appropriate transitional and saving provisions.

Clause 46 - Marine Council

71. Paragraph 46(a) amends section 424 of the Principal Act to ensure that a representative of a class of the membership of Marine Council need not actually be a member of that class.

72. The remainder of clause 46 abolishes committees of advice and vests their functions in the Marine Council.

73. The amendment provides that the membership of the Marine Council may be varied to allow ad hoc appointments for specific references in the same way as such appointments are able to be made to committees of advice.

Clause 47 - Regulations

74. Section 425 of the principal Act provides that the Governor-General may make regulations for and in relation to a wide range of specified matters for the purposes of the Act.

75. As outlined in the note to clause 45 above, it is necessary to extend the regulation-making power under the Principal Act to permit the regulations to establish a regime of marine casualty inquiry.

76. Clause 47 will insert two new regulation-making powers:

- paragraph (db) - to permit regulations to provide for the investigation of shipboard practices and management; and
- paragraph (ea) - to permit regulations to provide for the investigation of casualties generally.

77. These paragraphs preserve the scope of inquiry currently given to Courts of Marine Inquiry by section 364 of the Principal Act.

PART 12 - AMENDMENT OF THE NAVIGATION AMENDMENT ACT 1980

Clause 48 - Principal Act

78. This clause provides that in this Part, "Principal Act" means the *Navigation Amendment Act 1980*.

Clause 49 - Repeal of section 7

79. This clause repeals section 7 of the Principal Act. Section 7 has never been proclaimed. It was originally included in the Principal Act to ensure that the Northern Territory was treated the same as the States so far as the Governor-General's power to exclude trade within or with the Territory from the coasting trade provisions was concerned. Other legislation has made this provision unnecessary.

PART 13 - AMENDMENTS OF THE OTC ACT 1946

Clause 50 - Principal Act

80. This clause provides that, in this Part, "Principal Act" means the *OTC Act 1946*.

Clause 51 - Lands Acquisition Act

81. This clause amends section 43 of the Principal Act to provide that the *Lands Acquisition Act 1989* does not apply to OTC in relation to its disposal or other dealings in land or an interest in land, and to make a consequential amendment. The amendments are similar to the amendments to section 19 of the *AUSSAT Act 1984* made by clause 8 and the explanation for the amendment in the notes on that clause also applies to this amendment.

PART 14 - AMENDMENTS OF THE PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) ACT 1983

82. Subclause 2(7) provides that the amendments of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* are to come into operation at the same time as the provisions they amend.

Clause 52 - Principal Act

83. Clause 52 provides that in this Part, "Principal Act" means the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Clause 53 - Prohibition of disposal of garbage into the sea

84. Clause 53 amends section 26F of the Principal Act by extending the prohibition on the disposal of garbage to include disposal within 500 metres of offshore platforms. This corrects a drafting deficiency and will permit Australian ratification of Annex V (Garbage) to the International Convention for the Prevention of Pollution from Ships, 1973.

PART 15 - AMENDMENTS OF THE SHIPS (CAPITAL GRANTS) ACT 1987

Clause 54 - Principal Act

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

Clause 55 - Specification of grant

86. This clause amends section 8 of the Principal Act to provide for the payment of a grant under the Act to a shipowner who makes structural or equipment changes or modifications to a ship for the purpose of enabling the ship to be operated with a reduced crew number. At present grants are payable only in respect of the purchase of new ships or modern second hand ships,

and in respect of major reconstruction work which has the effect of converting an ineligible ship into an eligible ship.

87. To be eligible for a grant under this provision the ship must have been an Australian registered trading ship at all times from the announcement of the extension of the Act (1 June 1989) to the completion of the modifications.

88. A grant in respect of modifications is not payable to the shipowner unless:

- the shipowner has remained the ship's owner at all times since the modification;
- the ship is in commission;
- the ship has been an Australian trading ship since the modifications;
- at least one crew has been engaged for the ship and the number of the crew is, in the opinion of the Secretary to the Department of Transport and Communications, consistent with the shipping industry reform program; and
- the shipowner intends to remain the owner of the ship for at least 3 years after payment of the grant and to operate the ship with a crew consistent with the shipping industry reform program.

Clause 56 - Grants not payable

89. This clause amends Section 9 of the Principal Act to:

- extend the sunset date for the eligibility of new ships for grants under the Act from 30 June 1992 to 30 June 1997;
- clarify the drafting of subsection (4);
- make it clear that subsection (6) applies only to conversions of ships under subsection 8(3);
- provide that grants are not payable in respect of modifications under subsection 8(6) if the modifications are completed after 30 June 1992.

Clause 57 - Grants payable in respect of purchases etc. outside Australia

90. This clause amends section 10 of the Principal Act by adding subsection (4) which provides that grants are payable in respect of modifications even if the modifications are carried out outside Australia.

Clause 58 - Amount of grant

91. This clause amends section 11 of the Principal Act by adding subsection (3) which provides that the grant payable in respect of modifications is an amount equal to 7% of the cost of the structural or equipment changes which are solely or principally for the purpose of enabling the ship to be operated with a reduced crew.

Clause 59 - Application for category certificates

92. This clause amends section 12 of the Principal Act to correct a technical flaw in the original drafting which effectively prevented a shipowner from applying for the creation of new categories to cover special case ships.

93. The amendment solves this problem by requiring a shipowner to include in his or her application information on how the ship is likely to be used and allowing him to specify the category or categories into which, in the shipowner's opinion, the ship will fall.

94. This clause also amends paragraph (3)(a) to allow the Secretary to give a category certificate specifying the category or categories into which, in the Secretary's opinion, the ship could fall.

Clause 60 - Determination of prices and costs

95. This clause repeals section 18 of the Principal Act and substitutes a new section.

96. New subsection (2) allows the Secretary to determine the amount that is the price paid for a ship by a shipowner claiming a grant in respect of a new or second hand ship.

97. In order to determine a price the Secretary must form the opinion that the price claimed by the shipowner:

- is incorrect;
- has been fixed to obtain a larger grant;
- is unduly higher than prices paid by other persons for comparable ships;
- has been increased through collusion between the seller and purchaser;
- is an unreasonable price because of a prescribed reason;
or
- is excessive having regard to guidelines determined by the Minister under new subsection (8).

98. Under new subsection (3), in determining the amount that is to be taken as the price, the Secretary:

- must have regard to the guidelines; and
- may have regard to
 - : the prices of comparable ships;
 - : any valuation of the ship made under section 19;
 - : such other matters as the Secretary thinks appropriate.

99. New subsections (4) and (6) are equivalent subsections to subsection (2) enabling the Secretary to determine the amount for grant purposes that was paid in respect of conversions and modifications respectively.

100. New subsections (5) and (7) are equivalent to subsection (3) in respect of the conversions and modifications respectively.

101. New subsection (8) provides that the Minister may determine guidelines on:

- the circumstances in which an amount claimed as the purchase price of a ship, or the cost of converting or modifying a ship, is excessive; and
- the way in which the Secretary is to determine the amount that is to be taken as the purchase price or the cost of converting or modifying a ship.

102. These guidelines are to provide a means of specifically excluding those components of purchase price which, due to ship financing schemes, inflate purchase price for grant purposes. Foreign exchange costs and capitalised interest charges are examples of costs which may have been claimed as components of purchase price, contrary to the intention of the Act.

103. New subsection (9) provides that a determination by the Minister under subsection (8) is a disallowable instrument for the purposes of the Acts Interpretation Act 1901. This means the guidelines must be laid before Parliament and are subject to disallowance, and that the making of them is notified in the Gazette and they are available to the public.

Clause 61 - Valuation of ships etc.

104. This clause amends section 19 of the Principal Act to provide that a valuation of the modifications to a ship may be made.

Clause 62 - Evidence of crewing

105. This clause amends section 21 of the Principal Act to provide that a shipowner in receipt of a grant in respect of

modifications to a ship is to report to the Secretary.

106. The report is to be made within one month after the period of a year from the payment of the grant and after each of the next two years.

107. The report is to be in the approved form and state whether or not the ship has at any time in the year been crewed with a crew number different from that applying at the completion of the modifications. If the ship has operated with a different number of crew the report is to provide such information on the circumstances as is required by the form.

Clause 63 - Repayment of grants

108. This clause amends section 26 of the Principal Act (which provides for the repayment of a grant in whole or in part under certain circumstances) to provide that that section does not apply to grants made in respect of modifications.

Clause 64 - Application for review

109. This clause amends section 38 of the Principal Act to provide that any determination on the cost of modifications made by the Secretary under section 18 is reviewable by the Administrative Appeals Tribunal.

Clause 65 - Application of amendments relating to determination of price of ships etc.

110. This clause provides that the amendments to the Principal Act relating to purchase price apply to any claim for grant made under the Act on or after 7 September 1989. This is the date the announcement of the Government's intention to amend the Act was made by the Minister.

111. Subclause (2) provides that guidelines determined by the Minister under subsection 18(8) within 2 months of the date the amendments receive Royal Assent will apply from 7 September 1989.

112. Subclause (3) provides that nothing in the amendments will be taken to authorise the making of a claim for grant in respect of modifications before the amendments receive Royal Assent.

PART 16 - AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1989

Clause 66 - Principal Act

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

Clause 67 - Supply of reserved services within Australia otherwise than by satellite-based facilities

Clause 68 - Supply of reserved services within Australia by satellite-based facilities

114. The amendments in clauses 67 and 68 of the Bill overcome shortcomings in the application of sections 56 and 57 of the *Telecommunications Act 1989* to the external territories. The wording of the current provision in section 57 gives AUSSAT a monopoly on satellite communications for the provision of domestic communications services in a particular external territory and between Australia and the external territories.

115. Existing section 56 gives Telecom a monopoly in non-satellite communications between the external territories and Australia and in domestic telecommunications in a territory which is not a prescribed external territory. OTC has in the past provided links to the external territories and been available to assist the territorial administrations with domestic communications. The amendments in clauses 67 and 68 ensure that the existing arrangements can continue. The amendments provide exceptions to the monopolies currently existing under sections 56 and 57 so that OTC is not prevented from:

- providing links between the external territories and other parts of Australia (either by satellite or otherwise); and
- providing satellite communications for domestic communications in the external territories.

116. It is envisaged that any change to the current arrangements for the provision of telecommunications services for the external territories would involve full consultation with the appropriate territorial administration.

117. By subclause 2(8), the amendments to sections 56 and 57 are given retrospective effect from 1 July 1989, when those sections of the Act commenced, to provide legislative authority for OTC continuing to provide the services.

Clause 69 - Sale or supply of customer equipment for which there is no permit

118. This clause amends section 115 of the Principal Act, which prohibits the sale of customer equipment without a permit, unless the buyer is first informed that there is no permit under section 118 of the Principal Act for connection of the equipment to a telecommunications network. The amendment provides for the prohibition to be extended to the supply of equipment without a permit. This ensures the protection applies to arrangements for leases and other forms of supply which do not amount to sale.

Clause 70 - Associate Members

119. This clause amends section 160 of the Principal Act to provide that associate members of AUSTEL may resign by writing

signed and delivered to the Minister as a consequence of the changes to the resignation procedure for members made by clause 71.

Clause 71 - Resignation

120. This clause amends section 174 of the Principal Act to provide that members of AUSTEL may resign by writing signed and delivered to the Governor-General, rather than to the Minister as previously provided. The amendment makes the resignation procedure for members consistent with the appointment procedure in subsection 158(1).

PART 17 - AMENDMENTS OF THE TELECOMMUNICATIONS AND POSTAL SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1989

Clause 72 - Principal Act

121. This clause provides that, in this Part, "Principal Act" means the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*.

Clause 73 - Repeal

122. Section 75 of the Principal Act repealed the *Postal Services Act 1975* and several other Acts which amended that Act (the amending Acts) and made consequential amendments to other legislation. Doubts have been raised concerning the validity of certain consequential amendments made by the amending Acts after their repeal. To remove any doubt, this clause repeals section 75 and substitutes a new section repealing only the *Postal Services Act* thus ensuring the validity of the consequential amendments made by the amending Acts.

123. By subclause 2(9), the amendments are given retrospective effect from 19 June 1989 when the Principal Act received the Royal Assent to ensure that the amending Acts were not repealed when section 75 commenced.

Clause 74 - Existing Managing Director

124. Section 30 of the *Telecommunications Amendment Act 1988* (the amendment Act) is a transitional provision which preserved the rights, remuneration and other conditions of the Managing Director of Telecom upon the establishment of the Australian Telecommunications Corporation. Subsection 87(2) of the Principal Act is a further transitional provision which continues to apply section 30 of the amendment Act to the Managing Director of Telecom as if section 30 of the amendment Act and the *Telecommunications Act 1975* had not been repealed. By virtue of the amendment in clause 73, the amendment Act is not repealed. This clause makes a consequential drafting amendment by deleting the reference to the repeal of section 30 of the amendment Act from subsection 87(2).

125. By subclause 2(9), the amendments are given retrospective effect from 19 June 1989 when the Principal Act received the Royal Assent to ensure consistency with the commencement date for clause 75.

Clause 75 - Repeal

126. Section 90 of the Principal Act repealed the *Telecommunications Act 1975* and several other Acts which amended that Act. This clause repeals section 90 and substitutes a new section which has an equivalent effect to new section 75 substituted by clause 73. The explanation for the new section and its retrospective commencement in the notes on clause 73 apply also in relation to this section.





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