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TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(No. 3) 1992

EXPLANATORY MEMORANDUM

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



**TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
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OUTLINE

This Bill makes amendments to 8 Acts administered within the Transport and Communications portfolio:

Australian Broadcasting Corporation Act 1983;
Broadcasting Services Act 1992;
Civil Aviation Act 1988;
Federal Airports Corporation Act 1986;
Protection of the Sea (Prevention of Pollution from Ships) Act 1983;
Radiocommunications Act 1983;
Telecommunications Act 1991; and
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991.

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

Australian Broadcasting Corporation Act 1983

The Bill amends the *Australian Broadcasting Corporation Act 1983* to facilitate the introduction of an international television service which the ABC proposes to provide to South-East Asian countries. The proposed service is intended to carry corporate sponsorship and promotional programming and the amendments will remove existing restrictions in the Act which would prevent it from doing so.

Broadcasting Services Act 1992

The Bill amends the *Broadcasting Services Act 1992* to:

- . make it a reasonable excuse for a journalist to refuse to answer a question from, or to produce a document to, the Australian Broadcasting Authority if to do so would disclose the identity of a confidential source of information; and
- . make some minor amendments to remove an unnecessary definition, make a consequential change to another definition and correct some cross-references.

Civil Aviation Act 1988

The Bill amends the *Civil Aviation Act 1988* to provide a greater flexibility in the method of determining charges under the Act and to provide a mechanism under which

charges can be waived or remitted in appropriate cases. It also amends the Act's regulation-making provision to expressly provide that regulations can be made under the Act which deal with the design and manufacture of aircraft.

Federal Airports Corporation Act 1986

The Bill corrects a defect in one of the transitional tax provisions in the *Federal Airports Corporation Act 1986*.

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

The Bill amends the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to place more stringent controls on the discharge into the sea of oil and oily mixtures from ships.

Radiocommunications Act 1983

The Bill amends the *Radiocommunications Act 1983* to correct a drafting error in section 24B which was inserted in the Act consequential upon the enactment of the *Broadcasting Services Act 1992*.

Telecommunications Act 1991

The Bill amends the *Telecommunications Act 1991* to:

- . remove any doubt that agreements between carriers about the interconnection of their networks and the supply of services amongst them can be made between more than two carriers;
- . expand the scope of section 88 which prohibits disclosure of the contents of telecommunications so that the prohibition applies not only to employees of carriers, but also to suppliers of eligible services and their employees;
- . facilitate the creation of the Telecommunications Industry Ombudsman by:
 - enabling AUSTEL to refer complaints to the Telecommunications Industry Ombudsman;
 - protecting a person who makes a complaint in good faith to the Telecommunications Industry Ombudsman from civil actions in relation to the complaint; and
 - enabling information to be supplied by carriers and suppliers of eligible services to the Telecommunications Industry Ombudsman for the consideration of a complaint; and

- . clarify the rules which establish the extent of the general carriers' reserved rights by:
 - requiring a property to be defined by reference to geographical coordinates and thereby ensuring that the carriers retain, subject to certain exceptions, the reserved right to install or maintain line links on a property which is not so defined; and
 - ensuring that line links, whose installation or maintenance would otherwise be within the general carriers' reserved rights and which are excepted from those rights for particular purposes, which become vested in, or are transferred to, another person, remain subject to the restrictions originally imposed in relation to them.

Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991

The Bill amends the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991* to correct a minor transitional problem with the status of pre-existing carriers until the granting of their carrier licences under the *Telecommunications Act 1991*.

FINANCIAL IMPACT STATEMENT

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

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. 3) 1992*.

Clause 2 - Commencement

This clause provides that, with certain 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 the relevant clauses.

PART 2 - AMENDMENTS OF THE AUSTRALIAN BROADCASTING CORPORATION ACT 1983

Clause 3 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Australian Broadcasting Corporation Act 1983*.

Clause 4 - General powers of Corporation

The ABC is proposing to provide an international television service to South-East Asian countries. The service is to be provided by means of the Indonesian PALAPA satellite and will reach a large number of Asian nations. The service is intended to be free-to-air for the first year or two while a market for the service is being established, but will subsequently be encrypted and only be available on a subscription basis. The proposed television service will provide some associated audio channels which can be heard on the television sets which display the service or radios linked to the satellite dish.

Section 25 of the Principal Act sets out the general powers of the ABC. Subsection 25(3) of the Act prevents the ABC from accepting any payment or other consideration for the broadcasting or televising of any announcement, program or other matter.

Subsection 25(5) provides exceptions to, amongst other things, the rule in subsection 25(3). This clause amends subsection 25(5) to include a further exception which will enable the ABC to accept any payment or other consideration in relation to any announcement, program or other matter provided by the Corporation's international television service and associated audio channels outside Australia.

Clause 5 - Advertisements

The international television service proposed by the ABC is intended to provide for corporate sponsorship and promotional programming on the service.

Subsection 31(1) of the Act prevents the ABC broadcasting or televising advertisements. Although the ABC is only proposing to proceed with corporate sponsorship and promotional programming, it is sometimes difficult to draw a distinction at the margin between a sponsorship announcement and an advertisement.

This clause includes a new subsection (3) in section 31 to exclude from the prohibition in section 31 the televising or broadcasting of any matter by the Corporation's international television service and its associated audio channels outside Australia.

This exemption is also extended to incidental broadcasting of the service inside Australia. This is needed because although the ABC service will not be marketed within Australia, the transmission footprint for the Indonesian PALAPA satellite will cover some parts of northern Queensland and the Northern Territory.

The amendments will not enable the ABC to broadcast advertisements or sponsorship announcements on its domestic services or Radio Australia.

PART 3 - AMENDMENTS OF THE BROADCASTING SERVICES ACT 1992

Clause 6 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Broadcasting Services Act 1992*.

Clause 7 - Interpretation

Subsection 6(1) of the Principal Act contains definitions of terms used in the Principal Act.

Clause 7(a) omits the definition of 'initial satellite licence' in subsection 6(1) of the Principal Act as the definition is unnecessary as a consequence of the amendments contained in the new Part 7 of the Principal Act to be inserted by the Broadcasting Services (Subscription Television Broadcasting) Amendment Bill 1992.

Paragraph (g) of the definition of 'associate' in subsection 6(1) of the Principal Act contains a rule which exempts persons from being associates because of an association relating to the initial satellite licence.

Clause 7(b) omits paragraphs (f) and (g) of the definition of 'associate' and substitutes words which have the same effect as paragraph (f). Paragraph (g) is omitted as a consequence of the amendments contained in the new Part 7 of the Principal Act to be inserted by the Broadcasting Services (Subscription Television Broadcasting) Amendment Bill 1992.

Clause 8 - Non-compliance with requirement to give evidence

Part 13 of the Principal Act enables the Australian Broadcasting Authority (ABA) to conduct investigations and hold hearings when performing its functions and exercising its powers.

When conducting investigations and hearings, the ABA has the power to require a person to answer questions, give evidence and produce documents. Subsection 202(2) of the Act makes it an offence to refuse to answer a question or produce a document without reasonable excuse.

A concern has been raised that this power could be used by the ABA to require a journalist to disclose the identity of a person who disclosed information in confidence to the journalist for the purpose of a story.

This clause amends section 202 to include two new subsections which:

- . make it a reasonable excuse for a journalist to refuse to answer a question or produce a document if doing so would disclose the identity of a confidential informant used for a program; and
- . provide a definition of the term 'journalist' for the purpose of the provision.

Clause 9 - Appeals to the Administrative Appeals Tribunal

Section 204 of the Principal Act enables applications to be made to the Administrative Appeals Tribunal for the review of certain decisions under the Act.

This clause amends section 204 to correct the references to certain provisions. The new references will correspond to provisions to be inserted in the Act by amendments contained in the Broadcasting Services (Subscription Television Broadcasting) Amendment Bill 1992.

PART 4 - AMENDMENTS OF THE CIVIL AVIATION ACT 1988

The purpose of the amendments proposed to the *Civil Aviation Act 1988* is to:

- . amend section 66 of the Act to provide greater flexibility in the method of determining charges under the Act and to provide a mechanism under which charges can be waived or remitted in appropriate cases. Currently there is no such mechanism in the Act, although waivers and refunds have been granted in appropriate cases; and
- . amend section 98 of the Act to remove any doubt that may exist in relation to regulations, made under the Act, which deal with the design or manufacture of aircraft.

Since both amendments would effectively regularise the Authority's previous activity, the provisions are proposed to be retrospective to the date of commencement of the provisions being amended (ie, 15 June 1988 in the case of section 66 and 1 July 1988 in the case of section 98). Such retrospectivity will not trespass unduly on personal rights or liberties as persons have ordered their affairs on the basis of the current practice. The retrospectivity will, in particular, legitimate waivers and refunds of charges previously given by the Authority.

Clause 10 - Principal Act

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

Clause 11 - Charges for services and facilities

Clause 11(a) replaces subsection 66(2) with a provision which authorises the Board to determine charges by a variety of means. The provision will allow the Authority to specify an actual amount of charge or set out a method by which an amount of charge can be worked out (eg., by means of a formula or in accordance with an hourly rate). This allows greater flexibility in determining charges in cases where it is not possible to accurately fix a specific amount for a particular service because the time taken to perform the service may vary considerably depending upon the complexity of the service provided and the circumstances in which the service is provided.

As with the existing subsection 66(2), the Board retains the ability to make a determination for the purpose of fixing penalties for the purpose of subsection 66(8).

The clause also provides that a determination must specify the person by whom, and times when, the amount of charges are payable.

Clause 11(b) replaces paragraphs 66(3)(b) and (c) of the Act with new paragraphs. The new paragraphs are consequential upon amendments made by clause 11(a) and provide that, before making a determination, the Board shall give the Minister notice in writing of the following matters:

- . if it fixes an amount of charge, sets out a method by which an amount of charge may be worked out or fixes a penalty - the basis of the amount, method or penalty; and
- . if it varies a charge, method or penalty - the reasons for the variation.

Clause 11(c) provides for the waiver or remission of charges. Specifically, it provides that the Board, or an officer authorised by it, may, on a written application of a person by whom a charge has been incurred, remit, refund or waive the charge (or part of the charge) if the Board or the officer is satisfied that it should do so because of exceptional circumstances or because of circumstances beyond the control of the person.

Clause 12 - Regulations etc.

This clause inserts a new paragraph into the Act's regulation-making provision. This amendment will ensure that regulations can be made under the Act which deal with the design and manufacture of aircraft.

PART 5 - AMENDMENTS OF THE FEDERAL AIRPORTS CORPORATION ACT 1986

Clause 13 - Principal Act

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

Clause 14 - Land and buildings etc.

This clause amends subsection 57E(2) of the Principal Act to provide that if a Federal airport, or part of it, or a Federal airport development site, or part of it, consists of or includes land that is owned by the Commonwealth, and any of that land is leased by the Commonwealth to the Federal Airports Corporation, buildings and any other fixtures on the leased land are taken, for the purposes of the *Income Tax Assessment Act 1936*, to be owned by the Corporation. (This clause rectifies an omission in the *Transport and Communications Legislation Amendment Act (No.2) 1992*: subsection 57E(2), as it currently stands, allows the Corporation to depreciate for the purposes of

the Income Tax Assessment Act in relation to Federal airport development sites only.)

The clause will be taken to have commenced on 1 July 1991, which was the day on which the Corporation became liable to pay income tax.

**PART 6 - AMENDMENTS OF THE PROTECTION OF THE SEA
(PREVENTION OF POLLUTION FROM SHIPS) ACT 1983**

The purpose of this Part of the Bill is to amend the *Protection of the Sea (Prevention of Pollution From Ships) Act 1983* (the Pollution Act) to implement resolutions of 6 March 1992 of the Marine Environment Protection Committee of the International Maritime Organization to amend Annex I (Regulations for the Prevention of Pollution by Oil) to the International Convention for the Prevention of Pollution from Ships. Those amendments place more stringent controls on the discharge into the sea of oil or oily mixtures from ships.

In accordance with the resolutions of the Marine Environment Protection Committee, the amendments to Annex I will enter into force on 6 July 1993 unless, prior to 6 January 1993, "one third or more of the Parties, or the Parties the combined merchant fleets of which constitute fifty per cent or more of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments". The amendments to the Pollution Act are therefore expressed to commence on a date to be proclaimed. If there are no objections as referred to above, the proclamation date will be 6 July 1993. If the commencement date for the amendments is not fixed by proclamation prior to 1 August 1993, the amendments will be repealed on that day by clause 2(7).

Clause 15 - Principal Act

This clause identifies the Pollution Act as the Principal Act for the purposes of Part 6 of the Bill.

Clause 16 - Interpretation

This clause amends the definition of "the 1978 Protocol" in subsection 3(1) of the Pollution Act. That term is defined 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 2 new subparagraphs to the definition to refer to the amendments adopted on 6 March 1992.

Clause 17 - Prohibition of discharge of oil or oily mixtures into sea

This clause amends subsection 9(4) of the Pollution Act which provides exemptions to the general prohibition on the discharge into the sea of oil or oily mixtures from a ship. The clause also adds a new subsection 9(4A).

Subparagraph 9(4)(a)(iii) is amended to replace the existing condition that the discharge into the sea of oil or an oily mixture from an oil tanker is prohibited except where the instantaneous rate of discharge does not exceed 60 litres per nautical mile. The new condition is that the instantaneous rate of discharge does not exceed 30 litres per nautical mile.

Subparagraph 9(4)(b) provides conditions under which oil or an oily mixture may be discharged from a ship that is not an oil tanker. The condition that the ship be more than 12 nautical miles from the nearest land has been deleted. The condition that the oil content is less than 100 parts in 1,000,000 parts has been changed to less than 15 parts in 1,000,000 parts. The specification of the equipment to be required by the regulations has been simplified but this will not affect the equipment actually required.

The existing conditions in paragraphs 9(4)(e) and (f) which allow discharge of certain processed oily mixtures will no longer apply and those paragraphs are being deleted.

A new paragraph 9(4)(e) provides conditions under which oil or an oily mixture from a machinery space bilge may be discharged from a ship which has a gross tonnage of 400 or more. Those conditions are:

- (i) the ship was delivered before 6 July 1993 (that is, before these amendments to the Pollution Act come into operation);
- (ii) the oil or oily mixture did not originate from a cargo pump-room bilge;
- (iii) the oil or oily mixture is not mixed with oil cargo residues;
- (iv) the ship is not within a special area (Because of their oceanographical and ecological conditions, or the particular character of the traffic through them, special areas require special methods for the prevention of oil pollution. Eight special areas are defined for purposes of Annex I of the International Convention. They are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, the Gulf of Aden area and the Antarctic area.);
- (v) the ship is more than 12 nautical miles from the nearest land;

- (vi) the ship is proceeding en route;
- (vii) the oil content of the effluent is less than 100 parts per 1,000,000 parts; and
- (viii) the ship has in operation oily-water separating equipment as required by regulations made by virtue of section 267A of the Navigation Act 1912 (Section 267A simply provides that regulations may be made under the Navigation Act to give effect to certain parts of Annex I to the International Convention).

New paragraph 9(4)(e) is to be subject to new subsection 9(4A) (referred to below).

Paragraph 9(4)(h) is amended to remove some of the conditions which allow the discharge in a special area of oil or oily mixtures from a ship that is not an oil tanker and has a gross tonnage less than 400.

New subsection 4(4A) provides that paragraph 9(4)(e) does not apply to any ship after 6 July 1998. It will cease to apply to any ship which, before that date, is fitted with the equipment described in the amended Regulation 16 of the Annex to the International Convention, as set out in new Schedule 13.

Clause 18 - New Schedules 13 and 14

This clause adds new Schedules 13 and 14 to the Pollution Act. Those Schedules set out the resolutions of 6 March 1992 of the Marine Environment Protection Committee of the International Maritime Organization.

PART 7 - AMENDMENT OF THE RADIOCOMMUNICATIONS ACT 1983

Clause 19 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Radiocommunications Act 1983*.

Clause 20 - Broadcasting service transmitter licence

Section 24B of the Principal Act was inserted in the Principal Act as an amendment consequential to the enactment of the *Broadcasting Services Act 1992* (the BSA).

Subsection 24B(1) provides for the automatic grant of a radiocommunications transmitter licence if a commercial broadcasting, community broadcasting or subscription television broadcasting licence is allocated under Part 4 or 6 of the BSA (regardless of whether the broadcasting licence is a broadcasting services bands licence), or Part 7 of the BSA.

This clause omits subsection 24B(1) and substitutes a new section which provides for the automatic grant of a radiocommunications transmitter licence if a broadcasting services bands licence is allocated to a person under Part 4 or 6 of the BSA.

The amended clause is confined to the grant of broadcasting services bands licences, reflecting the original intention that only those types of broadcasting services licences carry with them guaranteed access to the radiofrequency bands which are designated as being primarily for broadcasting purposes and which are assigned to the Australian Broadcasting Authority for planning.

PART 8 - AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1991

Clause 21 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Telecommunications Act 1991*.

Clause 22 - Definitions

Clauses 28 to 37 of the Bill amend the Principal Act to remove any doubt that agreements between carriers about the interconnection of their networks and the supply of services amongst them can be made between more than two carriers.

Section 5 of the Principal Act contains definitions of terms used in the Principal Act.

Clause 22(a) omits the definition of 'access agreement' in section 5 of the Act and substitutes a new definition to make it clear that an access agreement can be made between more than 2 carriers and can relate to supplementary access conditions of more than one carrier licence.

This clause commences retrospectively for the reasons explained in the notes on clause 28.

Clauses 38 and 39 provide for amendments to allow for the referral of complaints to the Telecommunications Industry Ombudsman and other related matters.

The Telecommunications Industry Ombudsman (TIO) is being established under a scheme set up by the carriers in accordance with requirements in their licence conditions.

Clause 22(b) amends section 5 of the Principal Act to insert a new definition which defines the term "Telecommunications Industry Ombudsman" for the purposes of the Act to mean the Telecommunications Industry Ombudsman appointed under an Ombudsman scheme entered into by the

carriers in accordance with the conditions of their licences.

Clause 23 - Properties

Division 2 of Part 6 of the *Telecommunications Act 1991* sets out the reserved rights of the carriers. Subsection 90(1) prohibits a person from installing or maintaining a reserved line link. Subsection 90(2) allows a general carrier to do so.

A reserved line link is defined in section 24. Paragraph 24(1)(a) provides that a reserved line link is a line link between distinct places within Australia.

Section 12 sets out the basic rules for determining when places are distinct. Under subsection 12(1), places are distinct unless they are all in the same area because of subsections 12(2), (3) or (4).

Subsection 12(2) provides that places are in the same area if they are all situated in the same property as defined in section 13. Subsection 13(3) provides that an area of land is not a property except as provided in section 13.

Subsection 13(1) makes an area of land a property if there is a single freehold or leasehold title in relation to that area and no part of the area is subject to a lease.

Clause 23(a) of the Bill adds a further paragraph 13(1)(c) to subsection 13(1) of the Act to further require the freehold or leasehold title to be defined by reference to geographical coordinates if the area of land is to be a property.

Clause 23(b) of the Bill inserts two further subsections in section 13 to enable regulations to:

- . prescribe further circumstances in which an area of land is not to constitute a property; and
- . enable regulations to ameliorate the effect of paragraph (1)(c) by prescribing circumstances in which an area of land is a property despite that paragraph.

New subsection 13(3A) has been included as a reserve power in case it becomes apparent that there are further circumstances in which an area of land should not be taken to be a property. It is envisaged that this power would be used if it became apparent that, if the areas of land involved were taken to be properties for the purposes of section 13, it would result in an undue erosion of the practical value of the carriers' rights.

New subsection 13(3B) has been included in case it becomes apparent over time that the effect of the new paragraph

13(1)(c) is too stringent and that exceptions should be made to deal with particular kinds of cases. However, because the making of any such regulation may impact on the extent of the carriers' reserved rights, the new subsection requires, before the making of such a regulation, that the Minister consult each general carrier which may be affected and that the Minister be of the opinion that the regulation not erode unduly the practical value of the general carriers' rights.

Clause 24 - General functions - protection of public interest and consumers

Subsection 38(2) of the Principal Act gives AUSTEL the function, inter alia, of protecting consumers from unfair practices of carriers in the supply of telecommunications services.

This clause amends section 38 of the Principal Act by making a minor amendment to paragraph (2)(d) to provide that, for the purpose of its function under subsection 38(2), AUSTEL may refer consumer complaints to the Telecommunications Industry Ombudsman (TIO).

The TIO is being established under a scheme set up by the carriers in accordance with requirements in their licence conditions.

Clause 25 - Insertion of heading

This clause repeals the Heading to Division 6 of Part 5 of the Act which concerns protection of communications and re-enacts the heading as a new Part 5A as a consequence of the proposed changes to section 88 in the following clause of the Bill.

Clause 26 - Carriers, suppliers and their employees not to disclose or use contents of communications etc.

Section 88 of the Principal Act protects the confidentiality of telecommunications by prohibiting employees and former employees of carriers from disclosing or using facts or documents which relate to:

- . the contents of communications carried by the carrier;
- . telecommunications services supplied by the carrier;
and
- . personal particulars of other persons;

which come to their knowledge through their employment.

This clause amends section 88 of the Principal Act to extend the prohibition on such disclosure and use to

persons who supply eligible services under a class licence and their employees.

The amendments achieve this object by, inter alia, replacing references to 'an employee of a carrier' throughout the section with references to a 'prescribed person', which is defined to mean an employee of a carrier, a supplier of an eligible service under a class licence or an employee of the supplier.

Paragraphs 88(3)(h) and (i) and 88(4)(f) and (g) currently provide exceptions to the prohibition on disclosure and use for facts or documents necessary to be passed from carriers to eligible service suppliers so that services can be supplied to customers. As a consequence of the prohibition now applying to those suppliers, clauses 26(g) and (k) omit these paragraphs and substitute new paragraphs which extend the exception to facts or documents which need to be passed from the suppliers to the carriers for the same reason.

Section 88 is also amended by clause 26(i) to enable the disclosure of facts or documents to the Telecommunications Industry Ombudsman or his or her employees if the fact or document may assist the Telecommunications Industry Ombudsman in the investigation of a complaint.

Clause 27 - Restriction on use or disposal of certain reserved line links

Division 4 of Part 6 of the Principal Act sets out exceptions to the carriers reserved rights to install and maintain line links. These include:

- . transport authorities (section 98);
- . broadcasters (section 99);
- . facilities authorised by Telecom under paragraph 13(1)(a) of the *Telecommunications Act 1975* (subsection 100(1));
- . earth based facilities incidental to satellite services maintained and operated under section 45 of the *Telecommunications Act 1989* (subsection 100(2));
- . facilities authorised by AUSTEL under section 46 of the *Telecommunications Act 1989* (subsection 100(3)); and
- . defence line links (section 101).

Each of the above exceptions, some of which relate to maintaining existing line links and some of which enable line links to be installed as well as maintained, is limited to installing or maintaining the line links for a specific purpose mentioned or in accordance with a pre-existing authorisation, or for the subsidiary purpose of

supply of services to or by a general carrier (see subsection 97(2) and section 102).

Section 102 of the Act limits the use of line links within the above exceptions and also limits the disposal of such line links by prohibiting disposal to a person other than a general carrier.

However, situations may arise where a person who has an excepted right to install or maintain a reserved line link does not actually 'dispose' of the line link, but the line link is removed from the person in some other way, for example, by operation of law.

This clause amends section 102 of the Principal Act to ensure that where such a reserved line link is vested in, transferred to, or otherwise acquired by another person by operation of law or otherwise, the same restrictions apply in relation to the person who acquires the line link.

An example of the operation of the provision would be in relation to a Commonwealth or State transport authority able to install or maintain a reserved line link under section 98 of the Act. Where, by operation of law, the line link was vested in another body, that body could not use that line link except for the purpose of the transport services set out in section 98 or in relation to the supply of a telecommunications service to or by a general carrier. That body would also be subject to the prohibition on disposal to a person other than a general carrier.

Clause 28 - Carriers' rights to interconnection to networks of, and supply of telecommunications services by, other carriers

Clauses 28 to 37 amend Part 8 of the Principal Act to remove any doubt that agreements can be made between more than two carriers about:

- . the interconnection of their networks;
- . the supply of telecommunications services between them; and
- . obtaining access to other services supplied by other carriers (such as customer billing, operator assistance and services directories).

An access agreement has been entered into between the Australian and Overseas Telecommunications Corporation Limited and Optus Communications. However, late in the process of finalising the agreement, doubts were raised as to whether the agreement would be able to be registered by AUSTEL because Optus Communications is not a legal entity which holds a licence under the Telecommunications Act. The Optus licences are held by 2 subsidiaries of Optus

Communications, AUSSAT Pty Ltd which holds a general telecommunications licence and Optus Mobile Pty Ltd which holds a public mobile licence.

The agreement setting out the access arrangements was in fact entered into between 3 carriers. Since a doubt was raised as to whether such an agreement could be registered by AUSTEL, this Bill amends the Act to ensure that such an agreement is fully contemplated by Part 8 of the Act. The amendments will also ensure that other agreements can be entered into involving more than 2 carriers, for example, if it were contemplated that the third mobile carrier (whose licence is yet to be granted) would enter into a single access agreement with the other 3 carriers.

As the proposed amendments will clarify the situation in relation to an existing multi-carrier agreement, the amendments commence retrospectively to ensure that there is no question about the validity of actions which have been already taken in relation to the access agreement provisions of the Act. Such actions include the negotiation of the agreement, any arbitration by AUSTEL in relation to the agreement and the determination of relevant charging principles by the Minister which affected the agreement.

The date of commencement (ie. immediately after the commencement of Part 8 of the *Transport and Communications Legislation Amendment Act 1991* on 25 November 1991) is designed to ensure that the amendments interact correctly with other amendments to the Principal Act which occurred on that day and remove any doubts about the validity of any actions taken on and from that day.

This clause amends section 137 of the Act to change a number of references to a singular "carrier" and a singular "network" to the plural as a consequence of changes to section 154 which will ensure that there is no doubt that AUSTEL can make determinations in relation to multi-party access rights.

Clause 29 - AUSTEL's role in negotiations for access agreements

This clause amends subsection 139(1) of the Principal Act to ensure that any party to a proposed multi-party access agreement or variation of such an agreement can request AUSTEL to attend negotiations.

Clause 30 - Minister may determine principles to govern charging for access

This clause inserts "or carriers" after various references to "carrier" in section 140 of the Principal Act and makes other minor textual changes to put it beyond doubt that any principles determined by the Minister to be applied in

relation to the charges payable for access arrangements between carriers can apply to access by more than one carrier to more than one other carrier.

Clause 31 - Access agreements must comply with charging principles

This clause makes minor amendments to section 141 of the Principal Act to make it clear that multi-party access agreements must comply with the charging principles in force under a determination made under subsection 140(1).

The amendment to paragraph 141(1)(b) in clause 31(c) is made in recognition that although Ministerial charging principles may apply to a number of different carriers, not all of those carriers may propose to enter into the same agreement. Different agreements may be entered into by different groups of carriers, but still be affected by the same charging principles.

The amendments to subsections 141(2), (3), (4) and (7) made by clause 31(a) affect provisions which require a notification to AUSTEL by a carrier to whom charges are payable under a proposed access agreement or a variation to such an agreement and notifications in return by AUSTEL to that carrier.

The proposed amendments to those subsections will have the effect of changing references to 'the other carrier' to 'the other carrier or carriers'. In the context of section 141 read as a whole, the changes to subsection 141(1) made by the Bill and the other amendments in the Bill, these references should be read as references to the carrier or carriers:

- . who are proposing to make or vary the access agreement concerned; and
- . to whom charges in relation to which the determination under section 140 applies will be payable under the agreement as made or varied.

Clause 32 - Application for registration

This clause substitutes a new paragraph (2)(b) in section 146 in recognition that a multi-party access agreement can be made for the purpose of supplementary access conditions of more than one licence.

Clause 33 - Decision on request

This clause corrects a minor typographical error by replacing "person" with "party".

Clause 34 - Arbitration by AUSTEL of terms of access

This clause makes a number of minor amendments to section 154 of the Principal Act to make it clear that:

- . AUSTEL can arbitrate where two or more carriers cannot agree on the terms and conditions of an access agreement; and
- . a determination made by AUSTEL in relation to an arbitration can relate to multi-party access arrangements.

Section 156 of the Principal Act provides that a determination made by AUSTEL as a result of the arbitration is taken to be an access agreement between the parties and may be varied or enforced by the parties as if it were a contract between them.

Clause 35 - Arbitration where carriers cannot agree on variation of access agreement

This clause amends section 157 of the Principal Act to make it clear that AUSTEL can arbitrate where any party to an access agreement made between two or more carriers cannot agree on whether to vary the agreement or how to vary it.

A determination made by AUSTEL as a result of the arbitration has effect as if it were a variation made by a contract between the carriers who were parties to the arbitration.

Clause 36 - Steps to be taken in the arbitration

This clause makes some minor amendments to paragraphs 166(1)(b) and (c) of the Principal Act to take into account a situation where there are more than 2 parties involved in an arbitration.

Clause 37 - Party may request AUSTEL to treat material as confidential

Section 167 of the Principal Act enables a party to an arbitration to request AUSTEL not to give a copy of material which contains confidential commercial information to the other party to the arbitration.

This clause makes a number of minor amendments to section 167 of the Principal Act to take into account a situation where there are more than 2 parties to an arbitration.

Clause 38 - Reference of matters to Ombudsman or Telecommunications Industry Ombudsman

Section 339 of the Principal Act enables complaints to be transferred to the Commonwealth Ombudsman.

This clause amends section 339 of the Principal Act to specifically provide that AUSTEL may refer matters to the Telecommunications Industry Ombudsman.

AUSTEL will retain its power to refer matters to the Commonwealth Ombudsman in relation to the Australian and Overseas Telecommunications Corporation Limited (AOTC). In practice, it is expected that AUSTEL would only refer such complaints to the Commonwealth Ombudsman where the complaints involve matters which fall outside the scope of the TIO scheme, such as matters concerning the administration of AOTC.

Clause 39 - Protection from civil actions

Section 345 of the Principal Act protects a person from civil proceedings where the person, acting in good faith, makes a complaint or makes a statement or gives information to AUSTEL in connection with an investigation.

This clause is amended by inserting new provisions which extend the protection to a person, acting in good faith, who makes a complaint or makes a statement or gives information to the Telecommunications Industry Ombudsman in connection with the consideration of a complaint.

The protection does not extend to a carrier, or a person who supplies eligible services who is participating in the scheme. As with the banking ombudsman scheme, the carriers and other participants will be able to protect themselves from such liability through insurance.

PART 9 - AMENDMENT OF THE TELECOMMUNICATIONS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1991

Clause 40 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991*.

Clause 41 - Existing carriers may continue to operate pending grant of licence.

This clause amends section 7 of the Principal Act to deem AUSSAT Pty Ltd, the Australian Telecommunications Corporation and OTC Limited to be general carriers within the meaning of the Telecommunications Act 1991 for the period from 1 July 1991, the date on which the Telecommunications Act 1991 commenced, until the date on which each of the respective bodies was licensed as a general carrier under that Act (the relevant period).

The necessity for the amendment arises as a consequence of the delay in finalising the carrier licences which resulted in there being no carriers within the meaning of the Telecommunications Act for the relevant period.

Little difficulty has been occasioned in practice, as the carriers considered themselves to be subject to the Act during that period. However, the amendment will clarify the legal situation in relation to the carriers through that period by ensuring that, subject to certain exceptions, the carriers were general carriers within the meaning of the Act for all purposes.

The specific exceptions are:

- . Divisions 2 and 3 of Part 5 of the Act as these Divisions relate to the actual licensing of the carriers; and
- . Parts 8 and 9 of the Act which create specific obligations on the carriers which it would be inappropriate to seek to have apply to them after the relevant period has elapsed.

These exceptions aside, one of the effects of the amendment will be to ensure that any law which refers to a general carrier, or a carrier, within the meaning of the Telecommunications Act 1991, in relation to the relevant period, will be referring to the corporations to which section 7 applies.



