

**Trade Practices (International Liner Cargo Shipping) Amendment Act 1989**

**No. 34 of 1989**

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**Trade Practices (International Liner Cargo Shipping) Amendment Act 1989**

**No. 34 of 1989**

**An Act to amend the *Trade Practices Act 1974* in relation to international liner cargo shipping, and for related purposes**

[*Assented to 30 May 1989*]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title etc.**

**1.** **(1)** This Act may be cited as the *Trade Practices* (*International Liner Cargo Shipping*) *Amendment Act 1989.*

**(2)** In this Act, “Principal Act” means the *Trade Practices Act 1974*1.

**Commencement**

**2.** **(1)** Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

**(2)** If this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

**Application of Act to Commonwealth and Commonwealth authorities**

**3.** Section 2a of the Principal Act is amended by omitting from subsection (1) “(other than Part X)”.

**4.** Part X of the Principal Act is repealed and the following Part is substituted:

**“PART X—INTERNATIONAL LINER CARGO SHIPPING**

***“Division 1*—*Preliminary***

**Objects of Part**

“10.01. (1) The principal objects of this Part are:

(a) to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive;

(b) to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories; and

(c) to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade.

“(2) It is the intention of the Parliament that the principal objects of this Part should be achieved:

(a) by permitting continued conference operations while enhancing the competitive environment for outwards liner cargo shipping services through the provision of adequate and appropriate safeguards against abuse of conference power, particularly by:

(i) enacting additional restrictive trade practice provisions applying to ocean carriers;

(ii) requiring conference agreements to meet certain minimum standards;

(iii) making conference agreements generally publicly available;

(iv) permitting only partial and conditional exemption from restrictive trade practice prohibitions; and

(v) requiring conferences to take part in negotiations with representative shipper bodies;

(b) through increased reliance on private commercial and legal processes and a reduced level of government regulation of routine commercial matters; and

(c) by the exercise of jurisdiction, consistent with international law:

(i) over ocean carriers who have a substantial connection with Australia because they provide international liner cargo shipping services; and

(ii) to enable remedies for contravention of the provisions of this Part to be enforced within Australia.

**Interpretation**

“10.02. (1) In this Part, unless the contrary intention appears:

‘agreement’ means any contract, agreement, arrangement or understanding, whether made in or outside Australia;

‘association’ includes a body corporate;

‘Australian exporter’ means a person who exports goods from Australia; ‘Australian flag shipping operator’ means a person who:

(a) is an Australian citizen or a body corporate incorporated by or under the law of the Commonwealth or of a State or Territory;

(b) provides, or proposes to provide, shipping services; and

(c) normally uses, or proposes normally to use, in providing the services only:

(i) a ship that is registered in Australia; or

(ii) 2 or more ships, all or most of which are registered in Australia;

‘authorised officer’ means an officer of the Department who is authorised, in writing, by the Minister for the purposes of this Part;

‘conference’ means an unincorporated association of 2 or more ocean carriers carrying on 2 or more businesses each of which includes, or is proposed to include, the provision of liner cargo shipping services;

‘conference agreement’ means an agreement between members of a conference in relation to outwards liner cargo shipping services provided, or proposed to be provided, by them, and includes a varying conference agreement;

‘designated peak shipper body’ means an association specified in a notice under subsection 10.03 (1);

‘designated secondary shipper body’ means an association specified in a notice under subsection 10.03 (2);

‘designated shipper body’ means a designated peak shipper body or a designated secondary shipper body;

‘international liner cargo shipping service’ means a liner cargo shipping service for the transport of cargo by sea from a place in Australia to a place outside Australia or from a place outside Australia to a place in Australia;

‘inwards liner cargo shipping service’ means an international liner cargo shipping service commencing at a place outside Australia;

‘liner cargo shipping service’ means a scheduled service for the transport of various types of general cargo by sea on particular routes, generally by container and generally at predetermined freight rates;

‘loyalty agreement’ means an agreement:

(a) between an ocean carrier or conference and a shipper or designated shipper body; and

(b) that makes provision, in relation to outwards liner cargo shipping services, having the purpose or effect of giving certain benefits to the shipper, or a shipper represented by the designated shipper body, if the shipper ships with the ocean carrier, or members of the conference:

(i) all or particular cargo, or a particular portion of all or particular cargo, shipped by the shipper; or

(ii) a particular quantity of cargo or of particular cargo;

‘ocean carrier’ means a person who provides, or proposes to provide, international liner cargo shipping services;

‘outwards liner cargo shipping service’ means an international liner cargo shipping service commencing at a place in Australia;

‘pricing practice’ means the fixing, controlling or maintaining by an ocean carrier of prices charged for, or the giving or allowing by an ocean carrier of discounts, allowances, rebates or credits in relation to, liner cargo shipping services provided by the ocean carrier;

‘provisionally registered conference agreement’ means a conference agreement that is provisionally registered under this Part;

‘registered agent’, in relation to an ocean carrier, means the person specified in the register of ocean carrier agents as the agent of the ocean carrier;

‘registered conference agreement’ means a conference agreement that is finally registered under this Part;

‘registered non-conference ocean carrier with substantial market power’ means an ocean carrier specified in the register of non-conference ocean carriers with substantial market power;

‘Registrar’ means the Registrar of Liner Shipping;

‘vary’, in relation to a conference agreement, includes vary by way of:

(a) omitting or altering any of the provisions of, or parties to, the agreement;

(b) adding new provisions or parties to the agreement; or

(c) substituting new provisions or parties for any of the provisions of, or parties to, the agreement;

‘varying conference agreement’ means an agreement:

(a) that varies a conference agreement; or

(b) that otherwise affects a conference agreement (including an agreement referred to in subsection (3)).

“(2) A reference in this Part to the minimum level of outwards liner cargo shipping services provided, or proposed to be provided, under a conference agreement includes a reference to the frequency of sailings, cargo

carrying capacity, and ports of call, of outwards liner cargo shipping services provided, or proposed to be provided, under the agreement.

“(3) A reference in this Part to an agreement that affects a conference agreement includes a reference to an agreement between parties to the conference agreement or between parties to the conference agreement and other ocean carriers:

(a) that affects the conduct of parties to the conference agreement in relation to outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement;

(b) that affects the minimum level of outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement; or

(c) that otherwise affects:

(i) the operation, or proposed operation, of the conference agreement; or

(ii) outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement.

**Designated shipper bodies**

“10.03. (1) If the Minister is of the opinion that an association represents the interests, in relation to outwards liner cargo shipping services, of Australian shippers generally, the Minister may declare that the association is a designated peak shipper body for the purposes of this Part.

“(2) If the Minister is of the opinion:

(a) that an association represents the interests, in relation to outwards liner cargo shipping services, of all or any of the following kinds of persons:

(i) Australian shippers in a particular trade;

(ii) Australian shippers of particular kinds of goods;

(iii) shippers in a particular part of Australia;

(iv) producers of goods of a kind exported, or proposed to be exported, from Australia; and

(b) that it is desirable that the association be a designated secondary shipper body for the purposes of this Part;

the Minister may declare that the association is a designated secondary shipper body for the purposes of this Part.

“(3) Where the Minister declares that an association is a designated peak shipper body, or a designated secondary shipper body, for the purposes of this Part, the Registrar shall enter particulars of the association in the register of designated shipper bodies.

“(4) The particulars entered in the register shall include whether the association is a designated peak shipper body or a designated secondary shipper body.

“(5) The Minister may make guidelines to be applied by the Registrar in the exercise of the Registrar’s powers to nominate designated secondary shipper bodies for the purposes of sections 10.29, 10.41 and 10.52.

“(6) The Registrar shall enter particulars of any nomination of a designated secondary shipper body for the purposes of section 10.29, 10.41 or 10.52 in the register of designated shipper bodies.

“(7) A declaration under subsection (1) or (2), and a guideline under subsection (5), must be made in writing, and are disallowable instruments for the purposes of section 46aof the *Acts Interpretation Act 1901.*

***“Division 2***—***Additional restrictive trade practice provisions applying to ocean carriers***

**Application of section 46 in relation to conference agreements**

“10.04. (1) For the purposes of section 46, if the parties to a conference agreement together have a substantial degree of power in a market in which any party to the agreement provides international liner cargo shipping services under the agreement, each party to the conference agreement shall be taken to have a substantial degree of power in the market.

“(2) In subsection (1):

‘conference agreement’ means an agreement between members of a conference in relation to international liner cargo shipping services provided, or proposed to be provided, by them, and includes an agreement that varies such an agreement.

**Discrimination between shippers prohibited**

“10.05. (1) An ocean carrier shall not discriminate between shippers requiring similar outwards liner cargo shipping services on a particular trade route (whether the discrimination is in relation to freight rates, levels of shipping services, the provision of equipment and facilities or otherwise) if the discrimination is of such a magnitude or such a recurring or systematic character that it has, or is likely to have, the effect of substantially lessening competition in a market for goods or services, being a market in which the shippers supply goods or the ocean carrier supplies outwards liner cargo shipping services.

“(2) In a proceeding against an ocean carrier for contravention of subsection (1), it is a defence if the ocean carrier proves:

(a) that the discrimination made only reasonable allowance for differences in the cost or likely cost of providing outwards liner cargo shipping services resulting from:

(i) the different ports from or to which the services were required;

(ii) the different quantities of cargo required to be carried; or

(iii) the different kinds of cargo required to be carried;

(b) that the discrimination made only reasonable allowance for:

(i) the capacity of the ocean carrier to carry cargo or a particular kind of cargo, whether at all times or particular times; or

(ii) the different times at which the outwards liner cargo shipping services were required to be provided; or

(c) that the discrimination was constituted by the doing of an act in good faith to meet freight rates, levels of service, equipment or facilities, or benefits, offered by a competitor of the ocean carrier.

“(3) A person shall not:

(a) knowingly induce, or attempt to induce, an ocean carrier to discriminate between shippers in contravention of subsection (1); or

(b) enter into a transaction that, to the knowledge of the person, would result in the person receiving the benefit of a discrimination between shippers that contravenes subsection (1).

“(4) In a proceeding against a person for a contravention of subsection (3), it is a defence if the person proves:

(a) that the discrimination was of a kind referred to in subsection (2); or

(b) that the person reasonably believed that the discrimination was of a kind referred to in subsection (2).

“(5) Section 5 and Part VI apply in relation to subsections (1) to (4) (inclusive) as if those subsections were provisions of Part IV.

***“Division 3*—*Minimum standards for conference agreements***

**Application of Australian law to conference agreements and withdrawal from agreements**

“10.06. (1) A conference agreement must expressly provide for a question arising under the agreement in relation to an outwards liner cargo shipping service provided, or proposed to be provided, under the agreement to be determined in Australia in accordance with Australian law unless the parties and the Minister agree, in writing, to the particular question being otherwise determined.

“(2) A conference agreement must expressly permit any party to the agreement to withdraw from the agreement on reasonable notice without penalty.

**Minimum levels of shipping services to be specified in conference agreements**

“10.07. A conference agreement must contain provisions specifying the minimum level of outwards liner cargo shipping services to be provided under the agreement.

**Conference agreements may include only certain restrictive trade practice provisions**

“10.08. (1) If a conference agreement includes a provision:

(a) that is an exclusionary provision; or

(b) that has the purpose, or has or is likely to have the effect, of substantially lessening competition (within the meaning of section 45);

the provision, so far as it is an exclusionary provision or has or is likely to have that effect, must either:

(c) deal only with the following matters:

(i) the fixing or other regulation of freight rates;

(ii) the pooling or apportionment of earnings, losses or traffic;

(iii) the restriction or other regulation of the quantity or kind of cargo to be carried by parties to the agreement;

(iv) the restriction or other regulation of the entry of new parties to the agreement; or

(d) be necessary for the effective operation of the agreement and of overall benefit to Australian exporters.

“(2) If a conference agreement includes a provision that permits or requires the practice of exclusive dealing (within the meaning of section 47), the provision, so far as it permits or requires that practice, must be necessary for the effective operation of the agreement and of overall benefit to Australian exporters.

“(3) This section does not apply in relation to a provision of a conference agreement so far as the provision requires or permits a party to the agreement to enter into a loyalty agreement.

**Where may consequences of conference agreements not complying with minimum standards be found?**

“10.09. The consequences of a conference agreement not complying with this Division are to be found in the following provisions:

(a) section 10.28 (decision on application for provisional registration);

(b) section 10.33 (decision on application for final registration);

(c) section 10.45 (circumstances in which Minister may exercise powers in relation to registered conference agreements).

***“Division 4*—*Registers and tiles and public inspection of them***

**Registers and conference agreement files open to public inspection**

“10.10. (1) The registers and conference agreement files kept by the Registrar and the Commission under this Part are open to public inspection.

“(2) A person is entitled, on application to the Registrar or the Commission, as the case requires, and payment of the prescribed fee, to obtain a copy of the whole or any part of:

(a) an entry in a register kept under this Part; or

(b) a conference agreement file kept under this Part.

**What registers are to be kept by the Registrar?**

“10.11. (1) The Registrar shall keep:

(a) a register of conference agreements;

(b) a register of designated shipper bodies;

(c) a register of non-conference ocean carriers with substantial market power;

(d) a register of obligations concerning unfair pricing practices; and

(e) a register of ocean carrier agents.

“(2) An entry in a register must contain such particulars as are prescribed in relation to the register.

**What conference agreement files are to be kept by the Registrar?**

“10.12. (1) The Registrar shall keep a file, to be known as the conference agreement file, for each conference agreement (other than a varying conference agreement).

“(2) The conference agreement file for a conference agreement must include:

(a) documents filed with the Registrar under Division 6 in relation to the agreement or any relevant varying conference agreement (other than any part of a document that is not open to public inspection);

(b) abstracts accepted by the Registrar under section 10.36 in relation to such documents (being abstracts of those parts of the documents that are not open to public inspection); and

(c) notifications given to the Registrar under subsection 10.40 (1) or 10.43 (1) in relation to the agreement or any relevant varying conference agreement.

**What register is to be kept by the Commission?**

“10.13. (1) The Commission shall keep a register of Commission investigations.

“(2) Subject to section 10.88, the register of Commission investigations shall contain:

(a) references given to the Commission by the Minister under subsections 10.47 (1) and 10.57 (1);

(b) particulars of decisions made by the Commission under subsections 10.48 (2) and 10.58 (2) to hold investigations;

(c) requests made to the Commission by the Minister under subsections 10.48 (3) and 10.58 (3);

(d) documents given to the Commission in relation to investigations by it under this Part;

(e) particulars of oral submissions made to the Commission in relation to such investigations; and

(f) reports given to the Minister by the Commission in relation to such investigations.

***“Division* 5—*Exemptions from certain restrictive trade practice prohibitions***

***“Subdivision A—Exemptions relating to conference agreements***

**Exemptions apply only to ‘blue-water’ parts of service and activities outside Australia etc.**

“10.14. (1) Subject to subsection (2), where an outwards liner cargo shipping service consists of the transport of cargo by sea and other activities (including, for example, stevedoring operations and the transport of the cargo by land or air), the exemptions provided by this Subdivision apply only in relation to:

(a) the parts of the service that consist of the transport of the cargo by sea; and

(b) activities that take place outside Australia.

“(2) The exemptions provided by this Subdivision extend to:

(a) the fixing of door-to-door freight rates for an outwards liner cargo shipping service, if freight rates are also fixed for shippers wishing to use only those parts of the service that consist of:

(i) the transport of cargo by sea;

(ii) activities that take place in Australia within the limits of a wharf appointed under section 15 of the *Customs Act 1901*,being the limits fixed under that section; and

(iii) activities that take place outside Australia at a wharf or adjacent terminal facilities; and

(b) the determination of common terms and conditions for bills of lading for use in relation to an outwards liner cargo shipping service.

**When do exemptions commence to apply in relation to registered conference agreements?**

“10.15. The exemptions provided by this Subdivision apply in relation to the operation of a registered conference agreement only after the end of 30 days after the conference agreement is finally registered.

**Exemptions do not apply to variations of conference agreement unless varying agreement registered**

“10.16. Where a registered conference agreement is varied or otherwise affected by a varying conference agreement, the exemptions provided by this Subdivision apply only in relation to the operation of the registered conference agreement itself, and not that agreement as varied or otherwise affected, unless the varying conference agreement has been finally registered.

**Exemptions from section 45**

“10.17. (1) Section 45 does not apply in relation to the making of a contract or arrangement, or the arriving at an understanding, if:

(a) the contract, arrangement or understanding is a conference agreement; and

(b) the parties apply for its provisional registration under this Part within 30 days after the making of the contract or arrangement or arriving at the understanding.

“(2) Section 45 does not apply in relation to conduct engaged in by a party to a registered conference agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service.

**Exemption from section 47**

“10.18. (1) Section 47 does not apply in relation to conduct engaged in by a party to a registered conference agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service.

“(2) The exemption provided by subsection (1) does not apply in relation to subsections 47 (6) and (7).

***“Subdivision*** *B***—*Exemptions relating to loyalty agreements***

**Exemptions from section 45**

“10.19. (1) Section 45 does not apply in relation to the making of a contract or arrangement, or the arriving at an understanding, if the contract, arrangement or understanding is a loyalty agreement.

“(2) Section 45 does not apply in relation to conduct engaged in by a party to a loyalty agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service.

**Exemption from sections 47 and 10.05**

“10.20. (1) Sections 47 and 10.05 do not apply in relation to conduct engaged in by a party to a loyalty agreement in relation to another party to the agreement so far as the conduct gives effect to a provision of the agreement in relation to an outwards liner cargo shipping service.

“(2) The exemption provided by subsection (1) does not apply in relation to subsections 47 (6) and (7).

**Exemptions cease to apply in relation to a shipper at the shipper’s option**

“10.21. The exemptions provided by this Subdivision in relation to the operation of a loyalty agreement cease to apply in relation to conduct engaged in by an ocean carrier in relation to a shipper if the shipper notifies, as prescribed, the Commission and each ocean carrier who is a party to the agreement that the shipper no longer wishes the exemptions to apply.

***“Subdivision C***—***Exemption relating to inwards liner cargo shipping services***

**Exemption applies only to ‘blue-water’ parts of service and activities outside Australia etc.**

“10.22. (1) Subject to subsection (2), where an inwards liner cargo shipping service consists of the transport of cargo by sea and other activities (including, for example, stevedoring operations and the transport of the cargo by land or air), the exemption provided by this Subdivision applies only in relation to:

(a) the parts of the service that consist of the transport of the cargo by sea; and

(b) activities that take place outside Australia.

“(2) The exemption provided by this Subdivision extends to:

(a) the fixing of door-to-door freight rates for an inwards liner cargo shipping service, if freight rates are also fixed for shippers wishing to use only those parts of the service that consist of:

(i) the transport of cargo by sea;

(ii) activities that take place in Australia within the limits of a wharf appointed under section 15 of the *Customs Act 1901*,being the limits fixed under that section; and

(iii) activities that take place outside Australia at a wharf or adjacent terminal facilities; and

(b) the determination of common terms and conditions for bills of lading for use in relation to an inwards liner cargo shipping service.

**Exemption from sections 45 and 47**

“10.23. (1) Sections 45 and 47 do not apply in relation to conduct engaged in by a person so far as the conduct relates to the provision, or proposed provision, of an inwards liner cargo shipping service.

“(2) The exemption provided by subsection (1) does not apply in relation to subsections 47 (6) and (7).

***“Subdivision D—Other exemptions***

**Exemptions from sections 45 and 47 in relation to certain negotiations**

“10.24. (1) Sections 45 and 47 do not apply in relation to conduct engaged in by an ocean carrier, conference, shipper or designated shipper body so far as the conduct relates to the determination of terms and conditions of loyalty agreements.

“(2) Sections 45 and 47 do not apply in relation to conduct engaged in by an ocean carrier, conference, shipper or designated shipper body so far as the conduct relates to the obligations of an ocean carrier under any of the following provisions:

(a) section 10.29 (parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement);

(b) section 10.41 (parties to registered conference agreement to negotiate with certain designated shipper bodies etc.);

(c) section 10.52 (non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.).

“(3) The exemptions provided by this section do not apply in relation to subsections 47 (6) and (7).

***“Division 6***—***Registration of conference agreements***

***“Subdivision A—Provisional registration***

**Application for provisional registration of conference agreement**

“10.25. (1) The parties to a conference agreement may apply for its provisional registration under this Part.

“(2) The application must comply with the following provisions:

(a) subsections 10.26 (1) and (2) (how application is to be made and verified);

(b) section 10.27 (copy of agreement to be filed with application etc.).

**How application is to be made and verified**

“10.26. (1) An application for the provisional registration of a conference agreement must be:

(a) in the appropriate prescribed form;

(b) made to the Registrar in accordance with the regulations; and

(c) accompanied by the appropriate prescribed fee.

“(2) The application must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

“(3) The application may be made by a party to the agreement on behalf of the party and other parties to the agreement.

**Copy of agreement to be filed with application etc.**

“10.27. (1) An application for the provisional registration of a conference agreement must be accompanied by:

(a) a complete copy of the agreement so far as it is in writing (including all provisions of the agreement so far as they are in writing); and

(b) a written memorandum that fully sets out the agreement so far as it is not in writing (including all provisions of the agreement so far as they are not in writing);

other than any parts of the agreement that relate to the minimum level of outwards liner cargo shipping services to be provided under the agreement or a conference agreement that is varied or otherwise affected by the agreement.

“(2) A document that accompanies an application for the provisional registration of a conference agreement must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

**Decision on application for provisional registration**

“10.28. (1) If the Registrar is satisfied:

(a) that an application has properly been made for the provisional registration of a conference agreement;

(b) that the agreement complies with section 10.06 (application of Australian law to conference agreements and withdrawal from agreements) or, if the agreement varies or otherwise affects another conference agreement, that the other conference agreement as varied or affected complies with that section; and

(c) that provisional registration of the agreement is not prevented by one or more of the following provisions:

(i) section 10.38 (application for registration to be returned where request for confidentiality refused etc.);

(ii) section 10.39 (application also to be made for registration of varying agreements);

(iii) subsection 10.40 (1) (notification of happening of affecting events prior to final registration etc.);

the Registrar shall, within 14 days after the making of the application, provisionally register the agreement by entering in the register of conference agreements:

(d) particulars of the agreement; and

(e) a notation to the effect that the agreement has been provisionally registered.

“(2) If the Registrar is not so satisfied, the Registrar shall, within that 14 day period, refuse to provisionally register the agreement.

“(3) When the Registrar provisionally registers the agreement or refuses to provisionally register the agreement, the Registrar shall immediately notify the applicants.

**Parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement**

“10.29. (1) The parties to a provisionally registered conference agreement shall:

(a) take part in negotiations with the designated peak shipper bodies or, if there is not at that time a designated peak shipper body, the designated secondary shipper bodies nominated by the Registrar for the purposes of the agreement for the purposes of this section, in relation to the minimum level of outwards liner cargo shipping services to be provided under the agreement (including any provisions of the agreement that affect the level of those services) and consider the matters raised, and representations made, by the shipper bodies;

(b) if a shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

“(2) Subsection (1) does not apply in relation to a conference agreement if the shipper bodies notify, as prescribed, the Registrar and the parties to the agreement that they do not wish to have negotiations in relation to the agreement.

“(3) The nomination of a designated secondary shipper body for the purposes of a provisionally registered conference agreement must be made by written notice given to the parties to the agreement.

***“Subdivision*** *B***—*Final registration***

**Application for final registration of conference agreement**

“10.30. (1) The parties to a provisionally registered conference agreement may apply for its final registration under this Part.

“(2) The application must comply with the following provisions:

(a) subsections 10.31 (1) and (2) (how application is to be made and verified);

(b) section 10.32 (copy of agreement to be filed with application etc.).

**How application is to be made and verified**

“10.31. (1) An application for the final registration of a conference agreement must be:

(a) in the appropriate prescribed form;

(b) made to the Registrar in accordance with the regulations; and

(c) accompanied by the appropriate prescribed fee.

“(2) The application must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

“(3) The application may be made by a party to the agreement on behalf of the party and other parties to the agreement.

**Copy of agreement to be filed with application etc.**

“10.32. (1) An application for the final registration of a conference agreement must be accompanied by:

(a) a complete copy of the agreement so far as it is in writing (including all provisions of the agreement so far as they are in writing); and

(b) a written memorandum that fully sets out the agreement so far as it is not in writing (including all provisions of the agreement so far as they are not in writing).

“(2) A document that accompanies an application for the final registration of a conference agreement must comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

**Decision on application for final registration**

“10.33. (1) If the Registrar is satisfied:

(a) that an application has properly been made for the final registration of a conference agreement;

(b) that the agreement complies with section 10.07 (minimum levels of shipping services to be specified in conference agreements) and section 10.08 (conference agreements may include only certain restrictive trade practice provisions) or, if the agreement varies or otherwise affects another conference agreement, that the other conference agreement as varied or affected complies with those sections;

(c) that subsection 10.29 (1) (parties to conference agreement to negotiate minimum level of shipping services after provisional registration of agreement) has been complied with, or does not apply, in relation to the agreement; and

(d) that final registration of the agreement is not prevented by one or more of the following provisions:

(i) section 10.38 (application for registration to be returned where request for confidentiality refused etc.);

(ii) section 10.39 (application also to be made for registration of varying conference agreements);

(iii) subsection 10.40 (1) (notification of happening of affecting events prior to final registration etc.);

the Registrar shall, within 14 days after the making of the application, finally register the agreement by entering in the register of conference agreements a notation to the effect that the agreement has been finally registered.

“(2) If the Registrar is not so satisfied, the Registrar shall, within that 14 day period, refuse to finally register the agreement.

“(3) When the Registrar finally registers the agreement or refuses to finally register the agreement, the Registrar shall immediately notify the applicants.

***“Subdivision C—Confidentiality requests***

**Request for confidentiality**

“10.34. (1) An application for the provisional or final registration of a conference agreement may include a request that a specified part of the application, or of a document accompanying the application, not be open to public inspection under this Part.

“(2) If such a request is included in the application, the application must include a statement of reasons in support of the request.

**Abstract to accompany request for confidentiality**

“10.35. (1) Where a request is made under section 10.34 that a part of the application in which the request is included, or of a document accompanying the application, not be open to public inspection under this Part, the application must be accompanied by an abstract of the part of the application or other document in relation to which the request is made.

“(2) The abstract must:

(a) be in the appropriate prescribed form; and

(b) comply with any regulations requiring its verification (in whole or part) by or on behalf of the applicants.

**Examination of abstract**

“10.36. (1) Where:

(a) a request is properly made under section 10.34 that a part of a document not be open to public inspection under this Part; and

(b) the request is accompanied by an abstract of the part of the document;

the Registrar shall first determine whether to accept the abstract.

“(2) If the Registrar is satisfied:

(a) that the abstract adequately describes the scope of the part of the document; and

(b) that the abstract complies with subsection 10.35 (2);

the Registrar shall accept the abstract.

“(3) If the Registrar is not so satisfied, the Registrar shall:

(a) refuse to accept the abstract; and

(b) refuse the request and immediately notify the applicants of the decision.

**Decision on request for confidentiality**

“10.37. (1) If:

(a) the Registrar is satisfied that a request has properly been made under section 10.34 that a part of a document not be open to public inspection under this Part;

(b) the Registrar has, under section 10.36, accepted an abstract for the part of the document; and

(c) the Registrar is also satisfied, on the basis of the statement of reasons in support of the request that is included in the application for provisional or final registration of the conference agreement concerned:

(i) that granting the request would not disadvantage Australian exporters; and

(ii) that the request is justified because disclosure of the part of the document would disclose:

(a) trade secrets;

(b) information (other than trade secrets) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) any other information concerning a person in relation to the person’s business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, the disclosure of which would, or could reasonably be expected to, unreasonably affect the person adversely in relation to the person’s lawful business or professional affairs or the organisation or undertaking in relation to its lawful business, commercial or financial affairs;

the Registrar shall, within 14 days after the making of the request, direct that the part of the document not be open to public inspection under this Part.

“(2) If the Registrar is not so satisfied, the Registrar shall, within that 14 day period, refuse the request and immediately notify the applicants of the decision.

**Application for registration to be returned where request for confidentiality refused etc.**

“10.38. Where:

(a) an application for the provisional or final registration of a conference agreement includes a request under section 10.34 that a part of a document not be open to public inspection under this Part; and

(b) the request is refused by the Registrar;

the Registrar shall also refuse the application, and shall return the application, and any documents that accompanied the application, to the applicants.

***“Subdivision D*—*Miscellaneous***

**Application also to be made for registration of varying conference agreements**

“10.39. If:

(a) application has been made for the provisional or final registration of a conference agreement (in this section called the ‘original agreement’), but the original agreement has not been finally registered; and

(b) another conference agreement that varies or otherwise affects the original agreement is or has been made or arrived at;

the Registrar shall not provisionally or finally register the original agreement unless application has been made for the provisional registration of the other conference agreement.

**Notification of happening of affecting events prior to final registration etc.**

“10.40. (1) If:

(a) application has been made for the provisional or final registration of a conference agreement, but the agreement has not been finally registered; and

(b) either of the following subparagraphs applies:

(i) the proposed operation of the conference agreement is affected, or outwards liner cargo shipping services proposed to be provided under the agreement are affected, by the happening of an event or otherwise than by a varying conference agreement;

(ii) parties to the conference agreement have made or arrived at an agreement with other ocean carriers that affects outwards liner cargo shipping services provided, or that would, but for the agreement, have been provided, by the other ocean carriers;

the Registrar shall not provisionally or finally register the original agreement unless the parties to the agreement have notified the Registrar of the matter.

“(2) The notice must be:

(a) in the appropriate prescribed form; and

(b) given to the Registrar in accordance with the regulations.

“(3) The notice must comply with any regulations requiring its verification (in whole or part).

“(4) Where the parties to a conference agreement give a notice under subsection (1), the Registrar may make such variations (if any) to the particulars entered in the register of conference agreements in relation to the agreement as the Registrar considers necessary or desirable to take account of the notice.

***“Division* 7—*Obligations of ocean carriers in relation to registered conference agreements***

**Parties to registered conference agreement to negotiate with certain designated shipper bodies etc.**

“10.41. (1) The parties to a registered conference agreement shall:

(a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements (including any provisions of the agreement that affect those arrangements) whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;

(b) if the shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

“(2) The parties to the agreement shall give each relevant designated shipper body at least 30 days notice of any change in negotiable shipping arrangements unless the shipper body agrees to a lesser period of notice for the change.

“(3) In this section:

‘negotiable shipping arrangements’ means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, under the conference agreement (including, for example, freight rates, frequency of sailings and ports of call);

‘relevant designated shipper body’ means:

(a) a designated peak shipper body; or

(b) a designated secondary shipper body nominated by the Registrar (by written notice given to the parties to the agreement) for the purposes of the agreement for the purposes of this section.

**Application to be made for registration of varying conference agreements**

“10.42. (1) Where a conference agreement that varies or otherwise affects a registered conference agreement is made or arrived at, application shall be made for its provisional registration.

“(2) The application must be made within 30 days after the making of or arriving at the agreement.

**Parties to registered conference agreement to notify happening of affecting events etc.**

“10.43. (1) Where:

(a) the operation, or proposed operation, of a registered conference agreement is affected, or outwards liner cargo shipping services provided, or proposed to be provided, under the agreement are affected, by the happening of an event or otherwise than by a varying conference agreement; or

(b) parties to a registered conference agreement make or arrive at an agreement with other ocean carriers that affects outwards liner cargo shipping services provided, or that would, but for the agreement, have been provided, by the other ocean carriers;

the parties to the registered conference agreement shall notify the Registrar of the matter.

“(2) The notice must be:

(a) in the appropriate prescribed form; and

(b) given to the Registrar in accordance with the regulations within 30 days after the operation, or proposed operation, of the agreement is affected, the services are affected or the agreement is made or arrived at, as the case may be.

“(3) The notice must comply with any regulations requiring its verification (in whole or part).

“(4) Where the parties to a registered conference agreement give a notice under subsection (1), the Registrar may make such variations (if any) to the particulars entered in the register of conference agreements in relation to the agreement as the Registrar considers necessary or desirable to take account of the notice.

***“Division 8***—***Powers of Minister in relation to registered conference agreements***

**Powers exercisable by Minister in relation to registered conference agreements etc.**

“10.44. (1) Subject to sections 10.45 and 10.46, the Minister may direct the Registrar:

(a) to cancel the registration of a registered conference agreement; or

(b) to cancel the registration of a registered conference agreement so far as it relates to:

(i) a particular provision of the agreement;

(ii) a particular party to the agreement; or

(iii) particular conduct.

“(2) Where the Minister gives a direction under subsection (1), the Registrar shall immediately enter particulars of the direction in the register of conference agreements.

“(3) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to the agreement.

“(4) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement so far as it relates to a particular provision of the agreement, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to the provision.

“(5) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement so far as it relates to a particular party to the agreement, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to the party.

“(6) On the entry in the register of conference agreements of particulars of a direction to cancel the registration of a registered conference agreement so far as it relates to particular conduct, the exemptions provided by Subdivision A of Division 5 cease to apply in relation to conduct of that kind in relation to the agreement.

“(7) A direction under subsection (1) must be given in writing, and the Registrar shall serve a copy of the direction on the parties to the conference agreement concerned.

**Circumstances in which Minister may exercise powers in relation to registered conference agreements**

“10.45. The Minister shall not give a direction under subsection 10.44 (1) in relation to a registered conference agreement unless:

(a) the Minister is satisfied of one or more of the following matters:

(i) that the agreement does not comply with one or more of the following provisions:

(a) section 10.06 (application of Australian law to conference agreements and withdrawal from agreements);

(b) section 10.07 (minimum levels of shipping services to be specified in conference agreements);

(c) section 10.08 (conference agreements may include only certain restrictive trade practice provisions);

(ii) that parties to the agreement have contravened, or propose to contravene, either or both of the following provisions:

(a) section 10.41 (parties to registered conference agreement to negotiate with certain designated shipper bodies etc.);

(b) subsection 10.43 (1) (parties to registered conference agreement to notify happening of affecting events etc.);

(iii) that section 10.42 (application to be made for registration of varying conference agreements) has not been complied with in relation to a conference agreement that varies or otherwise affects the agreement;

(iv) that parties to the agreement have given effect to or applied, or propose to give effect to or apply, the agreement without due regard to the need for outwards liner cargo shipping services provided under the agreement to be:

(a) efficient and economical; and

(b) provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use, the services;

(v) that parties to the agreement have given effect to or applied, or propose to give effect to or apply, the agreement in a manner that prevents or hinders an Australian flag shipping operator from engaging efficiently in the provision of outwards liner cargo shipping services to an extent that is reasonable;

(vi) that provisional or final registration of the agreement was granted on the basis of a statement or information that was false or misleading in a material particular;

(vii) that parties to the agreement have breached an undertaking given by the parties to the agreement under section 10.49;

(b) the Minister has carried on or attempted to carry on, either personally or through authorised officers, consultations with the parties to the agreement directed at obtaining an undertaking or action by the parties that would have made a direction under subsection 10.44 (1) unnecessary; and

(c) either of the following subparagraphs applies:

(i) the Commission has reported to the Minister under section 10.47 or 10.48 in relation to matters referred to in paragraph (a) of which the Minister is satisfied and the Minister has taken the report into account;

(ii) the Minister is satisfied that the special circumstances of the case make it desirable to give the direction before he or she receives such a report from the Commission.

**Action to be taken where powers exercised by Minister without first obtaining Commission report**

“10.46. (1) Where the Minister gives a direction under subsection 10.44 (1) before receiving a report under section 10.47 or 10.48 in relation to matters referred to in paragraph 10.45 (a) of which the Minister was satisfied before giving the direction, the Minister shall immediately refer the matters to the Commission under section 10.47.

“(2) The Commission shall report to the Minister within a period of not more than 60 days in relation to those matters and any other matters that the Commission is then investigating under this Division in relation to the conference agreement concerned.

“(3) If, after taking the Commission’s report into account, the Minister is satisfied of one or more of the matters referred to in paragraph 10.45 (a), the Minister may, within 21 days after receiving the Commission’s report, direct the Registrar not to take action under subsection (4) in relation to the agreement, and may also give such further directions under subsection 10.44 (1) in relation to the agreement as the Minister considers appropriate.

“(4) The Registrar shall delete the particulars of the direction under subsection 10.44 (1) from the register of conference agreements at the end of 21 days after the Minister receives the Commission’s report unless the Minister has given a direction under subsection (3) in relation to the agreement.

“(5) On the deletion of the particulars of the direction, Subdivision A of Division 5 applies in relation to the agreement to the extent to which it would have applied but for the entry of the particulars.

“(6) Subsection (1) shall not be taken by implication to limit the matters that may be referred to the Commission under section 10.47.

“(7) A direction under subsection (3) must be given in writing.

**Investigation and report by Commission on reference by Minister**

“10.47. (1) The Minister may refer to the Commission for investigation and report the question whether grounds exist for the Minister to be satisfied in relation to a registered conference agreement of one or more specified matters referred to in paragraph 10.45 (a).

“(2) The Commission shall hold an investigation into the question and report to the Minister.

“(3) In its investigation, the Commission shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Commission.

**Investigation and report by Commission on application by affected person**

“10.48. (1) A person affected by the operation of a registered conference agreement may apply to the Commission for an investigation into the question whether grounds exist for the Minister to be satisfied in relation to the agreement of one or more specified matters referred to in paragraph 10.45 (a).

“(2) The Commission may hold an investigation into the question, and, if it decides to do so, it shall inform the Minister of its decision and report to the Minister.

“(3) In its investigation, the Commission shall give special consideration to such matters (if any) as the Minister requests it to give special consideration.

“(4) A request under subsection (3) must be made in writing.

“(5) Without limiting subsection (1), each of the following persons shall be taken to be a person affected by the operation of a registered conference agreement:

(a) a party to the agreement;

(b) a designated shipper body;

(c) an Australian flag shipping operator;

(d) a shipper who uses, or may reasonably be expected to need to use, outwards liner cargo shipping services provided, or proposed to be provided, under the agreement;

(e) an association representing shippers who use, or may reasonably be expected to need to use, such services.

**Undertakings by parties to registered conference agreement**

“10.49. (1) The parties to a registered conference agreement may, at any time, offer to give an undertaking to do, or not to do, a specified act or thing.

“(2) The offer must be:

(a) in the appropriate prescribed form; and

(b) made to the Minister in accordance with the regulations.

“(3) If the Minister accepts the offer, the Minister may do one or more of the following:

(a) revoke any reference made to the Commission under section 10.47 in relation to the agreement;

(b) direct the Commission, in writing, to cease holding any investigation being held by it under section 10.48 in relation to the agreement;

(c) revoke any direction given under subsection 10.44 (1) in relation to the agreement.

“(4) If the Minister accepts the offer, the parties shall be taken to have given the undertaking, and the Registrar shall immediately register the undertaking by entering particulars of it in the register of conference agreements.

“(5) If the Minister revokes a direction given under subsection 10.44 (1), the Registrar shall immediately include in the register a notation to the effect that the direction has been revoked.

“(6) On the inclusion of the notation, Subdivision A of Division 5 applies in relation to the agreement to the extent to which it would have applied but for the entry of the particulars of the direction.

***“Division 9*—*Obligations of non-conference ocean carriers with substantial market power***

**Inquiries by Tribunal into market power of ocean carriers**

“10.50. (1) The Minister may refer to the Tribunal for inquiry and report the question whether an ocean carrier has a substantial degree of market power in the provision of outwards liner cargo shipping services on a trade route otherwise than because the ocean carrier is a party to a conference agreement.

“(2) The Tribunal shall hold an inquiry into the question and report to the Minister.

“(3) In its inquiry, the Tribunal shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Tribunal.

**Determination by Minister of market power of ocean carriers**

“10.51. (1) Where:

(a) the Tribunal reports to the Minister under section 10.50 that an ocean carrier has a substantial degree of market power in the provision of outwards liner cargo shipping services on a trade route otherwise than because the ocean carrier is a party to a conference agreement; or

(b) an ocean carrier agrees, in writing, to the Minister giving a direction under this subsection in relation to the ocean carrier in relation to a trade route;

the Minister may direct the Registrar to register the ocean carrier as a non-conference ocean carrier with substantial market power in relation to the trade route.

“(2) Where the Minister gives a direction under subsection (1), the Registrar shall immediately enter particulars of the ocean carrier and the trade route in the register of non-conference ocean carriers with substantial market power.

“(3) A direction under subsection (1) must be in writing, and the Registrar shall serve a copy of the direction on the ocean carrier concerned.

**Non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.**

“10.52. (1) A registered non-conference ocean carrier with substantial market power shall:

(a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;

(b) if the shipper body requests the ocean carrier to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the ocean carrier—make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

“(2) The ocean carrier shall give each relevant designated shipper body at least 30 days notice of any change in negotiable shipping arrangements unless the shipper body agrees to a lesser period of notice for the change.

“(3) In this section:

‘negotiable shipping arrangements’ means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, by the ocean carrier on the relevant trade route (including, for example, freight rates, frequency of sailings and ports of call);

‘relevant designated shipper body’ means:

(a) a designated peak shipper body; or

(b) a designated secondary shipper body nominated by the Registrar (by written notice given to the ocean carrier) for the purposes of the relevant trade route;

‘relevant trade route’ means the trade route specified in relation to the ocean carrier in the register of non-conference ocean carriers with substantial market power.

**Non-conference ocean carrier with substantial market power not to hinder Australian flag shipping operators etc.**

“10.53. A registered non-conference ocean carrier with substantial market power shall not prevent or hinder an Australian flag shipping operator from engaging efficiently in the provision of outwards liner cargo shipping services to an extent that is reasonable.

***“Division 10*—*Powers of Minister in relation to non-conference ocean carriers with substantial market power***

**Powers exercisable by Minister in relation to obligations of non-conference ocean carriers with substantial market power**

“10.54. (1) Subject to sections 10.55 and 10.56, the Minister may, by writing served on a registered non-conference ocean carrier with substantial market power, order the ocean carrier to comply with any of the ocean carrier’s obligations under Division 9.

“(2) Where the Minister makes an order under subsection (1), the Registrar shall immediately enter particulars of the order in the register of non-conference ocean carriers with substantial market power.

**Circumstances in which Minister may exercise powers**

“10.55. The Minister shall not make an order under subsection 10.54 (1) unless:

(a) the Minister is satisfied that the ocean carrier concerned has contravened, or proposes to contravene, either or both of the following provisions:

(i) section 10.52 (non-conference ocean carrier with substantial market power to negotiate with certain designated shipper bodies etc.);

(ii) section 10.53 (non-conference ocean carrier with substantial market power not to hinder Australian flag shipping operators etc.);

(b) the Minister has carried on or attempted to carry on, either personally or through authorised officers, consultations with the ocean carrier directed at obtaining an undertaking or action by the ocean carrier that would have made an order under subsection 10.54 (1) unnecessary; and

(c) either of the following subparagraphs applies:

(i) the Commission has reported to the Minister under section 10.57 or 10.58 in relation to matters referred to in paragraph (a) of which the Minister is satisfied and the Minister has taken the report into account;

(ii) the Minister is satisfied that the special circumstances of the case make it desirable to make the order before he or she receives such a report from the Commission.

**Action to be taken where powers exercised by Minister without first obtaining Commission report**

“10.56. (1) Where the Minister makes an order under subsection 10.54 (1) before receiving a report under section 10.57 or 10.58 in relation to matters referred to in paragraph 10.55 (a) of which the Minister was satisfied before making the order, the Minister shall immediately refer the matters to the Commission under section 10.57.

“(2) The Commission shall report to the Minister within a period of not more than 60 days in relation to those matters and any other matters that the Commission is then investigating under this Division in relation to the ocean carrier concerned.

“(3) If, after taking the Commission’s report into account, the Minister is satisfied of one or more of the matters referred to in paragraph 10.55 (a), the Minister may, within 21 days after receiving the Commission’s report, direct the Registrar not to take action under subsection (4) in relation to the ocean carrier, and may also make such further orders under subsection 10.54 (1) in relation to the ocean carrier as the Minister considers appropriate.

“(4) The Registrar shall delete the particulars of the order under subsection 10.54 (1) from the register of non-conference ocean carriers with substantial market power at the end of 21 days after, the Minister receives the Commission’s report unless the Minister has given a direction under subsection (3) in relation to the ocean carrier.

“(5) Subsection (1) shall not be taken by implication to limit the matters that may be referred to the Commission under section 10.57.

“(6) A direction under subsection (3) must be given in writing.

**Investigation and report by Commission on reference by Minister**

“10.57. (1) The Minister may refer to the Commission for investigation and report the question whether grounds exist for the Minister to be satisfied in relation to a registered non-conference ocean carrier with substantial market power of one or more specified matters referred to in paragraph 10.55 (a).

“(2) The Commission shall hold an investigation into the question and report to the Minister.

“(3) In its investigation, the Commission shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Commission.

**Investigation and report by Commission on application by affected person**

“10.58. (1) A person affected by the conduct of a registered non-conference ocean carrier with substantial market power may apply to the Commission for an investigation into the question whether grounds exist for

the Minister to be satisfied in relation to the ocean carrier of one or more specified matters referred to in paragraph 10.55 (a).

“(2) The Commission may hold an investigation into the question, and, if it decides to do so, it shall inform the Minister of its decision and report to the Minister.

“(3) In its investigation, the Commission shall give special consideration to such matters (if any) as the Minister requests it to give special consideration.

“(4) A request under subsection (3) must be made in writing.

“(5) Without limiting subsection (1), each of the following persons shall be taken to be a person affected by the conduct of a registered non-conference ocean carrier with substantial market power:

(a) a designated shipper body;

(b) an Australian flag shipping operator;

(c) a shipper who uses, or may reasonably be expected to need to use, outwards liner cargo shipping services provided, or proposed to be provided, on the trade route specified in relation to the ocean carrier in the register of non-conference ocean carriers with substantial market power;

(d) an association representing shippers who use, or may reasonably be expected to need to use, such services.

**Undertakings by ocean carrier**

“10.59. (1) A registered non-conference ocean carrier with substantial market power may, at any time, offer to give an undertaking to do, or not to do, a specified act or thing.

“(2) The offer must be:

(a) in the appropriate prescribed form; and

(b) made to the Minister in accordance with the regulations.

“(3) If the Minister accepts the offer, the Minister may do one or more of the following:

(a) revoke any reference made to the Commission under section 10.57 in relation to the ocean carrier;

(b) direct the Commission, in writing, to cease holding any investigation being held by it under section 10.58 in relation to the ocean carrier;

(c) revoke any order made under subsection 10.54 (1) in relation to the ocean carrier.

“(4) If the Minister accepts the offer, the ocean carrier shall be taken to have given the undertaking, and the Registrar shall immediately register the undertaking by entering particulars of it in the register of non-conference ocean carriers with substantial market power.

“(5) If the Minister revokes an order made under subsection 10.54 (1), the Registrar shall immediately include in the register a notation to the effect that the order has been revoked.

**Enforcement of orders and undertakings**

“10.60. (1) An ocean carrier shall not contravene an order made under subsection 10.54 (1) or an undertaking given under section 10.59.

“(2) Part VI applies in relation to subsection (1) as if that subsection were a provision of Part IV.

***“Division 11*—*Unfair pricing practices***

**Powers exercisable by Minister in relation to pricing practices etc.**

“10.61. (1) Subject to section 10.62, the Minister may, by writing served on an ocean carrier, order the ocean carrier not to engage in a pricing practice.

“(2) Where the Minister makes an order under subsection (1), the Registrar shall immediately enter particulars of the order in the register of obligations concerning unfair pricing practices.

**Circumstances in which Minister may exercise powers**

“10.62. The Minister shall not make an order under subsection 10.61 (1) unless:

(a) the Minister is satisfied:

(i) that the ocean carrier concerned has engaged in the pricing practice concerned in relation to outwards liner cargo shipping services provided on a particular trade route;

(ii) that the practice has resulted in the freight rates charged by the ocean carrier for all or some outwards liner cargo shipping services provided on the trade route being less than normal freight rates for services of that kind (as determined in accordance with section 10.66);

(iii) that the practice is of such a magnitude or such a recurring or systematic character that it has prevented or hindered, or threatens to prevent or hinder, the provision of outwards liner cargo shipping services on the trade route that are:

(a) efficient and economical; and

(b) provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use, the services; and

(iv) that the practice is contrary to the national interest (as determined in accordance with section 10.67);

(b) the Minister has carried on or attempted to carry on, either personally or through authorised officers, consultations with the

ocean carrier directed at obtaining an undertaking or action by the ocean carrier that would have made an order under subsection 10.61 (1) unnecessary; and

(c) the Tribunal has reported to the Minister under section 10.63 in relation to the ocean carrier in relation to outwards liner cargo shipping services provided on the trade route and the Minister has taken the report into account.

**Inquiry and report by Tribunal**

“10.63. (1) The Minister may, on the complaint of an affected person or otherwise, refer to the Tribunal for inquiry and report the question whether grounds exist for the Minister to be satisfied, in relation to an ocean carrier in relation to outwards liner cargo shipping services provided on a trade route, of the matters referred to in paragraph 10.62 (a).

“(2) The Tribunal shall hold an inquiry into the question and report to the Minister.

“(3) In its inquiry, the Tribunal shall give special consideration to any matters specified in the reference as matters to be given special consideration by the Tribunal.

**Undertakings not to engage in pricing practices**

“10.64. (1) An ocean carrier may, at any time, offer to give an undertaking:

(a) not to engage in a pricing practice; and

(b) to give the Registrar such information as the Registrar from time to time requires (verified as the Registrar requires) for the purpose of ascertaining whether the ocean carrier is engaging in, or has engaged in, the pricing practice.

“(2) The offer must be:

(a) in the appropriate prescribed form; and

(b) made to the Minister in accordance with the regulations.

“(3) If the Minister accepts the offer, the Minister may do either or both of the following:

(a) revoke any reference made to the Tribunal under subsection 10.63 (1) in relation to the ocean carrier;

(b) revoke any order made under subsection 10.61 (1) in relation to the ocean carrier.

“(4) If the Minister accepts the offer, the ocean carrier shall be taken to have given the undertaking, and the Registrar shall immediately register the undertaking by entering particulars of it in the register of obligations concerning unfair pricing practices.

“(5) If the Minister revokes an order made under subsection 10.61 (1), the Registrar shall immediately include in the register a notation to the effect that the order has been revoked.

**Enforcement of orders and undertakings**

“10.65. (1) An ocean carrier shall not contravene an order made under subsection 10.61 (1) or an undertaking given under section 10.64.

“(2) Part VI applies in relation to subsection (1) as if that subsection were a provision of Part IV.

**Determination of normal freight rates for shipping services**

“10.66. (1) The normal freight rates for outwards liner cargo shipping services provided on a trade route are, subject to subsection (2), the freight rates actually charged in the ordinary course of shipping business for the same or similar services on the same or a comparable trade route by ocean carriers who do not enjoy non-commercial advantages given by a government (including a government of a foreign country).

“(2) If such actual freight rates do not exist or it is not possible to ascertain satisfactorily what they are, the normal freight rates for the services may be determined by:

(a) comparing the costs of the ocean carrier concerned and comparable ocean carriers who do not enjoy non-commercial advantages given by a government (including a government of a foreign country); and

(b) allowing reasonable margins of profit.

“(3) The comparison shall:

(a) take into account all costs incurred in the ordinary course of shipping business, whether the costs are fixed or variable; and

(b) allow for reasonable overhead expenses.

**Determination of whether practice contrary to national interest**

“10.67. In determining whether a pricing practice is contrary to the national interest, regard shall be had, in particular, to:

(a) the effect that the practice has had, or is likely to have, in relation to:

(i) continued access by Australian exporters to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive; and

(ii) stable access to export markets for exporters in all States and Territories;

(b) the extent to which any advantages provided by the practice or similar practices are enjoyed by competitors of Australian exporters; and

(c) the effect that denial of any advantages provided by the practice would have on the competitiveness of Australian industries.

***“Division 12*—*Registration of ocean carrier agents***

**Ocean carrier who provides international liner cargo shipping services to have registered agent**

“10.68. (1) Every ocean carrier who provides international liner cargo shipping services shall, at all times, be represented for the purposes of this Act by a person who:

(a) is an individual resident in Australia;

(b) has been appointed by the ocean carrier as the ocean carrier’s agent for the purposes of this Act; and

(c) is specified in the register of ocean carrier agents as the ocean carrier’s agent.

“(2) An ocean carrier who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding:

(a) in the case of a natural person—$2,000; and

(b) in the case of a body corporate—$10,000.

**Representation of ocean carrier by registered agent**

“10.69. (1) Everything done by or in relation to an ocean carrier’s registered agent in that capacity shall, for the purposes of this Act, be taken to be done by or in relation to the ocean carrier.

“(2) Without limiting subsection (1), a document required or permitted to be served on, or given to, an ocean carrier under or for the purposes of this Act (including the process of any court) may be served on, or given to, the ocean carrier by serving it on, or giving it to, the ocean carrier’s registered agent.

“(3) A document that is, under subsection (2), permitted to be served on, or given to, an ocean carrier’s registered agent may be served on, or given to, the agent by:

(a) delivering it to the agent personally; or

(b) leaving it at, or sending it by pre-paid post to, the address for service specified in relation to the agent in the register of ocean carrier agents.

“(4) Subsection (3) does not affect:

(a) the operation of any other law of the Commonwealth, or any law of a State or Territory, that authorises the service of a document otherwise than as provided in that subsection; or

(b) the power of a court to authorise service of a document otherwise than as provided in that subsection.

**Application by ocean carrier for registration of agent**

“10.70. (1) An ocean carrier may apply for the registration of a person as the ocean carrier’s agent for the purposes of this Act.

“(2) The person must:

(a) be an individual resident in Australia;

(b) have been appointed by the ocean carrier as the ocean carrier’s agent for the purposes of this Act; and

(c) have an address for service in Australia.

“(3) The application must be:

(a) made to the Registrar;

(b) made in the prescribed form and in accordance with the regulations; and

(c) accompanied by the prescribed fee.

**Registration of agent**

“10.71. (1) Where an ocean carrier properly applies under section 10.70 for the registration of an agent, the Registrar shall register the agent by entering particulars of the ocean carrier and the agent in the register of ocean carrier agents.

“(2) The particulars entered in the register must include:

(a) the name of the ocean carrier; and

(b) the name, and address for service, of the agent.

**Change of agent etc.**

“10.72. (1) An ocean carrier may, by notice given to the Registrar:

(a) revoke the appointment of the ocean carrier’s registered agent and, subject to subsection (2), appoint a new agent for the purposes of this Act;

(b) change the address for service of the ocean carrier’s registered agent to another address in Australia; or

(c) request the Registrar to vary any of the particulars entered in the register of ocean carrier agents in relation to the ocean carrier.

“(2) A new agent appointed under paragraph (1) (a) must:

(a) be an individual resident in Australia; and

(b) have an address for service in Australia.

“(3) A notice under paragraph (1) (a), (b) or (c):

(a) must be in the appropriate prescribed form;

(b) must be given to the Registrar in accordance with the regulations; and

(c) may be expressed to take effect on and from a specified future day.

“(4) Where an ocean carrier properly gives a notice under paragraph (1) (a) or (b), the Registrar shall immediately make such variations to the particulars entered in the register of ocean carrier agents in relation to the ocean carrier as are necessary to give effect to the notice.

“(5) Where an ocean carrier properly gives a notice under paragraph (1) (c), the Registrar shall make such variations (if any) to the particulars entered in the register of ocean carrier agents in relation to the ocean carrier as the Registrar considers necessary or desirable to give effect to the notice.

***“Division 13*—*General provisions relating to registers and conference agreement files***

**Form of registers and conference agreement files**

“10.73. (1) The registers and conference agreement files kept by the Registrar may be kept in such form (whether or not documentary form) as the Registrar considers appropriate.

“(2) The register of Commission investigations may be kept in such form (whether or not documentary form) as the Commission considers appropriate.

**Deletion of entries wrongly existing in certain registers**

“10.74. Where the Registrar is satisfied that an entry wrongly exists in a register kept by the Registrar, the Registrar shall delete the entry.

**Deletion of obsolete entries in certain registers**

“10.75. Where the Registrar is satisfied that an entry in a register kept by the Registrar is obsolete, the Registrar may delete the entry.

**Correction of clerical errors and other mistakes in certain registers etc.**

“10.76. Where the Registrar is satisfied that a clerical error or other mistake exists in particulars entered in a register kept by the Registrar or that matters included in particulars entered in a register kept by the Registrar are obsolete, the Registrar may vary the particulars for the purpose of correcting the error or mistake or removing the obsolete matters.

***“Division 14***—***Administration***

**Registrar of Liner Shipping**

“10.77. There shall be a Registrar of Liner Shipping.

**Appointment of Registrar etc.**

“10.78. The Registrar shall be appointed by the Minister, and holds office during the pleasure of the Minister.

**Acting Registrar**

“10.79. The Minister may appoint a person to act as Registrar:

(a) during a vacancy in the office of Registrar (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

**Registrar and staff to be public servants**

“10.80. The Registrar, and any staff of the Registrar, shall be persons appointed or employed under the *Public Service Act 1922.*

**Delegation by Minister**

“10.81. The Minister may, by signed writing, delegate to the Registrar, or to a person occupying a specified office in the Department, all or any of the Minister’s powers under or in relation to this Part (other than powers under section 10.03, subsections 10.06 (1) and 10.44 (1), sections 10.46, 10.47, 10.48 and 10.50, subsection 10.54 (1), sections 10.56, 10.57 and 10.58, subsection 10.61 (1) and section 10.63).

**Delegation by Registrar**

“10.82. The Registrar may, by signed writing, delegate to a person occupying a specified office in the Department all or any of the Registrar’s powers under this Part.

***“Division 15—Miscellaneous***

**Act not to affect rights under Freedom of Information Act**

“10.83. Nothing in this Part affects a right that a person may have under the *Freedom of Information Act 1982.*

**Review of decisions of Registrar**

“10.84. (1) Application may be made to the Administrative Appeals Tribunal for review of a reviewable decision.

“(2) In subsection (1):

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘reviewable decision’ means a decision of the Registrar under this Part, other than:

(a) a decision to provisionally or finally register a conference agreement; or

(b) a decision as to the form of a register.

**Statement to accompany notices of Registrar**

“10.85. (1) Where the Registrar makes a reviewable decision (within the meaning of section 10.84) and gives to a person whose interests are affected by the decision written notice of the making of the decision, the notice must include:

(a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of a decision of the Registrar under this Part; and

(b) a statement to the effect that a person who is entitled to apply to the Administrative Appeals Tribunal for review of a decision may, under section 28 of that Act, request a statement that includes reasons for the decision.

“(2) Paragraph (1) (b) does not apply in relation to a case to which subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies.

“(3) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

**Evidence**

“10.86. (1) A certificate signed by the Registrar stating any matter in relation to the registration under this Part of an ocean carrier, ocean carrier’s agent, conference agreement, direction, undertaking, determination or order, or any other matter in relation to a register, or conference agreement file, kept by the Registrar under this Part, is *prima facie* evidence of the matter.

“(2) Without limiting subsection (1), the matters that may be certified under that subsection include:

(a) whether an ocean carrier, ocean carrier’s agent, conference agreement, undertaking, determination or order is or is not registered under this Part;

(b) the name and address for service of an ocean carrier’s agent; and

(c) the provisions and other particulars of a conference agreement, direction, undertaking, determination or order.

“(3) A document purporting to be a certificate under subsection (1) shall, unless the contrary is established, be taken to be such a certificate and to have been properly given.

**Notification by Commission of references etc.**

“10.87. The Commission may make public, in such manner as it considers appropriate:

(a) receipt of references under subsections 10.47 (1) and 10.57 (1); and

(b) decisions made by it under subsections 10.48 (2) and 10.58 (2) to hold investigations.

**Exclusion of documents etc. from register of Commission investigations**

“10.88. (1) Where:

(a) a person gives a document to the Commission in relation to an investigation; or

(b) a person makes an oral submission to the Commission in relation to an investigation;

the person may, at the same time, request that the document, or the particulars of the submission, be excluded from the register because of the confidential nature of matters contained in the document or submission.

“(2) If the Commission is satisfied that the request is justified because disclosure of matters contained in the document or submission would disclose:

(a) trade secrets;

(b) information (other than trade secrets) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) any other information concerning a person in relation to the person’s business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, the disclosure of which would, or could reasonably be expected to, unreasonably affect the person adversely in relation to the person’s lawful business or professional affairs or the organisation or undertaking in relation to its lawful business, commercial or financial affairs;

the Commission shall exclude the document, or the particulars of the submission, from the register.

“(3) If:

(a) the Commission refuses a request to exclude a document from the register; and

(b) the person who gave the document requests the Commission to return it;

the Commission shall return the document and, in that case, paragraph 10.13 (2) (d) does not apply in relation to the document.

“(4) If:

(a) the Commission refuses a request to exclude the particulars of an oral submission from the register; and

(b) the person who made the submission withdraws it;

paragraph 10.13 (2) (e) does not apply in relation to the submission.

“(5) If the Commission is satisfied that it is otherwise desirable to do so, the Commission may exclude a document, or the particulars of a submission, from the register.

“(6) If a person makes a request under subsection (1), the document or the particulars of the submission concerned must not be included in the register until the Commission has dealt with the request.

“(7) In this section:

‘document’ includes a part of a document;

‘investigation’ means an investigation under section 10.47, 10.48, 10.57 or 10.58;

‘register’ means the register of Commission investigations;

‘submission’ includes a part of a submission.

**Disclosure of confidential information**

“10.89. (1) In this section:

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘give’ includes permit access to;

‘officer’ means a person who is or has been:

(a) the Registrar;

(b) a member of the staff assisting the Registrar; or

(c) a person to whom powers under this Part have been delegated by the Minister or the Registrar;

‘produce’ includes permit access to.

“(2) This section applies in relation to information if the information relates to a person and was obtained by an officer, either directly or indirectly, from a part of a document filed with the Registrar, being a part that is not open to public inspection.

“(3) This section applies in relation to a part of a document filed with the Registrar, being a part that is not open to public inspection.

“(4) An officer shall not:

(a) make a record of any information to which this section applies;

(b) divulge or communicate to a person any information to which this section applies; or

(c) give a person a part of a document to which this section applies;

unless the record is made, the information divulged or communicated or the part of the document given:

(d) for the purposes of this Act; or

(e) in relation to the performance of a duty or the exercise of a power under or in relation to this Act.

Penalty: $5,000 or imprisonment for 2 years, or both.

“(5) Subsection (4) applies in relation to the divulging or communicating of information whether directly or indirectly, but does not apply in relation

to the divulging or communicating of information to, or the giving of a part of a document to, the Minister.

“(6) An officer shall not be required:

(a) to produce in a court a part of a document to which this section applies; or

(b) to divulge or communicate to a court any information to which this section applies;

except so far as it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

**Fees**

“10.90. (1) The regulations may prescribe fees for the purposes of this Part, including fees payable on applications and requests made under this Part.

“(2) The regulations shall not fix fees exceeding:

(a) in the case of an application for provisional registration of a conference agreement—$300;

(b) in the case of an application for final registration of a conference agreement—$175;

(c) in the case of an application for the registration of a person as an ocean carrier’s agent—$20; and

(d) in the case of an application to obtain a copy of, the whole or any part of, an entry in a register kept under this Part or a conference agreement file kept under this Part—$40.

**Application of section 155 to investigations under Part**

“10.91. (1) Section 155 applies in relation to an investigation by the Commission under this Part as if the investigation were an investigation by the Commission relating to a matter that constitutes, or may constitute, a contravention of this Act.

“(2) Subsection (1) shall not be taken to limit by implication any powers that the Commission has apart from that subsection.

**Constitution of Tribunal for inquiries under Part etc.**

“10.92. For the purposes of an inquiry under this Part:

(a) the Tribunal shall, subject to section 43, be constituted by a Division of the Tribunal consisting of a presidential member and 2 members who are not presidential members;

(b) section 43 applies as if the holding of the inquiry, and the making of a report on the inquiry, were the hearing and determining of proceedings; and

(c) sections 109 and 110 do not apply.

**Participation in inquiries by Tribunal under Part etc.**

“10.93. (1) In an inquiry by the Tribunal under this Part in relation to an ocean carrier, each of the following persons is entitled to participate:

(a) the Minister;

(b) the ocean carrier;

(c) a designated peak shipper body;

(d) a designated secondary shipper body that the Tribunal is satisfied has a sufficient interest in the inquiry.

“(2) The Tribunal may grant leave to participate to any other person or association appearing to it to have a sufficient interest in the inquiry.

“(3) The representation of a person or body shall be by:

(a) a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State or Territory; or

(b) a person approved by the Tribunal.”.

**Repeal of section 154**

**5.** Section 154 of the Principal Act is repealed.

**Continued application of existing Part X to existing conference agreements**

**6.** **(1)** Where:

(a) a conference agreement was in force immediately before the commencement of this Act; or

(b) a conference agreement was made or arrived at before the commencement of this Act, but had not come into operation before that commencement;

Part X of the Principal Act as amended by this Act does not apply in relation to the agreement, but Part X of the Principal Act continues to apply in relation to the agreement for 6 months after that commencement.

**(2)** In subsection (1):

“conference agreement” has the same meaning as in Part X of the Principal Act.

**NOTE**

1. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; and Nos. 8 and 20, 1988.

[*Minister’s second reading speech made in—*

*House of Representatives on 8 March 1989*

*Senate on 3 May 1989*]