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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT
BILL (No. 2) 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon. Bob Collins)

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) 1992**

OUTLINE

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

Air Navigation Act 1920;
Australian Maritime Safety Authority Act 1990;
Australian Postal Corporation Act 1989;
Civil Aviation Act 1988;
Federal Airports Corporation Act 1986;
Navigation Act 1912;
Protection of Sea (Prevention of Pollution from Ships)
Act 1983;
Protection of the Sea (Powers of Intervention) Act
1981;
Telecommunications Act 1991;
Transport and Communications Legislation Amendment
Act 1990

The amendments do not, in general, 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 Bill amends the Air Navigation Act 1920 to enable ratification of two new Protocols amending the Chicago Convention on International Civil Aviation. The Protocols increase the size of the Council of the International Civil Aviation Organization and the Air Navigation Commission.

Australian Maritime Safety Authority Act 1990

The Bill amends the Australian Maritime Safety Authority Act 1990 to allow the Authority to provide services, on a commercial basis, to the Commonwealth, the States, the Australian Capital Territory and the Northern Territory.

Australian Postal Corporation Act 1989

The Bill amends the Australian Postal Corporation Act 1989 to extend the Act's operation to Christmas Island and the Cocos (Keeling) Islands.

Civil Aviation Act 1988

The Bill makes a number of amendments to the Civil Aviation Act 1988. The purpose of these amendments is to:

- . correct typographical errors and clarify that it is an offence for an aircraft to commence a flight unless it has a maintenance release that is valid for the duration of the flight;
- . specify that the Civil Aviation Authority (the Authority) is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction relating to its environmental functions;
- . clarify the priority of the Authority's statutory liens; and
- . include transitional tax provisions consequential upon the Authority's liability to pay income tax from 1 July 1991.

Federal Airports Corporation Act 1986

The Bill makes a number of amendments to the Federal Airports Corporation Act 1986. The purpose of these amendments is to:

- . specify that the Federal Airports Corporation (the Corporation) is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction relating to its environmental functions;
- . ensure that the Corporation has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and futures contracts; and
- . include transitional tax provisions consequential upon the Corporation's liability to pay income tax from 1 July 1991.

Navigation Act 1912

The Bill amends the Navigation Act 1912 to correct a minor drafting error.

Protection of the Sea (Powers of Intervention) Act 1981

The Bill amends the Protection of the Sea (Powers of Intervention) Act 1981 to apply the Act to a wider list of environmentally hazardous chemicals to enable Australian intervention to help reduce pollution in the case of spillage of any of those chemicals.

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

The Bill amends the Protection of Sea (Prevention of Pollution from Ships) Act 1983 to:

- give effect to Australia's obligations under Annex IV of the Protocol on Environmental Protection to the Antarctic Treaty; and
- require ships to have on board an oil pollution emergency plan.

Telecommunications Act 1991

The Bill makes a number of amendments to the Telecommunications Act 1991. The purpose of the amendments is to:

- enable a fee to be charged for the grant of the third public mobile licence (the amendments in this Bill should be read with the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992);
- amend a typographical error in section 131;
- allow exceptions to the rule in section 183 which prevents a carrier which dominates a market from discriminating between customers to enable AOTC to implement its decision to offer concessions to low income and other disadvantaged customers;
- allow exceptions to the rule in section 194 which requires all basic carriage services to be set out in a tariff - the amendment will allow regulations to be made which will exempt international transit traffic arrangements from the requirement to be included in a tariff as the details are confidential between international carriers; and
- provide for the protection of AUSTEL's name and symbol.

Transport and Communications Legislation Amendment Act 1990

The Bill amends the *Transport and Communications Legislation Amendment Act 1990* to correct a drafting error.

FINANCIAL IMPACT STATEMENT

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

The amendments to the *Civil Aviation Act 1988* and the *Federal Airports Corporation 1986* dealing with transitional

tax provisions will clarify the taxation liability of those organisations.

The amendments to enable a fee to be charged for the grant of the third public mobile licence, together with the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992, are expected to result in a significant contribution to Commonwealth revenue. It is not possible to estimate the extent of the likely contribution given that the amount obtained will depend on the result of the process for granting the licence.

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 (No. 2) 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 TO THE AIR NAVIGATION ACT 1920

The *Air Navigation Act 1920* (the Act) brings the Convention on International Civil Aviation (the Chicago Convention) into effect for Australia. Section 3A of the Act gives approval for Australian ratification of the Chicago Convention, the Air Transit Agreement, and the Protocols to the Chicago Convention. Section 4 provides for the incorporation of the text of these documents into the Act's Schedules.

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 - Approval of ratification of Chicago Convention etc

Clause 5 - Texts of Chicago Convention etc

These clauses amend sections 3A and 4 of the Principal Act, respectively, to give approval for Australian ratification

of the Protocol amending Article 56 of the Chicago Convention, approved by the Assembly of the International Civil Aviation Organization (ICAO) on 6 October 1989, and the Protocol amending Article 50(a) of the Chicago Convention, approved by the Assembly of ICAO on 26 October 1990.

Articles 50(a) and 56 of the Chicago Convention provide that the membership of ICAO's Council and its Air Navigation Commission shall consist of 33 and 15 members respectively. The above Protocols increase the membership of these two bodies to 36 and 19 respectively. These amendments will approve Australian ratification of the Protocols (which require 108 ratification to come into force).

Clause 6 - New schedules

This clause adds the text of these Protocols to the Act's Schedule.

PART 3 - AMENDMENTS OF THE AUSTRALIAN MARITIME SAFETY AUTHORITY ACT 1990

Clause 7 - Principal Act

This clause identifies the *Australian Maritime Safety Authority Act 1990* (the AMSA Act) as the Principal Act for the purposes of Part 7 of the Bill.

Clause 8 - Functions of the Authority

This clause makes 2 amendments to section 6 of the AMSA Act. The first amendment expands the functions of the Authority to permit it to provide services of a maritime nature to the Commonwealth, a State, the Australian Capital Territory or the Northern Territory. These services are to be provided on a commercial basis which will enable the Authority to recover all the costs of providing such services. This will complement the existing function of the Authority which allows it to provide services to the maritime industry on a commercial basis.

Section 6 is also amended by the addition of a new subsection 6(4). The new subsection provides that the Authority must not perform any functions otherwise than for a purpose in respect of which the Parliament has the power to make laws. This amendment will not effect the operations of the Authority and is merely restating the present position of the law consistently with present drafting practice.

PART 4 - AMENDMENTS OF THE AUSTRALIAN POSTAL CORPORATION ACT 1989

The purpose of Part 4 of the Bill is to amend the Australian Postal Corporation Act 1989 (the Australian Postal Corporation Act) to extend the operation of the Act to Christmas Island and Cocos (Keeling) Islands.

Clause 9 - Principal Act

This clause identifies the Australian Postal Corporation Act as the Principal Act for the purposes of Part 4 of the Bill.

Clause 10 - Extension of Act to certain external Territories

This clause amends section 8 of the Australian Postal Corporation Act to extend the application of the Act to Christmas Island and the Cocos (Keeling) Islands by omitting a reference to the Islands in the section with the result that they are no longer excluded from the application of the Act. Section 8 continues to exclude Norfolk Island from the application of the Act.

Clause 11 - Extension of Act to adjacent areas

This clause amends section 9 of the Australian Postal Corporation Act to extend the application of the Act to the adjacent areas of Christmas Island and the Cocos (Keeling) Islands as if references to Australia in the Act, when used in the geographical sense, include references to those adjacent areas.

Clause 12 - Community service obligations

This clause amends section 27 of the Australian Postal Corporation Act to extend the standard letter service, Australia Post's community service obligation, to Christmas Island and the Cocos (Keeling) Islands. Subsection (5) which contains a definition of "Australia" which prevents the community service obligation from extending to the external Territories to which the Act extends, is omitted and a new subsection is substituted with a new definition which provides that, for the purposes of the section, "Australia" includes Christmas Island and the Cocos (Keeling) Islands, thereby extending the community service obligation to them. The amendment does not extend the community service obligation to the other external Territories.

PART 5-AMENDMENTS OF THE CIVIL AVIATION ACT 1988

The purpose of these amendments is to:

- . correct typographical errors and clarify that it is an offence for an aircraft to commence a flight unless it has a maintenance release that is valid for the duration of the flight;
- . specify that the Civil Aviation Authority (the Authority) is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction relating to its environmental functions;
- . clarify the priorities of the Authority's statutory liens; and
- . include transitional taxation provisions consequential upon the Authority's liability to pay income tax from 1 July 1991.

Clause 13 - Principal Act

This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the *Civil Aviation Act 1988*.

Clause 14 - Flying unregistered aircraft etc.

This clause makes two minor amendments to section 20AA of the *Civil Aviation Act* which creates a number of offences in relation to the operation of aircraft.

The first of these amendments capitalises the word "Regulations" in paragraph 20AA(1)(a) to ensure consistency within the Act.

The second amendment clarifies the intent of paragraph 20AA(4)(a). As that provision is currently worded, it is an offence to commence a flight without a current maintenance release but not an offence to continue the flight after the release has expired. This is anomalous from a safety view point, because the purpose of the maintenance release is to ensure that an aircraft is fit to fly for the duration of a flight, not just at the commencement of the flight. The amendment corrects this anomaly and clarifies that it is an offence for an aircraft to commence a flight unless it has a maintenance release that is valid for the duration of the flight.

Clause 15 - Offence related warrants

This clause corrects a minor typographical error in paragraph 32AF(4)(b) of the *Civil Aviation Act* which deals with the issue of offence related warrants. The amendment will ensure that a magistrate has flexibility in relation to the time during which entry to premises is authorised under the warrant. The amendment will make the provision

consistent with the other warrant provision under the Act, paragraph 32AD(4)(b), as was originally intended.

Clause 16 - Reimbursement of cost of complying with directions

This clause amends section 48 of the Principal Act to provide that the Authority is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a direction of the Minister concerning the performance of its environmental functions. It is intended that these costs be borne by the aviation industry.

Clause 17 - Cessation of lien

This clause amends section 75 of the Principal Act, by providing that a statutory lien imposed in respect of an aircraft by the Authority ceases to have effect "only if" one of the three stipulated conditions in subsection (1) is satisfied.

The amendment makes it clear that the Authority's statutory liens are to have priority over any other financial security interests, including pre-existing mortgagees.

Clause 18 - Insertion of new Division (Provisions relating to the Authority's liability to pay income tax)

This clause inserts a new Division 3 into Part VI of the Principal Act.

New section 83A (Interpretation) provides that in Division 3, "Assessment Act" means the Income Tax Assessment Act 1936.

New section 83B (Commencement of the Authority's liability to pay income tax) provides that income derived by the Authority before 1 July 1991 is exempt income for the purposes of the Assessment Act.

New section 83C (Value of trading stock for income tax purposes) provides transitional measures in respect of trading stock of the Authority.

New subsection 83C(1) provides that, for the purposes of Subdivision B Division 2 of Part III of the Assessment Act, the value of the Authority's opening trading stock on 1 July 1991 is to be at the option of the Authority.

New subsection 83C(2) provides that any option or notice under subsection 83C(1) is to be exercised or given on or before the day of lodgement of the Authority's income tax return for the year commencing 1 July 1991, or such later date as the Commissioner of Taxation allows.

New subsection 83C(3) provides that if the Authority does not exercise an option under subsection(1) in relation to particular trading stock, the cost price shall be the value of that stock.

New subsection 83C(4) is concerned with the situation where the Authority exercises a further option in relation to the value of trading stock on hand at the end of the first taxable year. Where the Authority adopts cost price as the basis of determining such a valuation, the value at which that trading stock was taken into account under subsection (1) at the beginning of that year will be treated as the cost price of that trading stock.

New section 83D (Accelerated depreciation not available for income tax purposes) provides that section 57AL of the Assessment Act as in force immediately after the commencement of section 38 of the *Taxation Laws Amendment Act(No.4) 1988*, does not apply to a unit of property owned by the Authority.

Section 57AL authorises accelerated depreciation allowances for most new and second hand plant used for the purpose of producing assessable income. The deduction is allowed over 5 years if the effective life of the plant is longer than 5 years; otherwise a 3 year write-off applies.

Section 38 and subsection 54(7) of the *Taxation Law Amendment Act (No. 4) 1988* terminated this special accelerated depreciation deduction broadly for plant contracted for after 25 May 1988 or other plant not used or installed for use before 1 July 1991.

The new section has the effect that the accelerated depreciation allowances will not be available in respect of plant owned by the Authority even where that plant was contracted for on or before 25 May 1988.

New section 83E (Transitional provisions for capital gains tax) provides for the treatment of capital gains and losses on the Authority's assets acquired after 19 September 1985 and disposed of after 30 June 1991, the day before the commencement of the income year in which the Authority became liable for income tax. The cost basis of the relevant asset for determining capital gains will be determined by the greater of its indexed cost base or market value as at the end of 30 June 1991.

If the market value of the asset as at the end of 30 June 1991 is less than the reduced cost base of the asset as at that date, market value will be used for the purpose of determining capital losses.

Indexed cost base and reduced cost base are to be calculated using a cost base being the market value of the

relevant asset as at 1 July 1988 as independently valued and vested with the Authority by the Minister for Finance.

New subsection 83E(1), in effect, provides that, if:

- . an asset is owned by the Authority at the end of 30 June 1991 ("the changeover date"); and
- . the market value of the asset at the end of 30 June 1991 would have been greater than the indexed cost base of the asset to the Authority if it had been disposed of at that time,

only the gain which accrues after 30 June 1991 on the market value of the asset will be subject to capital gains tax under Part IIIA of the Assessment Act.

New subsection 83E(2) denies indexation to relevant assets which are disposed of within 12 months of acquisition.

New subsection 83E(3), in effect, provides that, if:

- . an asset is owned by the Authority at the end of 30 June 1991 ("the changeover date"); and
- . the market value of the asset at the end of 30 June 1991 would have been less than the reduced cost base of the asset to the Authority if it had been disposed of at that time,

any capital losses for the purposes of Part IIIA of the Assessment Act incurred by the Authority through subsequent disposal will be calculated on the market value of the asset.

New subsection 83E(4) provides that, for the purposes of subsections 83E(1) and (3), the cost base, the indexed cost base and the reduced cost base to the Authority of an asset acquired by the Commonwealth and transferred to the Authority for no consideration are to be worked out as if the asset had at all relevant times been an asset of the Authority.

New subsection 83E(5) provides that an asset of the Authority acquired by the Commonwealth before 20 September 1985 and later transferred to the Authority is taken, for the purposes of Part IIIA of the Assessment Act to have been acquired by the Authority before that date.

New subsection 83E(6) provides that, unless the contrary intention appears, expressions used in this section have the same respective meaning as in Part IIIA of the Assessment Act.

This clause commences on 1 July 1991, the day on which the Authority became liable to pay income tax.

**PART 6 - AMENDMENTS OF THE FEDERAL AIRPORTS
CORPORATIONS ACT 1986**

The purpose of these amendments is to:

- . specify that the Federal Airports Corporation (the Corporation) is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a Ministerial direction relating to its environmental functions;
- . ensure that the Corporation has the power to enter into a number of financial management risk or hedging transactions such as interest rate swaps, fixed rate agreements, options and future contracts;
- . include transitional tax provisions consequential upon the Corporation's liability to pay income tax from 1 July 1991.

Clause 19 - Principal Act

This clause is an interpretive rule which provides that, in this Part, "Principal Act" means the *Federal Airports Corporation Act 1986*.

Clause 20 - Interpretation

This clause inserts two new definitions in section 3 of the Principal Act.

**Clause 21 - Reimbursement of cost of complying
with directions**

This clause amends section 42 of the Principal Act to provide that the Corporation is not entitled to reimbursement by the Commonwealth where it suffers financial detriment as a result of complying with a direction of the Minister concerning the performance of its environmental functions. It is intended that these costs be borne by the aviation industry.

**Clause 22 - Insertion of new section (Hedging through
currency contracts etc.)**

This clause inserts a new section 54B authorising the Corporation to enter into financial contracts for hedging purposes. The Minister is empowered to make guidelines, binding on the Corporation, for the exercise of its power to enter into hedging contracts. Examples are given of the matters for which provision may be made by the guidelines.

The reference to "contracts of a kind approved in writing by the Minister" in paragraph 54B(6)(g) is not intended to

authorise the Corporation to engage in transactions not otherwise within the Corporation's powers. It is included to enable the Minister to resolve any doubt in the minds of financiers in cases where the Corporation proposes to enter into a transaction described in different words from those set out in proposed subsection 54B(6), but which is nevertheless clearly within the general description of a hedging transaction as otherwise authorised by the proposed new section 54B and the Corporation's existing powers.

This amendment, including new definitions in section 3, will commence on the date of commencement of the Principal Act (30 June 1986) to remove any doubt as to the Corporation's power in the past to engage in the kinds of transactions contemplated by the amendment. No person will be disadvantaged by this retrospectivity.

Clause 23 - Insertion of New Part (Provisions relating to the Corporation's liability to pay income tax)

This clause inserts a Part VIA into the Principal Act.

New section 57A (Interpretation) provides that in Part VIA, "Assessment Act" means the *Income Tax Assessment Act 1936*.

New section 57B (Commencement of the Corporation's liability to pay income tax) provides that income derived by the Corporation before 1 July 1991 is exempt income for the purposes of the Assessment Act.

New section 57C (Accelerated depreciation not available for income tax purposes) provides that section 57AL of the Assessment Act as in force immediately after the commencement of section 38 of the *Taxation Laws Amendment Act (No. 4) 1988*, does not apply to a unit of property owned by the Corporation.

Section 57AL authorises accelerated depreciation allowances for most new and second hand plant used for the purpose of producing assessable income. The deduction is allowed over 5 years if the effective life of the plant is longer than 5 years; otherwise a 3 year write-off applies.

Section 38 and subsection 54(7) of the *Taxation Law Amendment Act (No. 4) 1988* terminated this special accelerated depreciation deduction broadly for plant contracted for after 25 May 1988 or other plant not used or installed for use before 1 July 1991.

This section has the effect that the accelerated depreciation allowances will not be available in respect of plant owned by the Corporation even where that plant was contracted for on or before 25 May 1988.

New section 57D (Capital gains tax) provides for the treatment of capital gains and losses on the Corporation's

assets acquired after 19 September 1985 and disposed of after 30 June 1991, the day before the commencement of the income year in which the Corporation became liable for income tax. The cost basis of the relevant asset for determining capital gains will be determined by the greater of its indexed cost base or market value as at the end of 30 June 1991.

If the market value of the asset as at the end of 30 June 1991 is less than the reduced cost base of the asset as at that date, market value will be used for the purpose of determining capital losses.

New subsection 57D(1), in effect, provides that, if:

- . an asset is owned by the Corporation at the end of 30 June 1991 ("the changeover date"); and
- . the market value of the asset at the end of 30 June 1991 would have been greater than the indexed cost base of the asset to the Corporation if it had been disposed of at that time,

only the gain which accrues after 30 June 1991 on the market value of the asset will be subject to capital gains tax under Part IIIA of the Assessment Act.

New subsection 57D(2) denies indexation to relevant assets which are disposed of within 12 months of acquisition.

New subsection 57D(3) in effect, provides that, if:

- . an asset is owned by the Corporation at the end of 30 June 1991 ("the changeover date"); and
- . the market value of the asset at the end of 30 June 1991 would have been less than the reduced cost base of the asset to the Corporation if it had been disposed of at that time,

any capital losses for the purposes of Part IIIA of the Assessment Act incurred by the Corporation through subsequent disposal will be calculated on the market value of the asset.

New subsection 57D(4) provides that Part IIIA of the Assessment Act does not apply to the disposal of an asset of the Corporation where:

- . the asset was acquired by the Commonwealth before 20 September 1985 and transferred to, or vested in, the Corporation; or
- . the Commonwealth and not the Corporation is entitled to the consideration in respect of the disposal.

New subsection 57D(5) provides that, unless the contrary intention appears, expressions used in this section have the same respective meaning as in Part IIIA of the Assessment Act.

New section 57E (Land and Buildings etc.)

New subsection 57E(1) provides that land vested in the Corporation under section 28 of the Principal Act is taken, for the purposes of the Assessment Act, to be owned by the Corporation.

New subsection 57E(2) provides that, if a Federal airport development site consists of, or includes, land owned by the Commonwealth and any of that land is leased by the Commonwealth to the Corporation then buildings and other fixtures on that land are taken, for the purposes of the Assessment Act, to be owned by the Corporation.

New section 57F (Superannuation payments) provides that, for the purposes of section 82AAC of the Assessment Act, a payment made by the Corporation to the Commonwealth under the authority of paragraph 87J(8)(b) of the Public Service Act 1922 is taken to be a contribution to an eligible superannuation fund, within the meaning of Part IX of the Assessment Act, in relation to the year of income of the fund in which the payment is made.

Paragraph 82AAC(1)(a) of the Assessment Act provides that employer contributions to superannuation funds for employees are allowable taxation deductions. Paragraph 87J(8)(b) of the Public Service Act 1922 provides the legislative authority for the Corporation to levy employer superannuation contributions.

The Corporation regularly pays to the Retirement Benefits Office, as manager of the Commonwealth Superannuation Scheme, productivity and other contributions of a superannuation nature. These contributions are exclusive of those contributed by members of the scheme.

The new section has the effect that all contributions, excluding productivity and annual contributions, paid by the Corporation for recognised arrangements in respect its employees who retained a right of continued membership of the Commonwealth Superannuation Scheme will be deductible for taxation purposes as if those payments were made to an approved superannuation fund.

This clause commences on 1 July 1991, the day on which the Corporation became liable to pay income tax.

PART 7 - AMENDMENT OF THE NAVIGATION ACT 1912

Clause 24 - Principal Act

This clause identifies the *Navigation Act 1912* as the Principal Act for the purposes of Part 7 of the Bill.

Clause 25: Regulations relating to accommodation

This clause corrects a drafting error in paragraph 136(2)(b) by replacing the word "industrial" in the expression "Industrial Labour Organisation" with "International". The wrong term was inadvertently used when the Navigation Act was amended by the *Industrial Relations Legislation Amendment Act (No.3) 1991*. The amendment is therefore deemed to have come into operation immediately after the commencement of Part 5 of that Act (ie, 8 April 1992).

PART 8 - AMENDMENTS OF THE PROTECTION OF THE SEA (POWERS OF INTERVENTION) ACT 1981

The purpose of Part 8 of the Bill is to amend the *Protection of the Sea (Powers of Intervention) Act 1981* (the Intervention Act) to take account of a revision by the International Maritime Organization of the list of substances which are covered by the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution casualties.

Clause 26 - Principal Act

This clause identifies the Intervention Act as the Principal Act for the purposes of Part 8 of the Bill.

Clause 27 - Interpretation

This clause amends the definition of Protocol to take account of the proposed new Schedule 3 to be added to the Intervention Act by clause 26.

Clause 28 - New Schedule

This clause provides for the amendment of the Intervention Act by the addition of new Schedule 3 which is set out in Schedule 2 of the Bill. The new Schedule is a copy of a resolution adopted on 4 July 1991 by the Marine Environment Protection Committee of the International Maritime Organization. It is a revised list of substances other than oil which, if discharged from a ship, may cause damage to the marine environment.

**PART 9 - AMENDMENTS OF THE PROTECTION OF THE SEA
(PREVENTION OF POLLUTION FROM SHIPS) ACT 1981**

The purpose of Part 9 of the Bill is to amend the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Pollution Act) to:

- . provide for the preparation of shipboard oil pollution emergency plans;
- . enable Australian ratification of Annex III (which is concerned with the prevention of marine pollution by harmful substances in packaged form) to the International Convention for the Prevention of Pollution from Ships, 1973; and
- . enable Australian implementation of Annex IV of the Protocol on Environmental Protection to the Antarctic Treaty.

Clause 29 - Principal Act

This clause identifies the Pollution Act as the Principal Act for the purposes of Part 9 of the Bill.

Clause 30 - Interpretation

This clause amends subsection 3(1) of the Pollution Act by amending the definition of "the 1978 Protocol" and by inserting definitions of "Antarctic Area" and "Antarctic Protocol".

The Pollution Act defines "the 1978 Protocol" to mean the Protocol of 1978 relating to the International Convention

for the Prevention of Pollution from Ships, 1973 as affected by a number of amendments adopted by the International Maritime Organization. The amendments add 3 new subparagraphs to the definition to refer to one amendment adopted on 16 November 1990 and 2 amendments adopted on 4 July 1991. The amendments to the definition relating to definitions adopted on 4 July 1991 do not come into operation until 4 April 1993 which is the date agreed to by the International Maritime Organization that these amendments to the 1978 Protocol should come into force.

The terms "Antarctic Area" and "Antarctic Protocol" are defined primarily for purposes of new Division 1 of Part IIIB of the Pollution Act, to be inserted by clause 34. The amendment inserting these definitions will commence on a date to be proclaimed which is to be the day on which the Protocol on Environmental Protection to the Antarctic Treaty enters into force. The definitions are part of a series of amendments in the Bill to give effect to Australia's obligations under Annex IV of that Protocol.

**Clause 31 - Prohibition of discharge of oil
or oily mixtures into sea**

This clause amends paragraph 9(4)(h) of the Pollution Act. Subsection 9(4) provides exemptions to the general prohibition on the discharge of oil or oily mixtures from a ship into the sea. Paragraph 9(4)(h) allow such discharges in special areas under certain conditions. The amendment to this paragraph provides that the exemptions do not apply to one particular special area, namely the Antarctic Area. This clause will commence on 4 April 1993 which is the date agreed to by the International Maritime Organization on which these amendment should apply.

**Clause 32 - Insertion of new section (Shipboard oil
pollution emergency plan)**

This clause inserts a new section 11A into the Pollution Act to require the preparation of shipboard oil pollution emergency plans in accordance with amendments to Annex 1 of the International Convention for the Prevention of Pollution from Ships, 1973. This clause will commence on 4 April 1993 which is the date agreed to by the International Maritime Organization on which these requirements should apply.

New subsection 11A(1) provides that new section 11A applies to all Australian ships that have a gross tonnage of 400 or more and to other Australian ships that are oil tankers and have a gross tonnage of 150 or more.

New subsection 11A(2) provides that, for purposes of section 11A, the term "prescribed incident" has the same meaning as in existing section 11. Section 11 defines "prescribed incident" to mean a discharge of oil or an oil

mixture, or an incident involving the probability of a discharge of oil or an oil mixture, not been a case where the exceptions of subsection 9(4) apply.

New subsection 11A(3) requires a shipboard oil pollution emergency plan to be kept on board all ships to which section 11A applies.

New subsection 11A(4) requires a shipboard oil pollution emergency plan to be in the form prescribed in the regulations. The new subsection also sets out the particulars that must be in the plan. The particulars are in accordance with a resolution of the International Maritime Organization adopted on 4 July 1991 and included in the proposed new Schedule 11 to the Pollution Act.

New subsection 11A(5) provides that the procedure to be followed for notifying a prescribed incident (required by proposed paragraph 11A(4)(a) to be included in a shipboard oil pollution emergency plan) must be in accordance with the requirements prescribed for purposes of existing subsection 11(1) which imposes a duty to notify prescribed incidents.

New subsection 11A(6) provides that particulars other than those required by new subsection 11A(4) may be included in a shipboard oil pollution emergency plan.

New subsection 11A(7) provides that where a ship to which new section 11A applies does not have on board a shipboard oil pollution emergency plan, the master and the owner are each guilty of an offence of which the maximum penalty is \$50,000.

Clause 33 - Interpretation

This clause substitutes the existing subsection 26(1) with a new subsection 26(1). The existing subsection defines "harmful substance". That definition is repeated unchanged in the new subsection and a definition of "harmful substance" is added. This amendment will commence immediately after the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986*. That section will insert a new section 26AB which is where the term "harmful substance" is used.

Clause 34 - Repeal

This clause repeals section 26AA of the Pollution Act. This amendment will commence immediately after the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986* which is the provision which would insert section 26AA into the Pollution Act. Section 26AA would require notification of the loading and unloading of certain harmful substances. Following the amendment of Annex III of the International Convention for

the Prevention of Pollution from Ships (as set out in Schedule 3 of the Bill) this requirement has been replaced by a requirement to provide more comprehensive information such as a detailed stowage plan and manifest.

Clause 35 - Prohibition on discharge by jettisoning of harmful substances into the sea

This clause amends section 26AB of the Pollution Act by removing the reference to a freight container, portable tank and road and rail wagon. This amendment will commence immediately after the commencement of section 26 of the Protection of the Sea Legislation Amendment Act 1986 which is the provision which would insert section 26AB into the Pollution Act. Section 26AB would prohibit the discharge by jettisoning of a harmful substance into the sea, being a substance carried as cargo in packaged form or in a freight container, portable tank or road or rail wagon. Following the amendment of Annex III of the International Convention for the Prevention of Pollution from Ships (as set out in Schedule 3 of the Bill) there is no need to repeat the full definition of "packaged form" as it is now included in the Convention.

Clause 36 - Insertion of new Division (Discharge of sewage in the Antarctic Area)

This clause inserts a new Division 1 (sections 26BA to 26BC) into Part IIIB of the Pollution Act and provides that the existing Part IIIB is a new Division (Discharge of sewage in other sea areas) in that Part. The new Division will regulate the discharge of sewage in the Antarctic Area to fulfil Australia's obligations under Annex IV of the Protocol on Environmental Protection to the Antarctic Treaty (the Antarctic Protocol) which was signed by Australia on 4 October 1991 (contained in proposed new Schedule 12). This clause and the succeeding clauses up to clause 40 will commence on a date to be proclaimed which is to be the day on which the Protocol on Environmental Protection to the Antarctic Treaty enters into force. The clauses are part of a series of amendments in the Bill to give effect to Australia's obligations under Annex IV of that Protocol.

New section 26BA (Interpretation) provides that, unless there is a contrary intention, the same expressions used in the new Division and in the Antarctic Protocol have the same meaning.

New section 26BB (Object of Division) provides that the object of the new Division 1 is to give effect to Australia's obligations regarding the discharge of sewage in the Antarctic Area under Annex IV of the Antarctic Protocol.

New section 26BC (Prohibition of discharge of sewage) prohibits, subject to certain exceptions, the discharge of sewage from a ship in the Antarctic Area.

New subsection 26BC(1) provides that, subject to new subsections 26BC(2) to (5), if untreated sewage is discharged into the sea in the Antarctic Area from a ship that is certified to carry more than 10 persons, both the master and the owner are guilty of an offence of which the maximum penalty is a fine of \$200,000.

New subsection 26BC(2) provides that new subsection 26BC(1) does not apply to the discharge of sewage from a foreign ship unless the discharge occurs in the sea near the Antarctic territory.

New subsection 26BC(3) provides that new subsection 26BC(1) does not apply if sewage was discharged to save a ship or a person.

New subsection 26BC(4) provides that new subsection 26BC(1) does not apply to the discharge of sewage from a ship if the sewage was stored in a holding tank and it is discharged gradually while the ship is proceeding at a speed of at least 4 knots while the ship is at least 12 nautical miles from the nearest land or ice shelf.

New subsection 26BC(5) provides that, in proceedings for an offence against subsection 26BC(1), it is sufficient for the prosecution to allege and prove that a discharge of sewage occurred but it is a defence if it is proved that, because of subsection 26BC(2), (3), or (4), subsection 26BC(1) did not apply. This is a reversal of the onus of proof but it is necessary. The information in subsections (2), (3) and (4) would be known only to the defendant. New subsection 26BC(5) is similar to existing subsection 26F(12).

Clause 37 - Interpretation

This clause:

- makes consequential amendments to section 26C consequential upon the previous Part IIIB being made a Division of Part IIIB; and
- inserts a definition of "sea" to provide, that for purposes of Division 2 of Part IIIB, it does not include the sea in the Antarctic Area. This is because the discharge of sewage in the sea in the Antarctic Area is covered by Division 2.

Clause 38 - Insertion of new section (Object of Division)

This clause inserts new section 26CA into the Pollution Act to provide that the object of Division 2 of Part IIIB is to give effect to Australia's obligations regarding the

discharge of sewage into the sea under Annex IV of the International Convention for the Prevention of Pollution from Ships.

Clause 39 - Operation of Division

This clause makes a consequential amendment to section 26DA consequential upon the previous Part IIIB being made a Division of Part IIIB.

Clause 40 - Interpretation

This clause adds a new subsection (2) to the existing section 26E to provide that, unless there is a contrary intention, the same expressions used in new subsection 26F(8A) and in Annex IV to the Antarctic Protocol have the same meaning.

Clause 41 - Insertion of new section (Object of Part)

This clause inserts a new section 26EA into the Pollution Act to provide that the object of Part IIIC (Prevention of Pollution by Garbage) is to give effect to Australia's obligations regarding the prevention of pollution by garbage from ships and the disposal of garbage in the Antarctic Area.

Clause 42 - Prohibition of disposal of garbage into the sea

This clause amends section 26F of the Pollution Act by:

- . providing that the existing subsection 26F(8) applies only to the disposal of garbage in the sea outside the Antarctic Area; and
- . adding a new subsection (8A) to apply to the sea in the Antarctic Area.

The new subsection 26F(8A) provides that the prohibition on the disposal of garbage in the sea provided for by subsection 26F(1) does not apply to the disposal of food wastes in the sea in the Antarctic Area if wastes have been passed through a comminuter or grinder so that no piece is larger than 25 millimetres and the disposal occurs when the ship is at least 12 nautical miles from the nearest land or ice shelf.

Clause 43 - Application of certain provisions to foreign ships

This clause inserts a new subsection (1A) into section 32 to provide that the regulations may apply the provisions of the Pollution Act relating to the keeping of a shipboard oil pollution emergency plan to foreign ships in a port in Australia, in the territorial sea of Australia or in the sea on the landward side of the territorial sea of

Australia. This clause will commence on 4 April 1993 which is the date agreed to by the International Maritime Organization on which these requirements should apply.

The clause also makes a consequential amendment to subsection 32(2) to apply it to regulations made under the new subsection (1A) as well as to the existing subsection (1).

Clause 44 - Schedules

This clause amends Schedule 1 of the Pollution Act (which sets out the International Convention for the Prevention of Pollution from Ships, 1973, as amended) by substituting Annex III with a new Annex III. This amendment will commence on 1 July 1992 which is the date agreed to by the International Maritime Organization that the amendment to the Convention should take effect internationally.

The clause also adds new Schedules 9, 10, 11 and 12 to the Pollution Act.

Schedules 9, 10 and 11 set out amendments adopted by the Marine Environment Protection Committee of the International Maritime Organization to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973. The insertion of Schedules 10 and 11 into the Pollution Act will take effect on 4 April 1993 which is the date agreed to by the International Maritime Organization on which these requirements set out in those Schedules should apply.

Schedule 12 sets out the Protocol on Environmental Protection to the Antarctic Treaty (other than Annexes I, II, III and V). The amendment to insert this clause will commence on a date to be proclaimed which is to be the day on which the Protocol on Environmental Protection to the Antarctic Treaty enters into force. It is part of a series of amendments in the Bill to give effect to Australia's obligations under Annex IV of that Protocol.

PART 10 - AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1991

The purpose of this Part is to make a number of amendments to the Telecommunications Act 1991 (the Telecommunications Act) the most important of which are to enable a fee to be charged for the grant of the third public mobile licence; to allow a dominant carrier to discriminate in favour of low income and other disadvantaged customers; to allow particular basic carriage services and particular circumstances in which such services are provided to be excluded from the requirement under section 194 for such services to be set out in a tariff; and to protect the name and symbol of the Australian Telecommunications Authority (AUSTEL).

Clause 45 - Principal Act

This clause identifies the Telecommunications Act as the Principal Act for the purposes of Part 10 of the Bill.

Clause 46 - Applications for general telecommunications licences and certain public mobile licences

Subsection 56(1) of the Telecommunications Act currently provides for applications for a general telecommunications or public mobile licence.

New section 57A of the Telecommunications Act, to be inserted by clause 47 of the Bill, will provide for a new allocation system for granting public mobile licences.

This clause will omit subsection 56(1) and insert new subsections 56(1) and (1A) to prevent applications for public mobile licences being processed under the pre-existing licensing provisions unless the applicant is an existing licence holder seeking a renewal of the licence or is seeking the transfer of a licence under section 59 of the Act.

New subsection 56(1) re-enacts part of the effect of the current subsection 56(1) to enable applications to be made for a general telecommunications licence.

New subsection 56(1A) re-enacts part of the effect of the current subsection 56(1) to enable applications to be made for a public mobile licence by an existing licensee seeking to renew its licence or an eligible corporation seeking the transfer of a licence from an existing licensee.

Clause 47 - Allocation system for certain public mobile licences

This clause inserts a new section 57A in the Telecommunications Act to provide for a new allocation system for granting public mobile licences.

New subsection 57A(1) will enable the Minister to determine an allocation system for the purpose of granting public mobile licences to eligible corporations, other than those eligible to apply under new subsection 56(1A).

The Government has announced that the allocation system for the granting of the third public mobile licence will be based on criteria including the bid price, industry experience and financial strength, industry development commitments and Australian equity participation.

New subsection 57A(2) ensures that the allocation system will be able to require the new licensee chosen under the system to pay for the licence and will be able to set out

the criteria to be taken into account in deciding on the licensee. The charge for the licence will be imposed under clause 4 of the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992 - see also the Explanatory Memorandum for that Bill.

New subsection 57A(3) will enable the determination of the allocation system to be revoked or varied. It is not envisaged that the allocation system would be revoked or varied during the process, due to the commercial uncertainty that could result if such actions occurred. However, the Government has announced that the number of public mobile licences will be reviewed in 1995. If there is a decision to allocate further licences after that review, a different process may be determined. If a new system is put in place at such a time and it is not tender based, paragraph 5(b) of the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992 requires the amount of the charge to be calculated in accordance with regulations.

New subsection 57A(4) will enable the grant and refusal of public mobile licences in accordance with the allocation system that has been determined.

New subsection 57A(5) applies the same rule found in subsection 57(3) of the Act, which requires the Minister to table in each House of the Parliament a copy of each licence granted, to a licence granted under the new section 57A.

Clause 48 - Agreement with carrier about licences

This clause amends section 70 of the Telecommunications Act to make a minor amendment consequential upon the insertion of new clause 57A in that Act.

Clause 49 - Division 5A - Collection and recovery of public mobile licence charge

This clause inserts a new Division 5A in Part 5 of the Telecommunications Act, which contains 3 new sections providing for the collection and recovery of the public mobile licence charge.

New Section 87A - Definition

This section contains a definition of the term 'charge' for the purposes of the new Division 5A.

New section 87B - When charge is payable

New subsection 87B(1) will make the charge imposed on the grant of a public mobile licence payable at the time the licence is granted.

New subsection 87B(2) will enable the Minister to determine that the charge is payable on a different day or in instalments. This is done in recognition that the actual payment arrangements will be determined during the commercial negotiations concerning the grant of the licence.

New subsection 87B(3) will enable the determination to be varied, if it were to become necessary to do so.

New section 87C - Unpaid charge is a debt due to the Commonwealth

This section will enable the Commonwealth to recover an amount of charge that is payable but which has not been paid.

Clause 50 - A general carrier may replace, repair and maintain facilities etc.

This clause amends section 131 of the Telecommunications Act to correct a typographical error by omitting a reference in subsection (3) to "power" and substituting "owner". The effect of the subsection is to require a general carrier to give written notice to an owner of land of its intention to remove or erect a gate in a fence in order to replace, repair and maintain facilities.

Clause 51 - Dominant carrier not to discriminate between acquirers of telecommunications services

Section 183 of the Telecommunications Act prohibits a carrier that is in a position to dominate a market for a particular kind of telecommunications service from discriminating between customers in relation to the charges or the terms and conditions for the service, except in particular circumstances.

The Australian and Overseas Telecommunications Corporation (AOTC) has publicly announced that it proposes to offer concessions to low income and other disadvantaged customers. Section 183 as currently worded would prevent AOTC from proceeding with the proposed concessions. This clause amends section 183 by including a new subsection (3) which will allow discrimination in favour of such customers.

New subsection 183(3) would allow discrimination in favour of:

- a 'concessional beneficiary' - defined in subsection 84(1) of the *National Health Act 1953* and which includes persons receiving certain pensions, benefits and allowances under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* and disadvantaged persons under the *Health Insurance Act 1973*;

- persons to whom, or in respect of whom, a pension or allowance is being paid under the Veterans' Entitlements Act or the Seamen's War Pensions and Allowances Act 1940 (as not all these persons come within the definition of 'concessional beneficiary'); and
- any other person that the carrier reasonably believes is disadvantaged on financial or health grounds.

The new subsection places no obligation on a carrier to discriminate in favour of all or any of these types of persons. It remains a matter of commercial judgement for the carrier as to whether it is appropriate to do so in relation to any particular service. The amendment will ensure, however, that those concessions that AOTC has publicly announced that it wishes to make can proceed.

Clause 52 - Basic carriage service must be tariffed if supplied to a person other than a carrier

This clause amends section 194 of the Telecommunications Act by inserting new subsection (3) to allow the supply by a carrier of basic carriage services which are not set out in a tariff, as required under subsection (1), where the basic carriage service or services are prescribed in regulations or where particular circumstances are prescribed. Subsection (1) provides that a carrier must not supply a basic carriage service to a person other than a carrier unless a tariff in respect of that service is in force and the service is included in the tariff. The purpose of section 194 is to provide consumers and competitors with accurate information as to the tariffs on particular services and on any terms and conditions on which the services are supplied and to assist in the practical policing of the discrimination provisions following section 183 of the Telecommunications Act.

New subsection (3) will allow regulations to be made exempting particular basic carriage services or the prescribing of circumstances in which basic carriage services are exempt from the tariffing requirement of subsection (1). For example, the amendment will enable regulations to be made which will exempt international transit traffic arrangements from the requirement to be tariffed. The details of such arrangements are considered to be confidential between the carriers involved.

Clause 53 - Insertion of new section (Person not to use protected name or protected symbol)

This clause inserts new section 402A after section 402 of the Telecommunications Act to protect the protected name and symbol of AUSTEL.

New subsection 402A(1) provides that a person must not, unless AUSTEL consents in writing, use the protected name (defined in new subsection (6) to mean "AUSTEL" or "Australian Telecommunications Authority") or the protected symbol (to be set out in regulations as provided in new subsection (6)). The prohibition on use of the protected name and symbol, or a name or symbol closely resembling the protected name or symbol, includes:

- . the use in relation to a business, trade, profession or occupation; or
- . use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft; or
- . the application as a trade mark or otherwise to goods imported, manufactured, produced, sold, offered for sale or let or hire; or
- . use in relation to goods or services or the promotion of supply or use of goods or services.

The penalty for contravening new subsection 402A(1) is a fine of \$3,000.

New subsection 402A(2) provides that nothing in subsection (1) limits anything else in that section.

New subsection 402A(3) provides that the prohibition in subsection (1) does not affect a person's rights conferred by law in relation to a trade mark registered, immediately before the commencement of Part 10, under the *Trade Marks Act 1955* or a design that is so registered under the *Designs Act 1906*.

New subsection 402A(4) provides that the section does not affect the use or rights affecting the use conferred by law relating to the use if, immediately before the commencement of Part 10, the person was using the name or the symbol in good faith or the person would have been able through established use of the name or symbol to prevent another person from passing off goods or services as his or her goods or services.

New subsection 402A(5) protects from the prohibition a person who uses or applies a protected name or protected symbol for the purposes of labelling customer equipment in

accordance with a permit in force under subsection 258(1) of the Telecommunications Act.

New subsection 402A(6) defines AUSTEL's protected name and protected symbol.

**PART 11 - AMENDMENT OF THE TRANSPORT AND COMMUNICATIONS
LEGISLATION AMENDMENT ACT 1990**

Clause 54 - Principal Act

This clause identifies the *Transport and Communications Legislation Amendment Act 1990* as the Principal Act for purposes of Part 11 of the Bill.

Clause 55 - Interpretation

This clause corrects a drafting error in section 26 of the Principal Act. Section 26 amended the Interpretation section (section 5) of the *Motor Vehicles Standards Act 1989*. The Interpretation provision was inadvertently referred to as section 3. This clause corrects that error. The amendment is therefore deemed to have come into operation immediately after the commencement of section 26 of the Principal Act (ie 21 January 1991).





