

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**TRANSPORT AND COMMUNICATIONS LEGISLATION
AMENDMENT BILL (NO. 2) 1993**

EXPLANATORY MEMORANDUM

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



**TRANSPORT AND COMMUNICATIONS LEGISLATION
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GENERAL OUTLINE

This Bill amends the following Acts administered within the Transport and Communications portfolio :

Air Navigation Act 1920
Australian Land Transport Development Act 1988
Australian National Railways Commission Act 1983
Civil Aviation Act 1988
Navigation Act 1912
Seafarers Rehabilitation and Compensation Act 1992
Seafarers Rehabilitation and Compensation Levy Act 1992
Telecommunications Act 1991.

The amendments do not introduce substantial new policy schemes, but contain provisions aimed at improving mechanisms for the administration and delivery of existing policies, as described below :

Air Navigation Act 1920

The amendments to this Act will provide for Australian ratification of a Protocol to the Convention on International Civil Aviation.

Australian Land Transport Development Act 1988

The Bill enables payments made through the ALTD Trust fund to the National Rail Corporation Ltd for One Nation projects to be recognised as Commonwealth capital contributions.

Australian National Railways Commission Act 1983

The Bill amends penalty provisions relating to actions which intentionally or recklessly endanger the safety of a train, increases the maximum penalty that may be prescribed for offences against the by-laws or regulations from \$500 to \$1,500 and extends the powers of inquiry into rail safety incidents to railways owned or operated by the Australian National Railways Commission.

Civil Aviation Act 1988

The main amendments to this Act: will enable Australia to give effect to Article 83 *bis* of the Chicago Convention when it enters into force internationally; clarify the Authority's ability to properly regulate foreign registered aircraft which are employed in domestic commercial operations; and empower the Authority to provide regulatory services to other countries and agencies under contract.

Navigation Act 1912

The Bills provides for the making of regulations relating to the qualifications, training, standard of competence and licensing of marine pilots in the Australian Coastal sea, where use of pilots is required.

Seafarers Rehabilitation and Compensation Act 1992 Seafarers Rehabilitation and Compensation Levy Act 1992

The Bill amends the Act to cover company trainees separate from industry trainees, allow employers to insure their liabilities with State insurance offices, rationalise provisions relating to compensation for travelling expenses incurred in seeking medical treatment and ensure that injured seafarers are only required to be examined by one doctor at a time, rather than examination by a medical panel.

The amendments to the Levy Act require the Minister to consult in relation to financial matters affecting the operation of the Authority before recommending a particular rate of levy to the Governor General in Council.

Telecommunications Act 1991

This Bill makes minor amendments to section 88 of the Telecommunications Act, which protects the secrecy of communications carried by telecommunications services, and amends the numbering provisions set out in Division 2 of Part 11 of the Act.

The Bill amends section 88 of the *Telecommunications Act 1991* to provide greater consistency with Information Privacy Principles 10 and 11 of the *Privacy Act 1988*. These principles place limits on the disclosure and use of personal information. Section 88 creates an offence if an employee of a carrier makes unauthorised disclosure or use of any fact or document that relates to contents of communications carried, telecommunications services supplied or the affairs or personal particulars of a person. The amendments change references in section 88 to a "fact or document" to "information or document" to ensure that the protection extends to non-factual information, such as opinions.

The amendments to the numbering provisions of the Act:

- . insert a requirement that any allocation of numbers used in relation to public telecommunications networks occur in accordance with the relevant provisions of the Telecommunications Act;
- . enable AUSTEL to impose, by disallowable instrument, conditions on the use and allocation of such numbers,

including conditions about the charging of fees in relation to the numbers;

- . permit further allocation of numbers by persons to whom they have been allocated (for example, where a carrier allocates numbers to a supplier of eligible services who in turn allocates numbers to customers); and
- . remove any doubt that the carriers, and other persons, can charge for numbers that they allocate.

Other Amendments

In addition, a number of Acts are being amended to correct technical drafting defects or errors which have been discovered since the original passage of the relevant Bills. The amendments in this respect are all minor technical matters which have no policy significance or impact.

FINANCIAL IMPACT STATEMENT

The amendments to the Civil Aviation Act 1988, which will expand the Civil Aviation Authority's ability to export a range of aviation related consultancy services overseas, will enable the Authority to enter into agreements with other countries or agencies for the provision of consultancy services in relation to air safety regulation and other matters in which it has expertise. The amounts involved will depend on the contracts which the Authority successfully negotiates with such countries or agencies. Being able to provide an expanded range of services to overseas countries and agencies should increase the Authority's prospects of gaining a number of contracts in the region.

The other amendments are not expected to have a significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1 Short Title

This clause provides for the proposed Act to be cited as the *Transport and Communications Legislation Amendment Act (No. 2) 1993*.

Clause 2 Commencement

Subclause 2(1) provides that, subject to subclauses 2(2), 2(3) and 2(4) the proposed Act will commence on Royal Assent.

Subclause 2(2) provides that the amendment in items 15 and 35 of the Schedule and the amendments of the *Telecommunications Act 1991* in items 115 to 128 commence 28 days after the Act receives Royal Assent.

Subclause 2(3) provides that the amendments in Items 1, 2, 3, 20, 21, 22, 23 and 25 to the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*, which are to provide the mechanism to ratify and give effect to Article 83 *bis* agreements, will commence by way of Proclamation not before the day on which the Protocol inserting Article 83 *bis* into the Convention on International Civil Aviation comes into force internationally. As of May this year, seventy-five Contracting States (of the required ninety-eight) had ratified the Protocol.

Subclause 2(4) provides that the amendment in Item 50 of the Schedule (a technical amendment to the *Interstate Road Transport Act 1985*) is taken to have commenced on 17 January 1989.

Subclause 2(5) provides that the amendment in Item 41 of the Schedule (a technical amendment to the *Civil Aviation Act 1988*) is taken to have commenced on 20 June 1990.

Subclause 2(6) provides that the amendment in Item 46 of the Schedule (a technical amendment to the *Federal Corporation Act 1986*) is taken to have commenced on 1 July 1990.

Subclause 2(7) provides that the amendment in Item 9 of the Schedule (a technical amendment to the *Australian Maritime Safety Authority Act 1990*) is taken to have commenced on 22 October 1990.

Subclause 2(8) provides that the amendment in Items 47, 48, 49 and 129 of the Schedule (technical amendments to the *Federal Corporation Act 1986*) are taken to have commenced on 25 November 1991.

Subclause 2(9) provides that the amendments in Items 5, 6 and 7 of the Schedule (amendments to the *Australian Land*

Transport Development Act 1988) are taken to have commenced on 17 January 1989.

Subclause 2(10) provides that the amendments in Items 111 and 112 to section 130 of the *Seafarers Rehabilitation and Compensation Act 1992* are to have commenced on 24 June 1993, the date on which that Act commenced.

Clause 3 Amendment of Acts

This clause provides that the Acts specified in the Schedule are amendment as set out in the Schedule.

Clause 4 Savings provisions relating to certain Air Operators' Certificates

Section 27 of the *Civil Aviation Act 1988* strictly requires aircraft to be individually authorised by an Air Operator's Certificate in order to be able to operate lawfully in commercial operations. In practice, this requirement places an unnecessary limitation on the administration of Air Operators' Certificates and does not add to safety. Some Certificates have in fact authorised the operation of "classes" of aircraft. The *Civil Aviation Act 1988* is proposed to be amended to allow Certificates to authorise the operation of aircraft included in a class of aircraft rather than specific individual aircraft.

Subclause 4(1) will validate existing Certificates which have been issued before the proposed amendments to the extent that they authorise the operation of aircraft included in a class of aircraft.

Subsection 27(7) of the *Civil Aviation Act 1988* requires Air Operators' Certificates to be issued for a specified term. Some Certificates have, however, been issued without a term being specified. Subclause 4(2) will validate existing Certificates which have been issued before the proposed amendments to the extent that they did not specify a term. The Certificates will be taken to have been issued for a term ending on 1 July 1994 at which time the Certificates will need to be re-issued.

Clause 5 Transitional provision relating to certain Air Operators' Certificates

It is proposed to amend the *Civil Aviation Act 1988* to ensure that the Civil Aviation Authority can properly regulate foreign registered aircraft engaged in domestic commercial operations in Australia under an Air Operator's Certificate.

Subclause 5(1) is a transitional provision which will allow foreign registered aircraft engaged in domestic operations to continue to operate under an existing Air Operator's Certificate for a period of 3 months after the proposed

amendment to the *Civil Aviation Act 1988*. At the end of that period operators wishing to use foreign registered aircraft in domestic commercial operations in Australia will need to satisfy the requirements set out in the proposed new section 28A of the *Civil Aviation Act 1988* or they will need to obtain a special short term permission under the proposed new section 27A.

Clause 6 Treatment of certain payment made to National Rail after 30 June 1992

This clause provides that certain payments made from the Australian Land Transport Development Trust Fund (the "Trust Fund") to the National Rail Corporation Ltd ("National Rail") are to be treated as if they had been properly made as "additional capital contributions" under new paragraph 15(1)(ba) of the Act, which is inserted by an amendment set out in the Schedule to the Bill. As an additional capital contribution the Commonwealth is entitled to receive shares equivalent to the nominal value of the payments from the Trust Fund.

Payments to National Rail will only be treated as additional capital contributions, thus entitling the Commonwealth to shares, if :

- (a) the payment was made after 30 June 1992 and before this Bill receives Royal Assent; and
- (b) the shareholders and the Commonwealth agree that the Commonwealth will be issued shares having a nominal value equivalent to the value of the payments, or the proportion of the value of any assets financed by such payments.

Subclause 6(2) further limits the payments to National Rail that can be regarded as additional capital contributions to payments on certain specified projects.

Clause 7 Application - subsection 30(2) of the *Seafarers Rehabilitation and Compensation Act 1992*

This clause provides that the amendment of subsection 30(2) of the *Seafarers Rehabilitation and Compensation Act 1992* which relates to compensation for funeral expenses will only apply in respect of funerals which take place after commencement of this clause. The date for the indexation of the amount of compensation is taken to begin on 1 July 1993.

Clause 8 Application - section 39 of the *Seafarers Rehabilitation and Compensation Act 1992*

This clause provides that the amendment of section 39 of the *Seafarers Rehabilitation and Compensation Act 1992* which relates to compensation for injuries resulting in

permanent impairment applies only in respect of claims made after the commencement of this clause.

**Clause 9 Application - sections 28, 49 and 50 of the
*Seafarers Rehabilitation and Compensation Act 1992***

This clause provides that the amendment of sections 28, 49 and 50 of the *Seafarers Rehabilitation and Compensation Act 1992* which relate to compensation for medical and related expenses is taken apply only in respect of journeys made after the commencement of this clause.

**SCHEDULE
AMENDMENT OF ACTS**

Air Navigation Act 1920

Items 1-3

The amendments of the *Air Navigation Act 1920* will provide for the Australian ratification of Article 83 *bis* to the Convention on International Civil Aviation. The amendments also provide for the inclusion of the text of Article 83 *bis* (by way of Schedule) into the *Air Navigation Act 1920*.

Australian Land Transport Development Act 1988

Item 4

The title of the *Australian Land Transport Development Act 1988* ("the ALTD Act") is amended to reflect its broader purposes as the development and maintenance of land transport systems, and related purposes.

Item 5

New paragraph 15(1)(ba) provides that payments made from the Australian Land Transport Development Trust Fund ("the Trust Fund") may be paid to a railway authority as an "additional capital contribution" in respect of a capital railway project. As an additional capital contribution the Commonwealth is entitled to receive shares equivalent to the nominal value of the payments from the Trust Fund.

Item 6

Under new subsection 15(3), the ability to pay monies from the Trust Fund as additional capital contribution is only open in specific circumstances. One essential precondition to the capital contribution is the agreement of the railway authority itself. Such payments may not be made from the Trust Fund to a railway authority unless :

- . the authority has submitted particulars of the project to the Minister;
- . if the authority has a corporate plan in place, the Minister is satisfied that the project is consistent with that corporate plan; and
- . the shareholders and the Commonwealth (or if the authority is not a corporation, the authority and the Commonwealth) have agreed that shares having an

equivalent nominal value to the payment from the Trust Fund will be issued to the Commonwealth.

Item 7

The conditions which govern other payments from the Trust Fund generally apply to payments as additional capital contribution under new paragraph 15(1)(ba). However, as the Commonwealth will receive shares in the authority, it would be inequitable to require repayment of monies, as that would amount to a windfall gain. The Commonwealth's control over the payments will essentially reside in its abilities as shareholder to influence the direction of the authority. Accordingly, the conditions relating to repayment of Fund monies will not apply to capital contributions. In particular the following conditions will not apply to payments under new paragraph 15(1)(ba) :

- . section 31 - unexpended monies be returned to the Commonwealth;
- . paragraph 32(1)(n) - repayment of monies if asset financed with Fund monies is sold or otherwise disposed of; and
- . paragraph 32(1)(p) - repayment if notified of breach of condition.

The amendment in Section 28(A) provides that where a railway authority that receives additional capital contributions under paragraph 15(1)(ba) is a company incorporated under the Corporations Law, the obligations on the directors and officers under the ALTD Act apply only to the extent that those obligations are consistent with their obligations under the Corporations Law. Where a conflict arises, directors and officers obligations under the Corporations Law take priority.

Item 8

The amendments to section 32 facilitate the transfer of Commonwealth and State rail assets to National Rail in exchange for "A convertible" shares in the company, in accordance with subclause 5(5) of the National Rail Shareholders' Agreement. Section 32(1)(n) of the ALTD Act provides that if a State disposes of an asset funded by payments from the Trust Fund, the State must either repay these funds or ensure that the proceeds of the disposal are expended on other capital railway projects. In the context of National Rail however, it is intended that states should freely transfer assets in exchange for equity in the company. The amendment removes the disincentive to transfer assets.

Australian National Railways Commission Act 1983

Items 12 - 14 - safety investigations

Sections 69 and 70 the *Australian National Railways Commission Act 1983* (the ANRC Act) require the Commission to provide to the Minister reports of accidents that occur on railways operated by the Commission and provide that the Minister may establish a Board of Inquiry to inquire into such accidents. The precise scope of "railways operated by the Commission" may be ambiguous, particularly where the operational control and management of the railway owned by the Commission may be exercised by another railway authority, under a contractual arrangement such as a lease, licence or running agreement, to operate a Commission owned railway. The amendments to sections 69 and 70 will extend their operation to cover railways "owned or operated by the Commission" thus ensuring that in the event of any rail safety accident or incident occurring on any of the Commission's railways, the reporting and inquiry obligations will apply.

Items 15 - 18 - penalties/offences

Subsection 78(1) currently provides for an offence where a person "to his knowledge" does an act or thing which is likely to endanger the safety of a train or of a railway operated by the Commission or of any persons who are within the limits of a railway operated by the Commission. The amendment to subsection 78(1) will redefine the grounds on which a person may be successfully prosecuted to refer to a person acting intentionally or recklessly.

Paragraph 79(1) (h) and section 80 are being amended to increase the maximum penalty that may be prescribed for breaches of the by-laws and regulations respectively from \$500 to 15 penalty units (presently equivalent to \$1,500). This level of penalty will allow penalties to be set at levels equivalent to those imposed by other rail systems in Australia.

The amendments revise existing penalties so that they accord with the *Crimes Act 1914* by expressing monetary penalties in terms of penalty units expressing penalties which provide for a term of imprisonment and a monetary penalty as a term of imprisonment only.

Subsections 78(3) and (4) are being omitted because there are equivalent provisions in section 4J of the *Crimes Act 1914*.

Civil Aviation Act 1988

Items 19 - 21

The amendments to subsection 3(1) will insert several definitions into the *Civil Aviation Act 1988*. The new definitions are required for the purposes of the proposed amendments to the Act.

Item 22

The proposed new section 4A will enable Australia to give effect to Article 83 *bis* of the Chicago Convention.

Article 83 *bis* is a proposed amendment - and the first substantive amendment - to the Chicago Convention. It gives Contracting States a basis for entering into bilateral agreements transferring responsibilities under the following articles of the Convention: Article 12 (Rules of the Air), Article 30 (aircraft Radio Equipment), Article 31 (Certificates of Airworthiness), and Article 32 (Licences of Personnel). Under an Article 83 *bis* agreement, a State of registry will be able to transfer the responsibilities pertaining to these articles to the State in which an aircraft is to be based.

When the Convention was negotiated in 1944, the parties did not envision, and the resulting Convention did not provide for, aircraft that are operated by an operator belonging to a State other than the State of registry. Since 1944, however, the leasing of aircraft used in international operations has become extensive. The reasons for this are obvious and universal. Aircraft have become extremely expensive. Leasing arrangements are often the most economical method of obtaining the use of aircraft. Leasing can also maximise aircraft utilisation, thereby increasing the return on investment. By 1980, it was clear that the substantial increase in aircraft lease and charter activity and the movement of operational bases of aircraft across national boundaries posed real safety problems. Article 83 *bis* was adopted after lengthy discussion of alternative approaches by the 23rd ICAO Assembly in 1980. Article 83 *bis* responds to the need to preserve the vitality of the Convention by ensuring that it continues to reflect international civil aviation realities.

Article 83 *bis* was adopted unanimously in 1980. Since that time both the ICAO Assembly and the Council have repeatedly urged all States to ratify the amendment, most recently by unanimous resolution at the 29th Assembly in October 1992.

The new section 4A(2) provides that if Australia enters into an Article 83 *bis* agreement with another Contracting State in relation to foreign aircraft then for the purposes of

the *Civil Aviation Act 1988* and the *Civil Aviation Regulations* the foreign aircraft is to be taken to be an Australian aircraft and will be subject to Australian safety rules.

Similarly, under the new subsection 4A(3) if Australia enters into an Article 83 *bis* agreement with another Contracting State in relation to an Australian aircraft then the *Civil Aviation Act 1988* and the *Civil Aviation Regulations* will not apply to the Australian aircraft while the agreement is in force and the aircraft will be subject to the safety rules of the other Contracting State.

New subsection 4A(4) makes it clear that references in the *Civil Aviation Act 1988* and the *Civil Aviation Regulations* to a Contracting State include a reference to a Contracting State to which functions have been transferred under an Article 83 *bis* agreement.

New subsections 4A(5), (6) and (7) provide that the Authority must notify the making of, or an amendment to, an Article 83 *bis* agreement to which Australia is a party in the *Gazette*. A notice must include details about the Contracting State involved, the date of commencement of the agreement, the aircraft involved and the functions to be transferred.

Items 23 - 25

The amendments of section 7 are technical amendments which are necessary to ensure the proper operation of the *Civil Aviation Act 1988* in relation to aircraft which are covered by an Article 83 *bis* agreement and in relation to regulatory services which are provided under a contract entered into under the proposed new section 10A.

Item 26

New section 10A will expand the Civil Aviation Authority's ability to export a range of aviation related consultancy services overseas, where such is subject to a contract. Such a move has the potential to be an important area of export activity for Australia. Moreover, it has the potential to assist harmonisation of air safety regulation in the Asia Pacific region, whilst underpinning Australia's regional influence in the area of air traffic management.

Items 27 - 29

These amendments convert the existing pecuniary penalties in the *Civil Aviation Act 1988* into penalty units. The amendments do not change the existing level of penalty.

Item 31

New subsection 27(2A) makes it clear that Air Operators' Certificates may authorise the operation of Australian aircraft by reference to a class of aircraft rather than by reference to a specific aircraft. However, foreign registered aircraft will need to continue to be specified individually in a Certificate authorising the operation of such aircraft in domestic commercial operations. This is considered to be necessary from a safety point of view in order to enable the Authority to be able to properly monitor the number of foreign registered aircraft operating domestically in Australia.

New subsection 27(2B) makes it clear that Certificates can be issued only to natural persons or legal entities. Certificates will not be capable of being issued to partnerships or other unincorporated bodies.

Item 32

This section will allow special short term permissions to be granted to foreign registered aircraft that cannot meet the requirements of the new section 28A.

Proposed new section 28A will set out the requirements which will need to be complied with before an Air Operator's Certificate can authorise the use of a foreign registered aircraft in domestic commercial operations.

In some instances, these requirements may not be able to be complied with but it is nevertheless recognised that such an aircraft may need to be utilised in domestic operations for a very short period.

New section 27A will allow the Authority to permit the use of such an aircraft for a maximum period of 7 days if the Authority is satisfied that granting the permission will not adversely affect the safety of air navigation.

In giving the permission the Authority will be able to impose such conditions relating to the operation, maintenance and airworthiness of the aircraft as the Authority considers necessary in the interests of the safety of air navigation. It will also be able to vary these conditions or cancel the permission if it is satisfied it is necessary to do so on safety grounds.

The decisions of the Authority under this section will be subject to review by the Administrative Appeals Tribunal under section 31 of the *Civil Aviation Act 1988*.

Item 33

Proposed new section 28 sets out the limitations on the manner in which the Authority must exercise its discretion in granting, refusing, varying or cancelling permissions and Air Operators' Certificates under the *Civil Aviation Act 1988*. The amendments are required in order to enable the Authority to properly regulate the operation of foreign registered aircraft on domestic commercial flights.

For the purposes of the *Civil Aviation Act 1988*, a foreign registered aircraft engages in a "domestic commercial flight" if it flies from one place in Australian territory to another place also in Australian territory and the flight is not a leg of an international flight (ie, a flight to or from a place outside Australian territory). For example, a British Airways aircraft operating a service from Melbourne to London is not engaged in a domestic operation if it flies from Melbourne to Sydney before flying to London.

While most aircraft operated on domestic commercial flights in Australia are registered in Australia, from time to time operators lease aircraft that are registered in other countries for use in operations of this kind. Under sections 27 and 28 as they currently stand, it is not clear whether the Authority, in deciding whether to issue an Air Operator's Certificate in relation to a foreign registered aircraft, can take into account the ability of the applicant to comply with safety regulations that are expressed to apply only to "Australian aircraft". That is, the *Civil Aviation Act 1988* may require the Authority to apply different safety standards depending on whether an aircraft is registered in Australia or overseas yet the foreign aircraft may be operating alongside an Australian aircraft in the same domestic operation under the same Air Operator's Certificate.

In addition, it seems that it is not possible for the Authority to impose conditions on an Air Operator's Certificate issued in respect of a foreign registered aircraft that would require the operator of the aircraft to comply with safety regulations (that are limited to their application to "Australian registered aircraft").

The result is that the Authority may be required to issue a Certificate authorising a foreign registered aircraft to fly in domestic commercial operations without being satisfied that the aircraft is safe to fly, that the manner in which the aircraft is operated under its flight operations manual is safe, or that the aircraft will be properly maintained during the time that it is in Australia.

It is proposed that the Authority should be given greater control over the airworthiness and operation of foreign

registered aircraft that are flown in domestic commercial operations by restricting the circumstances in which an Air Operator's Certificate authorising such operations may be issued. The proposed amendments to sections 28 and 28A give effect to this proposal.

New subsection 28(1) repeats the existing provision in relation to the granting of permissions (other than permissions under the new section 27A). It provides that the Authority must grant a permission to an applicant if the Authority is satisfied that the applicant has complied with, or established the capability to comply with, the provisions of the *Civil Aviation Act 1988* and the *Civil Aviation Regulations* relating to safety.

New subsection 28(2) contains identical requirements in relation to the issue of Air Operators' Certificates. However, where it is proposed to issue a Certificate that will authorise the operation of a foreign registered aircraft on domestic commercial flights, the Authority must also be satisfied that the requirements of the proposed new section 28A have been met before it issues the Certificate.

New subsection 28(3) provides that the Authority cannot impose or vary conditions in, or suspend or cancel, a permission (other than a permission under section 27A) except for safety reasons.

New subsection 28(4) deals with Air Operators' Certificates that only authorise the operation of foreign registered aircraft on domestic commercial flights or so much of a mixed authority Certificate that authorises the operation of foreign registered aircraft on such flights. The Authority may only impose or vary conditions in, or suspend or cancel, such Certificates, in order to ensure that the aircraft's operation, maintenance and airworthiness are of a standard that the Authority considers necessary in the interests of the safety of air navigation.

New subsection 28(5) deals with Air Operators' Certificates authorising the operation of Australian aircraft in commercial operations. In these cases the Authority may only impose or vary conditions in, or suspend or cancel, such Certificates, in order to ensure compliance with the provisions of the *Civil Aviation Act 1988* and the *Civil Aviation Regulations* relating to safety. This provision repeats the existing requirements of section 28.

The reason for the difference in approach between subsections 28(4) and (5) is that, as mentioned above, many safety provisions in the *Civil Aviation Act 1988* and the *Civil Aviation Regulations* are expressed to apply only to "Australian aircraft" and do not apply to foreign registered aircraft operating in domestic operations. Accordingly it is not possible under the existing provisions of the *Civil Aviation Act 1988* to require

foreign registered aircraft to comply with many safety provisions to which Australian aircraft are subject. Subsection 28(4) is intended to ensure that foreign registered aircraft operating on domestic commercial flights are subject to the same strict safety rules as Australian aircraft.

Subsection 28(6) provides that the Authority must cancel an Air Operator's Certificate upon the written request of the holder of the Certificate.

New section 28A sets out the requirements that must be complied with before the Authority can issue an Air Operator's Certificate authorising the operation of a foreign registered aircraft on domestic commercial flights. These requirements are based upon the requirements recommended by the International Civil Aviation Organisation in relation to the domestic operation of foreign registered aircraft in a Contracting State. These additional requirements are necessary in order to ensure that the Authority can satisfy itself that such aircraft will not adversely affect the safety of air navigation within Australia.

Items 34 - 42

The remaining amendments to the *Civil Aviation Act 1988* (apart from carrying out some technical amendments) convert existing pecuniary penalties into penalty units. The level of penalty remains unchanged.

Navigation Act 1912

The *Navigation Act 1912* is amended to correct a number of technical defects and insert a new Part IIIA to enable the making of regulations on the licensing of pilots in Australian coastal waters. The Regulations provide for the determination of standards, documentation control, duration and cancellation of licences, training requirements, recognition of State qualifications, and exemptions.

Under the *Great Barrier Reef Marine Park Act 1975* ships have to carry a pilot while navigating the Marine Park, and ships as a matter of practice carry a pilot on two passages through the Torres Strait. Pilots were licensed by the Queensland Government which has now handed responsibility over to the Commonwealth.

Item 52. Subsection 6(1)

Corrects the spelling of 'd'affaires'.

Item 53. Subsection 6(1)(b)

Includes the new Part IIIA as an addition to the definition of a ship in Section 6 so that it is capable of applying to Off Shore Mobile units under tow.

Items 54 - 56. Subsections 15(1A) and Paragraphs 15(2)(a), (d) and (e).

Deletes reference to pilots licensed for the purposes of the Great Barrier Reef Marine Park Act 1975 as these will be covered by the new Part IIIA.

Items 57 - 58 Subsection 139(1) and 139(2)

This is to correct a fault arising from amendment by the Transport Legislation Amendment Act 1988 (No 57 of 1988). The section had a penalty for preventing a seaman going ashore for certain purposes. The Section was amended by the addition of Subsection (2) creating the offence of a seaman obtaining permission by making a false statement. The penalty provision was not moved to the end of the section so as to apply to both subsections.

Item 59. Subsection 173(2)

A reference to a paragraph in Subsection 173(1)(b) removed by the Transport Legislation Amendment Act 1988 is being deleted.

Item 60. Part IIIA - Pilotage

This Part inserts in the Act provisions for the licensing of pilots and regulation of pilotage services in Australian Coastal Waters.

Subsection 186A

The provision states that Part IIIA will apply to those parts of the Australian coastal waters defined in Section 8 as are specified by regulation.

Part IIIA is not intended to affect the operation of any law of a State or Territory governing pilots or pilotage within a port under the control of a State or Territory.

Section 186B

The provision defines the term the term 'licensed pilot' and extends the definition of 'certificate' for the purposes of Part IIIA to include a licence issued to a pilot.

Section 186C

Subsection (1) enables the making of regulations to provide for standards of competence and other conditions to be satisfied by licensed pilots.

Subsection (2) enables regulations to include conditions on age, character, health, citizenship and nationality.

Subsection (3) enables the making of regulations on proof of qualifications, Issue, Duration, and Suspension of licences, Training Requirements, Recognition of existing licences, and Exemptions.

Section 186D

This provision enables the making of regulations concerning pilots duties, professional relationship with the master of the ship, and professional liability.

Section 186E

The provision prohibits a person without a licence from undertaking the duties of a pilot unless there is a reasonable excuse, and makes it an offence for an unqualified person to be employed as a pilot.

Section 186F

This clause inserts offences relating to the abuse of alcohol or drugs by a pilot while on board a ship. This is identical to the requirements applying to other members of the crew under Section 386A.

Item 61. Subsection 329B(1)

The reference to Section 322 in the Section is being deleted as the section was repealed in 1988.

Item 62. Section 389A(6)

The provision is amended to include 'pilot' in the definition of a 'certificate' for the purposes of the Section.

Item 63. Section 389A

The section is amended to include a licence issued to a pilot in the definition of Certificate.

Item 64. Section 397(2)

This provision adds Section 186E to the offences in Section 397 (2). The effect is that a person convicted under Section 186E is not eligible for a discharge without conviction.

Item 65. Section 401

The Section is amended to include a pilot's licence in the definition of a certificate.

Item 66. Section 410(1)

This is updating the Act by substituting 5 penalty units for the fine of \$500, the penalty units have the same value.

Item 67. Section 425(1AA)

The section is being amended to include Part IIIA enabling Marine Orders to be made in respect of the new Part.

Seafarers Rehabilitation and Compensation Act 1992

The amendments to the Act essentially deal with four main matters :

- . differentiation between "company trainees" and "industry trainees";
- . insurance with State insurance offices;
- . ensure that injured employees are not required to be examined by medical panels;
- . rationalise provisions relating to compensation for travelling and accommodation expenses incurred in obtaining medical treatment.

Items 73, 75, 76, 77, 78, 79, 82 and 85 - trainees

The Act is amended to differentiate between "company trainees" and "industry trainees" for compensation purposes. While the Act recognises that industry trainees (who are not in the employ of any single employer) will be able to claim compensation for injuries from the general industry Fund established under section 96 of the Act, it is necessary to make provision for company trainees to direct claims for compensation to their actual employer.

Items 73, 75, 76, 77, 78, 79, 82 and 85 provide the necessary technical amendments. In particular, Item 75 defines a company trainee as a person ordinarily employed as a seafarer but who is undergoing a training course required by his or her employer. While undergoing such required training courses, a company trainee is an employee for the purposes of the Act (section 4).

Item 75 - insurance

Under section 93 of the Act employers must have a policy of insurance or indemnity to cover their liabilities under the Act. Item 75 amends the definition of "authorised insurer" to include both general insurance companies under the Insurance Act 1973 and insurers carrying on State insurance. This amendment will allow employers to insure their liabilities under the Act with State insurance companies if they wish.

Item 104 - medical examinations

Under section 66 of the Act where an employee has notified an injury or made a claim for compensation the employer may require the employee to be medically examined.

New subsection 66(1A) is inserted by Item 104 to provide that the employee must not be required to be examined by more than one medical practitioner at a time. This amendment will remove the potential for an employee to be required to be examined by a panel of medical practitioners. This amendment will not preclude an employer from requiring the employee to attend a series of separate medical examinations by different medical practitioners where the nature of the employee's injury requires further medical opinion or additional specialist medical examination.

Items 91, 98 and 100 - travelling expenses for medical treatment and rehabilitation

Section 28 of the Act includes provision for compensation for travelling and accommodation expenses incurred in obtaining medical treatment that it was reasonable for the employee to obtain.

Item 91 of the Schedule amends these provisions by inserting a formula for compensation for journeys undertaken by private motor vehicle, and for actual costs of journeys by public transport or ambulance.

New subsection 28(6A) provides that the compensation for a journey by public transport or ambulance is an amount equal to the expenditure reasonably incurred by the employee. The employee must be able to demonstrate that :

- . the journey was necessary for the purpose of obtaining the medical treatment for the injury (subsection 28(6)); and
- . that the employee's injury reasonably required the use of the particular public transport or ambulance services (new paragraph 28(7) (a)).

Compensation for journeys by private motor vehicle will be an amount worked out using the formula :

specified rate per kilometre x number of kilometres

where the specified rate is the amount specified by the Minister. The number of kilometres means the distance the employer determines to be the reasonable length of the return journey.

Compensation for a private motor vehicle journey is only payable if the return journey exceeds 50 kilometres (new paragraph 28(7) (b)). The 50 kilometre threshold will ensure that employees are compensated for the costs of substantial journeys undertaken by private motor vehicles, while ensuring that employers are not subject to undue administrative burden in determining compensation in relation to short journeys.

Identical provisions have been inserted in sections 49 and 50 (Items 98 and 100).

The remaining amendments to the Act are of a minor technical nature.

Seafarers Rehabilitation and Compensation Levy Act 1992

Item 114

The *Seafarers Rehabilitation and Compensation Levy Act 1992* (the Levy Act) enables a levy to be imposed in respect of seafarer berths (employee numbers) in the event that the Fund approved under section 96 of the *Seafarers Rehabilitation and Compensation Act 1992* (the Principal Act) ceases to meet the conditions of approval. In such an event, the Seafarers Rehabilitation and Compensation Authority (the Authority) has the Fund's functions, powers and obligations (section 100 of the Principal Act).

Section 4 of the Levy Act imposes the levy, and the rate of the levy is as prescribed (section 5). The levy is payable by employers of seafarers.

Item 114 amends section 7 of the Levy Act by providing that before the Minister advises the Governor General about the making of a regulation in relation to the rate of levy, the Minister shall consult the Authority, which includes representatives of seafarer employers, in respect of :

- . the need to ensure the Fund has adequate financial reserves for the purposes of its prudential management;
- . reasonable estimates of present and future liabilities under the *Seafarers Rehabilitation and Compensation Act 1992*, and

- . the cost of administering the Authority in connection with the performance or exercise of the Fund's functions, powers and obligations.

New subclause 7(3) provides that a failure to consult will not affect the validity of any regulations.

These amendments ensure that in assessing the relevant rate of levy to cover the Authority's costs and liabilities in administering the Fund's functions and obligations the Minister must take account of relevant financial matters before advising the Governor General. A failure to properly consult the Authority could be subject to parliamentary scrutiny.

Telecommunications Act 1991

Amendments to section 88

Section 88 of the *Telecommunications Act 1991* creates an offence if an employee of a carrier or certain other persons make unauthorised disclosure or use of any fact or document that relates to:

- . the contents of a communication carried or in the course of carriage;
- . telecommunications services supplied to another person;
- . the affairs or personal particulars (including an unlisted phone number or address) of another person;

and comes to the person's knowledge or possession because the person is an employee of a carrier or supplier of an eligible service.

Section 88 is intended to give effect to Information Privacy Principles 10 and 11 in section 14 of the *Privacy Act 1988*, which deal with limits on the use and disclosure of personal information.

These amendments in items 116 to 124 of the Schedule have the effect of changing references to "fact" in section 88 to "information" to provide greater consistency with Information Privacy Principles 10 and 11.

The amendment in item 125 defines "information" to include "opinion" for the purposes of section 88, which provides greater protection for the privacy of communications handled by telecommunications carriers.

Amendments to numbering provisions

Division 2 of Part 11 of the Telecommunications Act relates to AUSTEL's powers and responsibilities in relation to the management of numbering of telecommunications services in Australia.

Section 239 of the Act requires AUSTEL to prepare a plan for the numbering of telecommunications services in Australia and for the use of numbers in connection with the supply of such services. The national numbering plan came into effect on 16 April 1993.

Item 126 - New section 241A

Subsection 242(1) of the Act provides that AUSTEL may, on application by a carrier or another person, allocate numbers for telecommunications services provided by that carrier or other person across a public telecommunications network.

Subsection 242(3) enables a carrier or other person to whom numbers are allocated under subsection 242(1) to allocate those numbers to other persons.

It is not completely clear that the provisions of section 242 provide the only basis for the allocation of numbers in connection with the supply of services across telecommunications networks.

The amendment in item 126 of the Schedule inserts a new section 241A in Division 2 of Part 11 to provide that any allocation of numbers in respect of telecommunications services to be provided across a public telecommunications network must be made in accordance with section 242.

Item 115 also inserts a definition of 'allocation' in section 5 of the Act to make it clear that an allocation of a number includes the reservation of a number for future use.

Item 127 - New subsections 242 and 243

Subsection 242(3) enables the further allocation of numbers by a person or carrier to whom a number has been allocated by AUSTEL. The amendment in item 127 omits subsection 242(3) and substitutes a new subsection, which clarifies that a person who has been allocated a number can further allocate it to someone else. For example, this ensures that the supplier of an eligible service, who has been allocated a number by a carrier who has in turn been allocated that number by AUSTEL, can proceed to allocate that number to a customer.

The new subsection 242(3) is expressed in broad terms so that it will apply to all numbers to be allocated in respect of telecommunications services to be provided

across a public telecommunications network, even where such a number has not been formally allocated in the past.

Subsection 242 requires the allocation of a number by a carrier or other person to be in accordance with the policies set out in the national numbering plan. Item 128 inserts a new section 242B which enables AUSTEL, by disallowable instrument, to determine conditions applicable to the allocation or use of numbers.

Item 127 omits subsection 242(4) and substitutes a new subsection which extends the operation of subsection 242(4) by requiring an allocation of a number by AUSTEL or another person to comply with both the policies in the national numbering plan and any applicable determination of conditions.

Item 128 - New sections 242A and 242B

The *Telecommunications (Numbering Fees) Act 1991* provides for the payment of a fee to the Commonwealth for a number allocated under section 242 of the Act. Such fees are to be set by reference to regulations. To date, no regulations have been made under subsection 6(2) or 7(2) of the Numbering Fees Act.

The existence of the Numbering Fees Act raises some doubt that the carriers can charge for the allocation of numbers allocated to them by AUSTEL under section 242, on the basis that the Numbering Fees Act might be said to set out a comprehensive regime for the imposition of fees in relation to such numbers. New section 242A is inserted to remove any doubt that the carriers, and other persons, can charge for numbers that they allocate.

New subsection 242A(3) provides that nothing in the Telecommunications Act or the Numbering Fees Act prevents a person from charging a fee in respect of any allocation or use of numbers to which the new section applies.

New subsection 242A(3) is expressed to be 'subject to subsection 242A(4)'. That subsection provides that a fee can only be charged in accordance with the policies in the national numbering plan and any applicable determination of conditions. It is intended that such a condition could be determined, for example, to prohibit the charging of fees for the allocation of certain classes of numbers, such as numbers allocated to residential customers for the standard telephone service.

The vast bulk of numbers used for the provision of services across public telecommunications networks have been allocated at some time in the past. Accordingly, subsection 242A(2) ensures that section 242A applies to the use or allocation of numbers allocated before or after the section commences. The section is prevented from having

retrospective effect by the requirement that it apply to the use of numbers and the allocation of numbers after the section commences.

New section 242A is not intended to apply in relation to charges for the underlying services in respect of which the numbers are allocated. The section is intended to apply in relation to charging fees set for the allocation or use of numbers which may be used in relation to the supply of those services.

New section 242B enables AUSTEL to impose, by disallowable instrument, conditions on the use and allocation of numbers in respect of telecommunications services to be provided across a public telecommunications network, including conditions about the charging of fees in relation to the numbers.

The vast bulk of numbers used for the provision of services across public telecommunications networks have been allocated at some time in the past. Accordingly, subsection 242B(2) ensures that section 242B applies to the use or allocation of numbers allocated before or after the section commences. The section is prevented from having retrospective effect by the requirement that it apply to the use of numbers and the allocation of numbers after the section commences.

New subsection 242B(6) gives examples of the kinds of conditions that AUSTEL may determine under this section, including conditions prohibiting, or restricting, the allocation or use of numbers and conditions relating to the charging of fees for such allocation or use.

Under new subsection 242B(5), the conditions must be consistent with the policies set out in the national numbering plan. AUSTEL will not be precluded from applying more detailed conditions than the general provisions of the plan. If the plan, for example, requires 008 numbers to be used for toll free services, AUSTEL will be able to impose conditions restricting the use and further allocation of the 008 numbers to toll free services of a particular kind.

Another example of a condition that AUSTEL could determine is a condition about portability ie. a condition to the effect that a number which was allocated to a customer by a carrier does not revert to that carrier merely because the customer has elected to have the particular telecommunications services concerned provided by another carrier.

AUSTEL can also set conditions relating to any fees payable for the use or further allocation of numbers under subsection 242B(3), such as:

- . whether or not a fee can be charged for particular kinds of numbers (for example, to prohibit charges for the allocation or use of numbers allocated to residential customers for the standard telephone service);
- . the types of fee that can be charged (for example, a fee to reserve a number, a fee to use a number);
- . the basis on which the amount of the fee can be determined for particular kinds of numbers (for example to recover the costs of allocating a number or to recover the number's market value);
- . other limitations on any such fees, such as the frequency of any such fee (for example, to be charged on a quarterly or an annual basis).

The new section 242B is not intended to give AUSTEL the authority to set tariffs or place restrictions on the level of tariff for the supply of particular kinds of telecommunications services. The section is intended to apply in relation to fees set for the allocation or use of numbers which may be used in relation to the supply of those services.

Any further allocation of a number by a carrier to another person or use of a number by a carrier otherwise than in accordance with the policies in the national numbering plan or the conditions determined by AUSTEL would be remedied by an AUSTEL direction under section 46. Section 228 of the Act gives AUSTEL a remedy where an eligible service provider does not comply with, or allocates a number to another person otherwise than in accordance with, the plan or a condition under a determination. Paragraph 5(i) of the Service Providers Class Licence issued under section 209 of the Act requires eligible service providers to comply with AUSTEL's numbering requirements.

New section 242B is also intended not to prevent the carrier or other persons from imposing their own conditions upon an allocation of a number, providing those conditions are not inconsistent with the plan or any condition under a determination. For example, a carrier may propose to impose a condition on a customer's use of a number preventing the customer from allocating the number to another person.

Other Amendments

In addition to the amendments described in detail above, a number of Acts are being amended to correct technical drafting defects and typographical errors which have been discovered since the original passage of the relevant Bills. These include deletion of duplicated words, mistaken references to other legislation, spelling mistakes and grammatical errors. The amendments in this respect are all minor technical matters which have no policy significance or impact. The relevant Acts are :

Australian Maritime Safety Authority Act 1990
Civil Aviation Act 1988
Civil Aviation (Carrier's Liability) Act 1959
Federal Airports Corporation Act 1986
Interstate Road Transport Act 1985
Lighthouses Act 1911
Navigation act 1912
Qantas Sale Act 1992
Protection of the Sea (Prevention of Pollution from Ships) Act 1985
Transport and Communications Legislation Amendment Act 1991.





