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TRANSPORT LEGISLATION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Transport and Communications,
Senator the Hon Gareth Evans, QC)

1994

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GENERAL OUTLINE

This is an omnibus Bill containing amendments that formerly would have been submitted to Parliament in a Statute Law (Miscellaneous Provisions) Bill.

2. The bulk of the Bill implements the recommendations of the Efficiency Scrutiny Review of Mercantile Marine Offices, ending detailed Government involvement in the engagement and discharge of seafarers and making way for greater self-regulation in these matters by the maritime industry.

3. The Bill will:

- . facilitate applications by owners of off-shore industry vessels to bring their vessels under the jurisdiction of the Navigation Act 1912
- . reduce Government involvement in the engagement and discharge of seaman and eliminate from the Navigation Act 1912 all references to apprenticeships, which are now an anachronism in the maritime industry
- . bring the numerous penalties in the Navigation Act 1912 up to date consistently with those applying to similar offences in other Federal legislation
- . permit review by the Administrative Appeals Tribunal of decisions in respect of remission or refund of charges due or paid under the Air Navigation (Charges) Act 1952
- . provide flexibility in the capacity of the Federal Airports Corporation to establish superannuation schemes for both its permanent staff and its short-term contract staff, and clarify certain powers and procedures of the Corporation under the Federal Airports Corporation Act 1986
- . assist the Registrar of Ships to ensure that the information appearing on certificates of registration is current
- . correct minor editorial errors in cross-referencing in the Protection of the Sea (Prevention of Pollution from Ships) Act 1983
- . repeal an obsolete transitional provision of the Navigation Amendment Act 1979

- repeal unproclaimed provisions of the Navigation Amendment Act 1980 and the Navigation Amendment Act 1981 relating to the employment of seamen, those provisions being now overtaken by the Efficiency Scrutiny Review.

FINANCIAL IMPACT STATEMENT

Implementation of the Scrutiny Review recommendations regarding Mercantile Marine Office services will achieve savings through more efficient utilisation of staff and accommodation. All remaining services provided to industry will be fully cost recovered from users.

In 1988/89 it is estimated those savings will amount to \$0.7 (reflecting gradual implementation of new procedures) and in 1989/90 savings of \$1.4 will be achieved (based on 1987/88 costs).

There will be no significant costs, revenues or savings to the Government arising from the other amendments in the Bill.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clauses 1 and 2

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. The provisions of the Bill, other than amendments to the Air Navigation (Charges) Act 1952, the Federal Airports Corporation Act 1986 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the repeal of provisions of the Navigation Amendment Act 1979, Navigation Amendment Act 1980 and Navigation Amendment Act 1981, will come into effect on a day or days to be fixed by Proclamation to provide time for appropriate advance publicity and the preparation of subordinate legislation where necessary.

2. The amendments to the Air Navigation (Charges) Act 1952, the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the repeal of the Navigation Amendment Acts of 1979, 1980 and 1981 will come into operation on the day of Royal Assent

3. The amendments to the Federal Airports Corporation Act 1986 will be deemed to commence at the date of commencement of that Act.

Clause 3: Transitional and application provisions

4. Clause 3(1) will ensure that parties to existing articles of agreement as to employment on a ship, are not prejudiced by the amendment of provisions in the Navigation Act 1912 relating to articles.

5. Clause 3(2) deems a person determined to be unsuitable for employment as a seaman under existing provisions of the Navigation Act 1912, to be unsuitable in terms of the amended provisions of that Act.

6. Clause 3(3) will ensure that the penalties attaching to new provisions of the Navigation Act 1912 inserted by Schedule 1 of the Bill, will take effect from the date of commencement of those provisions.

7. Clause 3(4) provides that a proposed determination as to aeronautical charges, varying an existing determination in accordance with the proposed amendment of subsection 56(2) of the Federal Airports Corporation Act 1986 and notified to the Minister within 30 days after the commencement of this transitional provision, may be stopped by the Minister within 7 days of notification rather than the 60 days allowed by section 56.

8. Clauses 3 (5) and (6) will ensure that the amendments of the Air Navigation (Charges) Act 1952 and the Shipping Registration Act 1981 contained in the bill will not have retrospective effect.

PART II - AMENDMENTS OF THE NAVIGATION ACT 1912

Clause 4: Principal Act

9. The Navigation Act 1912 is defined as the Principal Act.

Clause 5: Off-shore industry vessels

10 Section 8A provides that the owner of an off-shore industry vessel may apply to the Minister for a declaration that the Principal Act applies to the vessel. Declarations are valid for three years and are made only after consultation with State/Territory authorities. Clause 5 will amend section 8A by removing the requirement for consultation with State/Territory authorities and removing the three year limitation on declarations.

Clause 6: Amendments in relation to seamen, apprentices and Mercantile Marine Offices

11. Part II of the Principal Act is being amended to give effect to the recommendations contained in the report of the Efficiency Scrutiny on Mercantile Marine Offices instituted by the Government and to remove or update other anachronistic provisions relating to the employment and engagement of seafarers.

12. The amendments are contained in Schedule 1 of the Bill. Details of the amendments are as follows:

- (i) Superintendents of Mercantile Marine Offices have been traditionally and statutorily responsible for supervising the engagement and discharge of ships' crews. Superintendents will now be less administratively involved in the statutory requirements as to employment of seamen and will no longer be associated with a specific Mercantile Marine Office. Superintendents will however retain some existing functions relating to the protection of seamen including those that meet Australia's obligations under International Labour Organisation treaties. A number of proposed amendments to the Act merely omit reference to the involvement of a superintendent in the supervision of engagement and discharge of seamen, omit references to specific ports in relation to superintendents and omit references to Mercantile Marine Offices. These amendments affect:

Section 6 (1) (definitions of 'proper authority' and of 'superintendent'), 6(3), 13, 13A, 18, Division 7A - Approval of Engagement of Seamen, Sections 46(2), 46(3), 46(4), 46(5), 48A(2), 48B, 49, 52(1), 54, 55(2), 60, 60A, 61, 62, 62(A), 64, 66, 67, 71(2)(a), 75, 76(1), 79, 80, 127(6),

132(3)(a), 132A(1), 132B(1), 148B, 148C(1)(c)(i) & (ii), 148C(1)(d), 151(1)(a), 151(4), 153, 154(3), 155, 157(1)(b), 163A(2)(a), 165, 167(1), 173(1), 174(1), 174(2), 290(1), 417(1)(d) and 417(3).

- (ii) Apprenticeships in the maritime industry are an anachronism, training now being through company or industry sponsored training programmes. No apprenticeships have been entered into for more than twelve years. Sections of the Act providing for or referring to apprentices have been repealed or amended as necessary:

6(1) (definitions of 'seaman' and of 'apprentice'), 6B, 6E(1)(a) & (c), 6E(2), Division 5 - Apprentices, sections 59, 59A(3), 81(1), 83(1), 83(2), 84, 91(a), 99, 101, 113, 124(1) and (2), 127(7), 128(1), 132(8), (definitions of 'agreement' and of seaman'), 132(A)(4), 132B(5), 139, 140, 148, 148A, 148C(1), , 148C(2), 148C(4), 148D, 149, 150, 151(1), 151(2), 151(5), 152(1)(a), 153, 154(1), 154(2), 154(3), 155, 155A, 156(1), 157(1), 158(1), 159, 160, 163(1), 209(1), 235(2), 235(3), 251, 288(3)(c) and 387A.

- (iii) Other amendments arising from the Scrutiny Review are:

- (a) repeal of section 12, providing for the keeping of a General Register of Seamen - The concept of a statutory requirement for a General Register of Seamen is obsolete, as particular records are kept to meet specific industry needs.
- (b) amendment of section 16, which requires seafarers of any designation to be duly qualified - The section creates offences for the employment of unqualified persons as qualified masters or other seamen. Although it is the principal control mechanism giving effect to International Maritime Organization convention requirements, it fails to satisfy those requirements entirely. The proposed amendments will clarify that a person is not to perform the duties relating to a particular designation if the person is not a qualified master, officer or seaman of that designation.
- (c) repeal of sections 28 to 31 and amendment of section 32, relating to the supplying of seamen - The concept of the commercial supply of seamen is outmoded and its regulation is inconsistent with the proposed system of industry self-regulated engagement. Sections 28 to 31 are therefore to be repealed. Section 32 alone, which specifies penalties for supplying seamen for reward is to be

retained to satisfy International Labour Organisation Convention No 22. The amendment of section 32 is to retain a definition of seaman previously contained in section 28.

- (d) amendment of subsection 46(1) and repeal of sections 47 and 48 - Subsection 46(1) provides that where a seaman is engaged at a port in Australia to serve on a ship, it is an offence for the ship to be taken to sea unless the master and the seaman have entered a prescribed form of agreement. Section 48 creates a similar offence in relation to engagement outside Australia. The amendment of subsection 46(1) will extend that provision to engagements outside Australia, allowing section 48 to be repealed as redundant. Section 47 enables the engagement of substitute seamen at short notice without compliance with section 46. The amendment of section 46 renders section 47 superfluous.
- (e) amendment of paragraph 46(2)(a) and repeal of subsection 46(2A) - Paragraph 46(2)(a) provides that an agreement shall be in the prescribed form and subsection 46(2A) permits the Minister to approve an alternative form in special circumstances. The amendment to paragraph 46(2)(a) will terminate prescription of forms and empower the Minister to approve a form of an agreement in all circumstances, thus affording greater flexibility and making subsection 46(2A) redundant.
- (f) new section 47 - This section in effect re-enacts subsections 45A(9) and (10) which alone of the provisions in Division 7A of Part II of the Act have a role to play in the future. The subsections deal with unsuitability of persons for engagement but rely on the present 'approval of engagement' system for effect. With the proposed removal of the 'approval' system, the new section 47 will place the onus not to engage an unsuitable person on that person and on the master owner and agent of a ship. The power to determine unsuitability will reside, under proposed section 47 as with subsection 45A(9), in Marine Council, a statutory body representative of shipowners and maritime unions.

Responding to a recommendation of Mr Justice Davies of the Federal Court, determinations as to unsuitability will no longer apply for specified periods, but will apply until terminated by a Marine Council revocation and

will be required in other respects to accord more clearly with principles of natural justice.

Proposed subsection 47(5) in effect re-enacts subsection 45A(10) requiring a master to report a seaman considered to be unsuitable and to so inform the seaman.

- (g) amendment of subsection 52(2) provides a defence of reasonable excuse to an otherwise strict liability for failure to furnish information.
- (h) repeal of section 66 - Section 66 requires a ship's master to return to a seaman certificates of the seaman in his possession, custody or control, on discharge of the seaman. A master no longer has a statutory power to take possession, custody or control of certificates. The section is to be repealed as having no further purpose.
- (i) repeal of sections 67 and 68 and substitution of section 68 - Section 67 requires a master, upon discharge of a seaman, to furnish a report of the seaman's character to a superintendent. Character reports will no longer be required to be made and furnished to superintendents. The section is therefore repealed and section 68 amended consequentially, deleting reference to such reports. Also deleted is reference to a permit to sign articles, such permits having long been taken out of use.
- (j) repeal of section 182 - Section 182 makes it an offence to harbour or employ a seaman illegally absent from duty, that is, a deserter. This provision descends from the Imperial Merchant Shipping Acts and has no role today, absenteeism being a contractual issue as between master and seaman. Other former provisions of the Act relating to desertion have been previously repealed.
- (k) insertion of section 424AA - Provides for review of Marine Council determinations relating to unsuitability of seamen under proposed section 47, by the Administrative Appeals Tribunal.

Clause 7: Amendments in relation to offences and penalties

13. Offences and penalties under the Navigation Act 1912 are inconsistent within the Act and with similar offences and penalties in other legislation, there having been no general review of the offences and penalties since 1981.

14. Schedule 2 contains the necessary amendments to the provisions of the Act identified as inconsistent. The amendments also take into account changes to the Acts Interpretation Act 1901 and the Crimes Act 1914, enabling offence provisions to be more simply expressed. The affected provisions are:

6(1), 8B(4), 14 (8) and (11), 32, 45(1A), 46(1), 48A, 52(2), 53(1) and (2), 56, 61, 62A(1), 63, 76(1), 104(1), 117, 120(4) and (5), 125(1), 132(5), 132A(2), 133(3), 138A, 139(1), 148A(3), 148C(5), 152(1) and(2), 156(2), 160, 164(2), 167(1), 168(1) and (2), 172(2), 174, 182, 188(4), 190AA(4), 190A(1), 191B(1) and (2), 192C(4), 193(1), 196, 202(1) and (2), 206H(2), 206Q, 206S(3), 206T(4), 206U(2), 206V(1A), 206V(5), 208(1) and (2), 212, 217(1), (2) and (3), 221(4), 221(8), 225(1), 227A(1A), 227D(1) and(2), 228(2), 231A(2), 231B, 231C, 233(2), 249(1A), 253(1A) and (3), 253A(3), 254(1) and (3), 255, 257(3), 258A(2), 264(2), 265(1), (2), (5) and (5A), 265(6), 267D(1), 267D(2)(c), 267E(2), 267G(3), 267J, 267K(4), 267L, 267S(1) and (2)(c), 267T(2), 267V(1), 267X, 267Y(4), 267Z, 267ZJ(1), 267ZJ(2)(c), 276ZK(2), 267ZM(1) and (2), 267ZQ(4), 267ZR, 269N(1), 275, 278(1) and (3), 283F(3), 283G(4), 287(1), 288(1) and (4), 312, 317A(2), 387, 389, 389A(2), 392, 393, 394, 395, 397(2), 410(1), 410A(1), 414(2), 415, 417(1), 423B(3), and 425(1)(h).

PART III - AMENDMENT OF THE AIR NAVIGATION (CHARGES) ACT 1952

Clause 8: Principal Act

15. The Air Navigation (Charges) Act 1952 is defined as the Principal Act.

Clause 9: Review of decisions

16. Section 5J of the Principal Act includes a definition of 'reviewable decision', the amendment of which will make reviewable by the Administrative Appeals Tribunal, decisions in respect of remission or refund of charges due or paid under the Act.

PART IV - AMENDMENTS OF THE FEDERAL AIRPORTS CORPORATION ACT 1986

Clause 10: Principal Act

17. The Federal Airports Corporation Act 1986 is defined as the Principal Act.

Clauses 11 and 12: Capital of Corporation

18. Section 44 of the Principal Act provides the formula by which the capital of the Federal Airports Corporation at any time is determined. The amendment will add to that formula the liability for recreation and long-service leave that the Corporation acquired at establishment and may in future acquire, in assuming employment of previously Commonwealth Departmental staff.

Clause 13: Aeronautical charges

19. Section 56 of the Principal Act provides for a charge for, or in respect of the use of airports or of services or facilities provided by the Federal Airports Corporation. The amendments will clarify that persons by whom and the time when charges are payable may be specified. The amendments will also enable the Corporation to determine the manner of making public a determination as to a charge and will constrain charges to be such as to not amount to a tax.

Clause 14: Superannuation benefits

20. Section 65 of the Principal Act provides for the establishment of a superannuation scheme. The section is amended to allow the establishment of more than one scheme. A second scheme is needed to provide for short-term contract staff.

Clause 15: By-laws

21. Section 72 of the Principal Act provides the Corporation with power to make by-laws. The amendment corrects a printing error, replacing 'offices' by 'officers'.

PART V - AMENDMENTS OF THE SHIPPING REGISTRATION ACT 1981

Clause 16: Principal Act

22. The Shipping Registration Act 1981 is defined as the Principal Act.

Clause 17: Delivery of registration certificate or transfer, etc

23. Section 37A of the Principal Act is to be repealed and substituted to ensure the effectiveness of the provision which imposes a duty on the holder of a registration certificate to deliver up the certificate following transfer of an interest in a ship.

Clause 18: Offences

24. The amendment of section 74 of the Principal Act is consequential on the restructuring of section 37A.

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

Clause 19: Principal Act

25. The Protection of the Sea (Prevention of Pollution from Ships) Act 1983 is defined as the Principal Act.

Clauses 20 & 21: Reporting of certain incidents

26. The amendment of sub sections 11(3) and 22(3) of the Principal Act is to correct erroneous numbering effected by the Protection of the Sea Legislation Amendment Act 1986.

PART VII - REPEAL OF PROVISION OF THE NAVIGATION AMENDMENT ACT 1979

Clause 22: Principal Act

27. The Navigation Amendment Act 1979 is defined as the Principal Act.

Clause 23: Repeal of section 109

28. Section 109 of the Principal Act which provided a transitional means of control in relation to ships' crews following amendments to the Act in 1979 has no further function. It is to be repealed as a tidying-up exercise.

PARTS VIII AND IX - REPEAL OF PROVISIONS OF THE NAVIGATION AMENDMENT ACT 1980 AND THE NAVIGATION AMENDMENT ACT 1981

Clauses 24 and 26: Principal Acts

29. The Navigation Amendment Act 1980 and the Navigation Amendment Act 1981 are defined as the Principal Acts.

Clauses 25 and 27: Repeals

30. The following unproclaimed provisions of the Principal Acts, which were intended to introduce a contract of sea service as an alternative to articles of agreement in the offshore industry, are to be repealed as being no longer required following the Department's reduced involvement in the employment of seamen:

- 1980:

5(2), 6, 10, 11, 12, 13(2), 15, 16, 17(2), 18, 19, 20, 21, 22, 23(2), 24, 25, 26, 27, 28, 29, 30(2), 31, 32, 33, 34, 36, 37, 38, 40, 41, 42, 43, 44, 45, 47, 48, 49(2), 50, 51, 53(2), 54, 55, 57, 58, 59, 61, 62, 63, 65(2), 67, 72, 74, 75, 99 and 109.

- 1981:

3(1)(a), 3(3), 19, 22(1)(c), 22(2), 24, 26(1) and (2), 27(1) and (2), 46 and in Schedule 1 and Schedule 3, the items relating to 47A(3), (4) and (8), 54(1) and (3), 60, 61(2) and (3), 62A(4A) and (7), 66(2), 67(1) and (2), 68, 75(2B), 76(2), 173(1A), 209(2) and 251(2) of the Navigation Act 1912.

