

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TRANSPORT LEGISLATION AMENDMENT BILL 1995

SUPPLEMENTARY EXPLANATORY MEMORANDUM  
(Amendments to be moved on behalf of the Government)

(Circulated by the authority of the Minister for Transport,  
the Honourable Laurie Brereton, MP)

## TRANSPORT LEGISLATION AMENDMENT BILL 1995

### OUTLINE OF AMENDMENTS

The amendments proposed by the Government will amend the Transport Legislation Amendment Bill 1995 (the Bill) and the Audit (Transitional and Miscellaneous) Amendment Bill 1995. The amendments affect the *Australian Maritime Safety Authority Act 1990* (AMSA Act).

The purpose of the amendments is to:

clarify that the Australian Maritime Safety Authority (the Authority) does not have the status of a Government Business Enterprise;

ensure that the financial and accountability obligations imposed on the Authority are appropriate to its status as a Commonwealth authority;

ensure that the Authority's safety and regulatory functions are not compromised by its commercial objectives;

insert an objects clause in the AMSA Act which emphasises the primacy of the Authority's safety/regulatory and marine environment protection roles;

- repeal or omit certain provisions relating to the Authority's commercial obligations such as the requirement to pay a dividend to the Commonwealth and payroll tax to the States and Territories;

insert provisions in relation to the operation of the Authority and requirements for the preparation and submission of corporate plans and annual reports.

### FINANCIAL IMPACT STATEMENT

The amendments will have an impact on Commonwealth revenue due to the removal of the requirement for the Authority to pay dividends to the Commonwealth.

Services and facilities provided by the Authority will continue to be funded through levies imposed on the shipping industry, except for the performance of the Authority's community service obligations such as marine search and rescue services. The cost of these community service obligations will continue to be met by the Commonwealth.

## NOTES ON AMENDMENTS

### Amendment (1)

This amendment to subclause 2(1) provides for the Bill (other than specific provisions referred to in subclauses 2(2) to 2(6)) to commence on Royal Assent.

### Amendment (2)

This amendment provides for specific provisions in the Bill which relate particularly to the Authority to commence on a day other than when the Bill receives the Royal Assent.

Those amendments which amend the proposed *Audit (Transitional and Miscellaneous) Amendment Act 1995* will come into effect immediately before that Act commences.

Those amendments which set forth the main objects of the AMSA Act (item 1 of Part B of Schedule 1 of the Bill), and provide for administrative, corporate planning and financial reporting requirements of the Authority (items 1A, 2, 3 and 5 to 10 of Part B of Schedule 1 of the Bill) will commence on the later of 1 July 1995 or Royal Assent.

Parts C and E of Schedule 1 of the Bill will also commence on the later of 1 July 1995 or Royal Assent. These parts make amendments to the *Australian National Railways Commission Act 1983* and the *Federal Airports Corporation Act 1986* which are already contained in the Bill.

Those amendments which relate to the inclusion of matters concerned with Ministerial notices and directions in the annual report of members of the Authority under section 9 of the proposed *Commonwealth Authorities and Companies Act 1995* (items 2A and 2B of Part B of Schedule 1 of the Bill) commence on the same day as the proposed *Financial Management and Accountability Act 1995*. The amendment which gives the Minister a power to terminate the appointment of Authority members if the Authority fails to comply with Ministerial directions or the members do not keep the Minister informed about significant changes to or matters affecting the corporate plan or the members do not comply with certain reporting requirements under the proposed *Commonwealth Authorities and Companies Act 1995* (item 4 of Part B of Schedule 1 of the Bill) will also commence on the same day as the proposed *Financial Management and Accountability Act 1995*.

### Amendment (3)

This amendment is consequential to the amendments concerning commencement dates outlined in amendments (1) and (2).

**Amendment (4)**

This amendment allows the Authority to recommend and pay a dividend to the Commonwealth in respect of the 1994/95 financial year in accordance with section 38 of the AMSA Act, as if that section had not been repealed. In future financial years, however, no dividend will be payable by the Authority. This is consistent with the clarification of the Authority's status as a non Government Business Enterprise.

**Amendment (5)**

This amendment allows the Authority to submit an annual report for the 1994/95 financial year which evaluates its performance against the financial targets and performance indicators for that year.

**Amendment (6)**

This amendment provides that the amendments made by item 8G of Part B of Schedule 1 concerning the remuneration, allowances and leave of absence provisions for the Chief Executive Officer (CEO) do not apply to the Authority's current CEO, but will apply to any persons appointed in future as CEO.

**Amendment (7)**

This amendment omits the amendments which were proposed for subsection 49(1), section 52 and subsection 54(1) of the AMSA Act relating to the appointment of the CEO, his or her resignation and the acting CEO respectively.

**Amendment (8)**

Consistent with amendments to ensure that the Authority's safety functions are given primacy, this amendment omits the amendment which would have inserted a new section 38A in the AMSA Act relating to interim dividends.

**Amendment (9)**

This amendment inserts Part AA of Schedule 1 in the Bill. Part AA sets forth amendments to be made to the proposed *Audit (Transitional and Miscellaneous) Amendment Act 1995*.

This amendment refers to item 197 of the Schedule to that Act which has the effect of deleting paragraph 10(2)(f) of the AMSA Act (which relates to the investment of money by the Authority). Item 197 now substitutes in place of paragraph 10(2)(f) of the AMSA Act subsection 18(3) of the proposed *Commonwealth Authorities and Companies Act 1995*, which relates to banking and investment by authorities other than Government Business Enterprises and Statutory Marketing Authorities.

The references to items 201, 202 and 204 related to corporate planning provisions applying to Government Business Enterprises as contained in the proposed *Commonwealth Authorities and Companies Act 1995*. As these provisions will no longer apply to the Authority, items 201, 202 and 204 are omitted.

**Amendm nt (10)**

This amendment inserts a substituted item 1 and new item 1A in Part B of Schedule 1.

Item 1 inserts section 2A in the AMSA Act which contains the main objects of the AMSA Act. Section 2A emphasises the primacy of the Authority's safety and marine environment protection functions and the efficient provision of associated services.

Item 1A is consequential to the repeal of sections 29 and 38 of the AMSA Act.

**Amendment (11)**

This amendment omits a note which referred to corporate planning requirements of Government Business Enterprises and is no longer required.

**Amendment (12)**

This amendment amends item 2 of Part B of Schedule 1. It modifies the proposed subsection 9A(4) so as to include as part of the annual reporting requirements of the Authority under section 63H of the *Audit Act 1901* a summary of any notices given to the Authority by the Minister. These notices will relate to the Authority's strategic direction and the manner in which the Authority should perform its functions. The Authority will also be required to report any action taken to comply with the notices.

**Am ndm nt (13)**

This amendment omits a note which referred to the annual reporting requirements under section 9 of the proposed *Commonwealth Authorities and Companies Act 1995* and is not required.

**Amendment (14)**

This amendment amends item 2 of Part B of Schedule 1. It modifies the proposed subsection 9B(4) so as to include as part of the annual reporting requirements of the Authority under section 63H of the *Audit Act 1901* particulars of any Ministerial directions relating to the provision of information to be given by the Authority to a ministerial nominee.

**Amendment (15)**

This amendment omits a note which referred to the annual reporting requirements under section 9 of the proposed *Commonwealth Authorities and Companies Act 1995* and is not required.

**Amendment (16)**

This amendment inserts items 2A and 2B in Part B of Schedule 1. Items 2A and 2B will commence on the same day as the proposed *Financial Management and Accountability Act 1995* and after item 2 is no longer of any effect.

Item 2A modifies the proposed subsection 9A(4) and item 2B modifies the proposed subsection 9B(4), both of which will supplement the annual reporting requirements of the members of the Authority under section 9 of the proposed *Commonwealth Authorities and Companies Act 1995*. Item 2A carries through the requirements of subsection 9A(4) and item 2B carries through the requirements of subsection 9B(4) so that the members of the Authority are obliged to continue to include the required information under these subsections in any annual report after the commencement of the proposed *Financial Management and Accountability Act 1995*.

**Amendment (17)**

This amendment modifies item 3 of Part B of Schedule 1. It provides for a subsection 21(3A) to be inserted in the *AMSA Act* before the commencement of the proposed *Financial Management and Accountability Act 1995*. Subsection 21(3A) gives the Minister a discretion to terminate the appointment of members where the Authority has failed to comply with a Ministerial direction to provide a ministerial nominee with documents or information relating to the operations of the Authority (under the proposed subsection 9B(3)), or where the members have failed to keep the Minister informed about significant changes to and matters affecting the attainment of objectives in the Authority's corporate plan (under the proposed subsection 25(4)).

**Amendment (18)**

This amendment omits items 4, 5, 6, 7 and 8 of Part B of Schedule 1 and inserts new items.

Item 4 substitutes a new subsection 21(3A) in the *AMSA Act* which will take effect when the proposed *Financial Management and Accountability Act 1995* commences. It post dates that contained in amendment (17). It also adds additional grounds pursuant to which the Minister can exercise a discretion to terminate the appointment of

members of the Authority where the members have failed to comply with certain requirements under the proposed *Commonwealth Authorities and Companies Act 1995*.

The requirements under the proposed *Commonwealth Authorities and Companies Act 1995* are concerned with failure to prepare interim financial statements (subsection 13(2)), failure to give particulars to the Minister about business acquisitions and disposals and similar interests and activities (subsection 15(1)), failure to keep the Minister informed about the operations of the Authority (paragraph 16(1)(a)), failure to give the Minister any reports, documentation and information required in relation to those operations (paragraph 16(1)(b)).

Item 5 repeals sections 25 and 26 of the AMSA Act and inserts replacement sections. Section 25 requires members of the Authority to prepare a corporate plan once a year and outlines the members' obligations in relation to that corporate plan and the requirements of the corporate plan. Section 26 requires the Minister to make a response to that corporate plan within 60 days of being given the corporate plan.

Item 6 removes references to the Authority's financial plan from section 27 of the AMSA Act and places an obligation on the members of the Authority to consider the performance indicators referred to in section 27 when preparing the corporate plan.

Item 7 inserts a replacement paragraph 27(e) in the AMSA Act. Members of the Authority will be required to include in the corporate plan details of functions, such as community service obligations, performed by the Authority which are directly funded by the Commonwealth.

Item 8 deletes paragraphs 27(h) and 27(j) of the AMSA Act which provided for inclusion in the financial plan details of the rate of return on assets earned by the Authority and the payment of dividends by the Authority.

Item 8A amends paragraph 27(k) of the AMSA Act so that it only refers to other considerations that relate to the performance of the Authority. Such considerations may be included in the corporate plan.

Item 8B repeals section 29 of the AMSA Act so as to remove the Minister's ability to direct variations to the Authority's financial plan. This item is consequential to the amendment of section 27 by item 6 which now refers to a corporate plan. The Minister's power to direct a variation of the Authority's corporate plan is contained in the new section 26.

Item 8C is consequential to the omission of paragraph 37(2)(c) of the AMSA Act.

Item 8D omits paragraph 37(2)(c) of the AMSA Act so as to remove the Authority's liability to pay payroll tax.

Item 8E repeals section 38 of the AMSA Act so that there is no requirement on the Authority to recommend or pay a dividend to the Commonwealth after the 1994/95 financial year.

Item 8F amends subsection 44(2) of the AMSA Act so as to delete the reference to financial targets. This is consequential to the amendment to section 27 AMSA Act.

Item 8G repeals section 51 of the AMSA Act and inserts two new sections (51 and 51A) in the AMSA Act. Section 51 provides for the remuneration of the Chief Executive Officer (CEO) to be determined by the Remuneration Tribunal and for allowances to be prescribed by regulations. Section 51A provides for leave of absence for the CEO.

**Amendment (19)**

This amendment substitutes a new item 10 in the Bill. Item 10 makes an amendment to section 60 of the AMSA Act which is consequential to the repeal of sections 29 and 38 of the AMSA Act.

