



Transport and Communications Legislation Amendment Act (No. 2) 1989

No. 23 of 1990

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

- 1. Short title**
- 2. Commencement**

PART 2—AMENDMENTS OF THE AIR NAVIGATION ACT 1920

- 3. Principal Act**
- 4. Interpretation**
- 5. Regulations**

PART 3—AMENDMENTS OF THE AUSSAT ACT 1984

- 6. Principal Act**
- 7. Directors of AUSSAT**
- 8. Lands Acquisition Act**

PART 4—AMENDMENT OF THE AUSTRALIAN AIRLINES (CONVERSION TO PUBLIC COMPANY) ACT 1988

- 9. Principal Act**
- 10. Schedule 2**

PART 5—AMENDMENTS OF THE AUSTRALIAN POSTAL CORPORATION ACT 1989

- 11. Principal Act**
- 12. Resolutions without meetings**
- 13. Lands Acquisition Act**

TABLE OF PROVISIONS *continued*

Section

**PART 6—AMENDMENTS OF THE AUSTRALIAN
TELECOMMUNICATIONS CORPORATION ACT 1989**

- 14. Principal Act
- 15. Resolutions without meetings
- 16. Lands Acquisition Act

PART 7—AMENDMENTS OF THE BROADCASTING ACT 1942

- 17. Principal Act
- 18. Licence warrants
- 19. Additional functions of Minister

**PART 8—AMENDMENT OF THE BROADCASTING LEGISLATION
AMENDMENT ACT 1988**

- 20. Principal Act
- 21. Schedule 3

**PART 9—AMENDMENTS OF THE INTERSTATE ROAD TRANSPORT ACT
1985**

- 22. Principal Act
- 23. Interpretation
- 24. Insertion of new section:
 - 4A. Indexation of certain fee limits
- 25. Insertion of new section:
 - 47A. Conduct of directors, servants and agents
- 26. Regulations

**PART 10—AMENDMENTS OF THE MOTOR VEHICLE STANDARDS ACT
1989**

- 27. Principal Act
- 28. Interpretation
- 29. Repeal of section 9 and substitution of new section:
 - 9. Procedures for testing vehicles
- 30. Repeal of section 10 and substitution of new section:
 - 10. Compliance plates
- 31. Withdrawal of compliance plate authority
- 32. Insertion of new section:
 - 17A. Authority to take delivery of imported vehicles
- 33. Importation of vehicles requiring modification
- 34. Delegation by Minister
- 35. Appointment of inspectors
- 36. Powers of inspectors
- 37. Application of Trade Practices Act

PART 11—AMENDMENTS OF THE NAVIGATION ACT 1912

- 38. Principal Act
- 39. Insertion of new section:
 - 8AA. Declaration that Act applies in relation to trading ships engaging in intra-state trade
- 40. Persons unsuitable for engagement
- 41. Regulations relating to accommodation
- 42. Repeal of section 138 and substitution of new section:
 - 138. Crew accommodation
- 43. Interpretation
- 44. Collisions, lights and signals
- 45. Repeal of Part IX
- 46. Marine Council
- 47. Regulations

TABLE OF PROVISIONS *continued*

Section

PART 12—AMENDMENT OF THE NAVIGATION AMENDMENT ACT 1980

- 48. Principal Act
- 49. Repeal of section 7

PART 13—AMENDMENTS OF THE OTC ACT 1946

- 50. Principal Act
- 51. Lands Acquisition Act

**PART 14—AMENDMENTS OF THE PROTECTION OF THE SEA
(PREVENTION OF POLLUTION FROM SHIPS) ACT 1983**

- 52. Principal Act
- 53. Prohibition of disposal of garbage into the sea

PART 15—AMENDMENTS OF THE SHIPS (CAPITAL GRANTS) ACT 1987

- 54. Principal Act
- 55. Specification of grant
- 56. Grants not payable
- 57. Grants payable in respect of purchases etc. outside Australia
- 58. Amount of grant
- 59. Application for category certificates
- 60. Repeal of section 18 and substitution of new section:
 - 18. Determination of prices and costs
- 61. Valuation of ships etc.
- 62. Evidence of crewing
- 63. Repayment of grants
- 64. Application for review
- 65. Application of amendments relating to determination of price of ships etc.

PART 16—AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1989

- 66. Principal Act
- 67. Supply of reserved services within Australia otherwise than by satellite-based facilities
- 68. Supply of reserved services within Australia by satellite-based facilities
- 69. Sale or supply of customer equipment for which there is no permit
- 70. Associate members
- 71. Resignation

**PART 17—AMENDMENTS OF THE TELECOMMUNICATIONS AND
POSTAL SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL
AMENDMENTS) ACT 1989**

- 72. Principal Act
- 73. Repeal of section 75 and substitution of new section:
 - 75. Repeal
- 74. Existing Managing Director
- 75. Repeal of section 90 and substitution of new section:
 - 90. Repeal



Transport and Communications Legislation Amendment Act (No. 2) 1989

No. 23 of 1990

An Act to amend certain laws relating to Transport and Communications, and for related purposes

[Assented to 17 January 1990]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Transport and Communications Legislation Amendment Act (No. 2) 1989*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) The amendment of the *Australian Airlines (Conversion to Public Company) Act 1988* made by this Act is to be taken to have commenced on the day on which that first-mentioned Act received the Royal Assent.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

(3) The amendment of the *Broadcasting Legislation Amendment Act 1988* made by this Act is to be taken to have commenced on the day on which that first-mentioned Act received the Royal Assent.

(4) Subject to subsections (5) and (6), the following amendments of the *Navigation Act 1912* made by this Act commence on a day or days to be fixed by Proclamation:

- (a) the amendments of sections 138, 138B and 424;
- (b) the repeal of Part IX.

(5) If an amendment referred to in paragraph (4) (a) does not commence under subsection (4) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(6) If the commencement of the amendment referred to in paragraph (4) (b) is not fixed by Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, the amendment is repealed on the first day after the end of that period.

(7) The amendments of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of Part IIIC of that Act.

(8) The amendments of sections 56 and 57 of the *Telecommunications Act 1989* made by this Act are to be taken to have commenced immediately after the commencement of those sections.

(9) The amendments of the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989* made by this Act are to be taken to have commenced on the day on which that first-mentioned Act received the Royal Assent.

PART 2—AMENDMENTS OF THE AIR NAVIGATION ACT 1920

Principal Act

3. In this Part, “**Principal Act**” means the *Air Navigation Act 1920*¹.

Interpretation

4. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“**‘aviation security’** means a combination of measures and human and material resources intended to safeguard aviation against unlawful interference;”.

Regulations

5. Section 26 of the Principal Act is amended by inserting before paragraph (2) (c) the following paragraph:

“(a) aviation security;”.

PART 3—AMENDMENTS OF THE AUSSAT ACT 1984

Principal Act

6. In this Part, “Principal Act” means the *AUSSAT Act 1984*².

Directors of AUSSAT

7. Section 12 of the Principal Act is amended by omitting from subsection (1) “*Telecommunications Act 1975*” and substituting “*Australian Telecommunications Corporation Act 1989*”.

Lands Acquisition Act

8. Section 19 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) The *Lands Acquisition Act 1989* does not apply in relation to the disposal of, or other dealing in, land, or an interest in land, by AUSSAT.”;

(b) by omitting from subsection (2) “subsection (1)” and substituting “this section”.

**PART 4—AMENDMENT OF THE AUSTRALIAN AIRLINES
(CONVERSION TO PUBLIC COMPANY) ACT 1988**

Principal Act

9. In this Part, “Principal Act” means the *Australian Airlines (Conversion to Public Company) Act 1988*³.

Schedule 2

10. Schedule 2 to the Principal Act is amended by omitting “*Australian National Airlines Amendment Act 1987*” and substituting “*Australian National Airlines Amendment Act 1988*”.

**PART 5—AMENDMENTS OF THE AUSTRALIAN POSTAL
CORPORATION ACT 1989**

Principal Act

11. In this Part, “Principal Act” means the *Australian Postal Corporation Act 1989*⁴.

Resolutions without meetings

12. Section 69 of the Principal Act is amended by omitting from subsection (2) “subsection (2)” and substituting “subsection (1)”.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

Lands Acquisition Act

13. Section 99 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) The *Lands Acquisition Act 1989* does not apply in relation to the disposal of, or other dealing in, land, or an interest in land, by Australia Post.”;

(b) by omitting from subsection (2) “subsection (1)” and substituting “this section”.

**PART 6—AMENDMENTS OF THE AUSTRALIAN
TELECOMMUNICATIONS CORPORATION ACT 1989**

Principal Act

14. In this Part, “Principal Act” means the *Australian Telecommunications Corporation Act 1989*⁵.

Resolutions without meetings

15. Section 65 of the Principal Act is amended by omitting from subsection (2) “subsection (2)” and substituting “subsection (1)”.

Lands Acquisition Act

16. Section 103 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) The *Lands Acquisition Act 1989* does not apply in relation to the disposal of, or other dealing in, land, or an interest in land, by Telecom.”;

(b) by omitting from subsection (2) “subsection (1)” and substituting “this section”.

PART 7—AMENDMENTS OF THE BROADCASTING ACT 1942

Principal Act

17. In this Part, “Principal Act” means the *Broadcasting Act 1942*⁶.

Licence warrants

18. Section 89D of the Principal Act is amended by omitting from paragraph (3) (b) “or limited licence”.

Additional functions of Minister

19. Section 125D of the Principal Act is amended by adding at the end the following subsection:

“(4) The Minister may make charges for the investigation of interferences with the reception of radio and television programs.”.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

**PART 8—AMENDMENT OF THE BROADCASTING LEGISLATION
AMENDMENT ACT 1988**

Principal Act

20. In this Part, “**Principal Act**” means the *Broadcasting Legislation Amendment Act 1988*⁷.

Schedule 3

21. Schedule 3 to the Principal Act is amended by omitting from the second amendment of a provision of section 89D “(ba)” and substituting “(b)”.

**PART 9—AMENDMENTS OF THE INTERSTATE ROAD
TRANSPORT ACT 1985**

Principal Act

22. In this Part, “**Principal Act**” means the *Interstate Road Transport Act 1985*⁸.

Interpretation

23. Section 3 of the Principal Act is amended by omitting subsection (11) and substituting the following subsection:

“(11) Despite subsection (10) but subject to section 4A, a prescribed fee must not exceed \$100.”.

24. After section 4 of the Principal Act the following section is inserted:

Indexation of certain fee limits

“4A. (1) In this section:

‘**index number**’, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter;

‘**relevant amount**’ means:

- (a) the amount specified in subsection 3 (11); or
- (b) the amount specified in subsection 56 (4);

‘**relevant year**’ means the period of 12 months commencing on 1 July 1990, and each subsequent period of 12 months.

“(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

“(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to the index numbers published in terms of the new reference base.

“(4) Where the factor ascertained under subsection (5) in relation to a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:

- (a) in a case to which paragraph (b) does not apply—the relevant amount; or
- (b) if, by virtue of another application or other applications of this section, this Act has effect as if another amount or amounts were substituted for that relevant amount—the substituted amount or the last substituted amount, as the case requires.

“(5) The factor to be ascertained for the purposes of subsection (4) in relation to a relevant year is the number (calculated to 3 decimal places) ascertained by dividing the index number for the March quarter immediately preceding that relevant year by the index number for the March quarter immediately preceding that first-mentioned March quarter.

“(6) Where the factor ascertained in accordance with subsection (5) in relation to a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that subsection in relation to that relevant year is to be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.”

25. After section 47 of the Principal Act the following section is inserted:

Conduct of directors, servants and agents

“47A. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, in proceedings for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

“(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, in proceedings for an offence against this Act, to have been engaged in also by the first-mentioned person unless the person establishes that the person took reasonable precautions and exercised due diligence to avoid the conduct.

“(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

“(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory.

“(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

“(9) In this section:

‘offence against this Act’ includes any offence against section 6 or 7A, or subsection 86 (1), of the *Crimes Act 1914* that relates to an offence against this Act;

‘this Act’ includes the regulations.”.

Regulations

26. Section 56 of the Principal Act is amended:

- (a) by inserting after paragraph (2) (d) the following paragraph:

“(da) enabling a person who is alleged to have committed an offence referred to in paragraph (d) to pay to the

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

Commonwealth, as an alternative to prosecution, a penalty not exceeding:

- (i) in the case of a natural person—\$200; or
 - (ii) in the case of a body corporate—\$3,000;”;
- (b) by omitting from subsection (4) “A fee” and substituting “Subject to section 4A, a fee”.

**PART 10—AMENDMENTS OF THE MOTOR VEHICLE
STANDARDS ACT 1989**

Principal Act

27. In this Part, “Principal Act” means the *Motor Vehicle Standards Act 1989*.

Interpretation

28. Section 5 of the Principal Act is amended:

- (a) by inserting “, particles” after “gas” in paragraph (b) of the definition of “vehicle standard”;
- (b) by omitting the definition of “road motor vehicle” and substituting the following definition:

“‘road motor vehicle’ means:

- (a) a motor vehicle designed solely or principally for the transport on public roads of people, animals or goods; or
- (b) a motor vehicle that is permitted to be used on public roads;

but does not include vehicles declared by the Minister in writing not to be road motor vehicles for the purposes of this Act;”;

- (c) by inserting the following definition:

“‘manufacture’, in relation to a road vehicle, includes modify the vehicle and assemble the vehicle;”;

- (d) by adding at the end the following subsection:

“(2) Declarations by the Minister under the definition of ‘road motor vehicle’ in subsection (1) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

29. Section 9 of the Principal Act is repealed and the following section is substituted:

Procedures for testing vehicles

“9. (1) The Minister may determine, in writing, procedures to be observed by manufacturers and importers in determining whether road vehicles or vehicle components comply with this Act, being procedures relating to:

- (a) the testing and inspection of road vehicles or vehicle components; or

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

- (b) the inspection of steps in the manufacture of road vehicles or vehicle components; or
- (c) the operation of facilities used in the carrying out of any such testing and inspection and the assessment of those facilities by inspectors appointed under section 25; or
- (d) the keeping of records relating to the manufacture or testing of road vehicles or vehicle components and the examination of those records by inspectors appointed under section 25.

“(2) Determinations under subsection (1) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

30. Section 10 of the Principal Act is repealed and the following section is substituted:

Compliance plates

“10. The regulations are to provide for arrangements under which plates are to be placed on road vehicles to indicate that the vehicles comply with this Act.”.

Withdrawal of compliance plate authority

31. Section 11 of the Principal Act is amended by inserting after subparagraph (1) (b) (iii) the following word and subparagraph:

“or (iv) that the person has failed to observe procedures determined under section 9;”.

32. After section 17 of the Principal Act the following section is inserted:

Authority to take delivery of imported vehicles

“17A. (1) An authority to deal with an imported road vehicle under section 39 of the *Customs Act 1901* is subject to the condition that an approval under this section for the importer to take delivery of the vehicle is given by the Minister or an officer of the Department authorised in writing by the Minister to give approvals under this section.

“(2) An approval under this section must be granted if the importer produces to the Minister or to such an officer:

- (a) if the vehicle has a compliance plate—details of the plate; or
- (b) in any other case—a copy of the approval under section 19 or 20 in respect of the vehicle.”.

Importation of vehicles requiring modification

33. Section 19 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsection:

“(1) A person may import a nonstandard road vehicle, a road vehicle that does not have a compliance plate or a nonstandard

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

prescribed vehicle component with the written approval of the Minister, which may be approval subject to written conditions determined by the Minister.”;

- (b) by omitting from subsection (3) “paragraph (1) (b) or (2) (b)” and substituting “subsection (1)”.

Delegation by Minister

34. Section 23 of the Principal Act is amended by inserting “or to another person who holds or performs the duties of a Senior Executive Service office within the Department” after “Administrator”.

Appointment of inspectors

35. Section 25 of the Principal Act is amended by inserting in subsection (2) “or of an authority of a State or Territory” before “to perform”.

Powers of inspectors

36. Section 27 of the Principal Act is amended by adding at the end the following subsection:

- “(6) In this section:
‘manufacture’ includes importation.”.

Application of Trade Practices Act

37. Section 41 of the Principal Act is amended by omitting “section 65F” and substituting “sections 65C (other than subsection 65C (8)) and 65F”.

PART 11—AMENDMENTS OF THE NAVIGATION ACT 1912

Principal Act

38. In this Part, “Principal Act” means the *Navigation Act 1912*¹⁰.

39. After section 8A of the Principal Act the following section is inserted:

Declaration that Act applies in relation to trading ships engaging in intra-state trade

“8AA. (1) The owner of a trading ship may apply to the Minister for a declaration under subsection (2) in relation to the ship.

“(2) The Minister may, in writing, declare that this Act applies in relation to the ship even when the ship is proceeding on a voyage other than an overseas voyage or an inter-state voyage.

“(3) The declaration has effect despite section 2.

“(4) The Minister must revoke the declaration on the application of the owner of the ship.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

“(5) If a declaration under subsection (2) is in force in relation to a trading ship, then, for the purposes of this Act, the ship is to be taken not to be a ship referred to in subsection 2 (1).”.

Persons unsuitable for engagement

40. Section 47 of the Principal Act is amended:

- (a) by omitting subsection (4);
- (b) by adding at the end of subparagraph (5) (a) (i) “or”;
- (c) by omitting subparagraph (5) (a) (ii);
- (d) by omitting from paragraph (5) (b) “, (ii)”.

Regulations relating to accommodation

41. Section 136 of the Principal Act is amended by omitting from paragraph (1) (j) “to the Minister”.

42. (1) Section 138 of the Principal Act is repealed and the following section is substituted:

Crew accommodation

“138. (1) The Marine Council may:

- (a) consider plans for accommodation, or alterations in accommodation, in ships; and
- (b) make recommendations to the Minister in relation to the requirements to be prescribed in relation to accommodation in ships.

“(2) Where:

- (a) a question arises as to the accommodation that ought to be provided in a ship by the owner of the ship, either generally or for particular persons in, or in particular parts of, the ship; and
- (b) the owner, or an association of seamen that is an organisation within the meaning of the *Industrial Relations Act 1988*, requests the Marine Council to hear and determine the question;

the Marine Council is to inquire into the question and make such order as it considers proper in the circumstances.

“(3) An order under subsection (2):

- (a) must be in writing; and
- (b) is not a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*; and
- (c) has effect from the date of effect specified in the order; and
- (d) has effect despite anything to the contrary in the regulations in force at the date of effect of the order.”.

(2) An order or recommendation made by the Crew Accommodation Committee under section 138 of the previous Act has effect after the

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

commencement as if it were an order or recommendation made by the Marine Council under section 138 of the amended Act.

(3) If, before the commencement, the Crew Accommodation Committee had started to inquire into a question under subsection 138 (6) of the previous Act but:

- (a) had not completed the inquiry; or
- (b) had completed the inquiry, but had not made an order in relation to the inquiry;

the Marine Council:

- (c) if paragraph (a) applies—is to complete the inquiry, and make an order in relation to the inquiry, under subsection 138 (2) of the amended Act; and
- (d) if paragraph (b) applies—is to make an order in relation to the inquiry under subsection 138 (2) of the amended Act.

(4) In this section:

“**amended Act**” means the Principal Act as amended by subsection (1);

“**commencement**” means the commencement of subsection (1);

“**previous Act**” means the Principal Act as in force immediately before the commencement of subsection (1).

Interpretation

43. Section 138B of the Principal Act is amended by omitting the definition of “the Committee”.

Collisions, lights and signals

44. Section 258 of the Principal Act is amended by omitting subsections (1A) and (1B) and substituting the following subsections:

“(2) Without limiting subsection (1), the regulations may make provision for and in relation to giving effect to the Prevention of Collisions Convention.

“(2A) The regulations, so far as they give effect to the Prevention of Collisions Convention, apply, despite section 2, in relation to ships in the areas constituted by:

- (a) the high seas; and
- (b) the territorial sea of Australia; and
- (c) the sea on the landward side of the territorial sea of Australia; and
- (d) waters other than waters of the sea;

as provided by subsections (2B) to (2E) (inclusive).

“(2B) The regulations mentioned in subsection (2A) apply in relation to a ship (other than a ship of a kind referred to in subsection 2 (1)) while the ship is in any of the areas mentioned in subsection (2A).

“(2C) Subsection (2B) is not intended to exclude the operation of a State or Territory law, being a law that gives effect to the Prevention of

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

Collisions Convention, in relation to a ship while it is in the area mentioned in paragraph (2A) (b), (c) or (d).

“(2D) The regulations mentioned in subsection (2A) apply in relation to a ship of a kind referred to in subsection 2 (1) while the ship is in the area mentioned in paragraph (2A) (a).

“(2E) Subsection (2D) is not intended to exclude the operation of a State or Territory law, being a law that gives effect to the Prevention of Collisions Convention, in relation to a ship while it is in the area mentioned in paragraph (2A) (a).

“(2F) Where proceedings are instituted against a person for an offence, in relation to a particular matter, against:

- (a) a provision of the regulations mentioned in subsection (2A); or
- (b) a provision of a law of a State or Territory that gives effect to the Prevention of Collisions Convention;

proceedings must not also be instituted against the person for an offence, in relation to the same matter, against:

- (c) if paragraph (a) applies—a provision of a kind referred to in paragraph (b); or
- (d) if paragraph (b) applies—a provision of a kind referred to in paragraph (a).”.

Repeal of Part IX

45. (1) Part IX of the Principal Act is repealed.

(2) Regulations made for the purposes of paragraphs 425 (1) (db) and (ea) of the Principal Act as amended by this Part may also include any necessary or desirable transitional or saving provisions, or other similar provisions, in relation to the repeal of Part IX of the Principal Act and the making of the regulations.

Marine Council

46. Section 424 of the Principal Act is amended:

- (a) by omitting from paragraphs (2) (b), (c), (d) and (e) “representative of” and substituting “representing”;
- (b) by omitting from paragraph (2) (d) “and”;
- (c) by adding at the end of subsection (2) the following word and paragraph:
 - “; and (f) for the purposes of inquiring into, and reporting to the Minister on, a matter referred to the Council under subsection (5)—any members appointed under subsection (3A) for the purpose of assisting the Council to inquire into, and report on, the matter.”;
- (d) by inserting in subsection (3) “(other than the members referred to in paragraph (2) (f))” after “Council”;

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

(e) by inserting after subsection (3) the following subsections:

“(3A) The Minister may, for the purpose of assisting the Marine Council to inquire into, and report to the Minister on, a matter referred to the Council under subsection (5), appoint a person with special knowledge of the matter to be a member of the Council for the purposes of inquiring into, and reporting to the Minister on, the matter.

“(3B) The following provisions apply in relation to a person appointed as a member under subsection (3A) for the purpose of assisting the Marine Council to inquire into, and report on, a matter:

- (a) subject to paragraph (b), the person’s appointment ends when the Council completes its inquiry and report in relation to the matter;
- (b) until the Council completes its inquiry and report in relation to the matter, the person holds office during the pleasure of the Minister.”;

(f) by omitting subsections (7) and (8);

(g) by omitting from subsections (8A) and (8B) “, the deputies of the Chairman and other members of the Marine Council, and the members of a committee of advice,” and substituting “, and the deputies of the Chairman and other members of the Marine Council,”;

(h) by omitting paragraph (9) (a);

(j) by omitting from paragraphs (9) (b) and (d) “or of such a committee”;

(k) by omitting from paragraph (9) (c) “or such a committee”.

Regulations

47. Section 425 of the Principal Act is amended:

(a) by inserting after paragraph (1) (da) the following paragraph:

“(db) the safe navigation and operation of ships;”;

(b) by inserting after paragraph (1) (e) the following paragraph:

“(ea) the investigation of, and reporting on, casualties affecting ships, or entailing loss of life on or from ships;”.

PART 12—AMENDMENT OF THE NAVIGATION AMENDMENT ACT 1980

Principal Act

48. In this Part, “Principal Act” means the *Navigation Amendment Act 1980*¹¹.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

Repeal of section 7

49. Section 7 of the Principal Act is repealed.

PART 13—AMENDMENTS OF THE OTC ACT 1946

Principal Act

50. In this Part, “Principal Act” means the *OTC Act 1946*¹².

Lands Acquisition Act

51. Section 43 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) The *Lands Acquisition Act 1989* does not apply in relation to the disposal of, or other dealing in, land, or an interest in land, by OTC.”;

(b) by omitting from subsection (2) “subsection (1)” and substituting “this section”.

**PART 14—AMENDMENTS OF THE PROTECTION OF THE SEA
(PREVENTION OF POLLUTION FROM SHIPS) ACT 1983**

Principal Act

52. In this Part, “Principal Act” means the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*¹³.

Prohibition of disposal of garbage into the sea

53. Section 26F of the Principal Act is amended:

(a) by adding at the end of subsection (6) the following paragraph:

“; (c) the disposal takes place when the ship is not alongside, or within 500 metres of, a fixed or floating platform engaged in the exploration, exploitation and associated offshore processing of seabed mineral resources.”;

(b) by adding at the end of subsection (7) the following paragraph:

“; (e) the disposal occurs when the ship is not alongside, or within 500 metres of, a platform of a kind referred to in paragraph (6) (c).”;

(c) by omitting paragraph (8) (a) and substituting the following paragraph:

“(a) the following conditions are satisfied:

(i) the disposal occurs when the ship is as far as practicable from, and is at a distance of not less than 12 nautical miles from, the nearest land;

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

- (ii) the disposal occurs when the ship is not alongside, or within 500 metres of, a platform of a kind referred to in paragraph (6) (c); or”.

**PART 15—AMENDMENTS OF THE SHIPS (CAPITAL GRANTS)
ACT 1987**

Principal Act

54. In this Part, “Principal Act” means the *Ships (Capital Grants) Act 1987*¹⁴.

Specification of grant

55. Section 8 of the Principal Act is amended:

- (a) by inserting in subsections (4) and (5) “under subsection (1), (2) or (3)” after “payable”;
- (b) by adding at the end the following subsections:

“(6) Subject to this section and section 9, where:

- (a) a shipowner modifies a trading ship that was registered in Australia at all times during the period starting on 1 June 1989 and ending on completion of the modification; and
- (b) the modification consists of or includes structural or equipment changes to the ship solely or principally for the purpose of enabling the ship to be operated with a reduced number of crew;

a grant is payable to the shipowner in respect of the ship.

“(7) A grant is not payable under subsection (6) to a shipowner in respect of a ship unless:

- (a) the shipowner has remained the ship’s owner at all times since the modification; and
- (b) the ship is in commission; and
- (c) the ship has been an Australian trading ship at all times while it has been in commission after the modification; and
- (d) at least one crew has been engaged for the ship after the modification and the number of that crew or those crews is, in the Secretary’s opinion, consistent with the strategy of the program known as the Shipping Industry Reform Program; and
- (e) the shipowner intends:
 - (i) to remain the owner of the ship for at least 3 years after the payment of the grant; and
 - (ii) to operate the ship with a crew of a number consistent with the program referred to in paragraph (d).”.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

Grants not payable

56. Section 9 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (b) “1992” and substituting “1997”;
- (b) by omitting from subsection (4) “this section” (wherever occurring) and substituting “section 8”;
- (c) by inserting in subsection (6) “under subsection 8 (3)” after “payable”;
- (d) by adding at the end the following subsection:

“(7) A grant is not payable under subsection 8 (6) to a shipowner in relation to the modification of a ship if the modification is completed after 30 June 1992.”.

Grants payable in respect of purchases etc. outside Australia

57. Section 10 of the Principal Act is amended by adding at the end the following subsection:

“(4) A grant may be payable under subsection 8 (6) in relation to the modification of a ship even if the modification was carried out outside Australia.”.

Amount of grant

58. Section 11 of the Principal Act is amended by adding at the end the following subsection:

“(3) The grant payable under subsection 8 (6) in respect of a ship is an amount equal to 7% of the cost of the structural or equipment changes concerned that are of a kind referred to in paragraph (b) of that subsection.”.

Application for category certificates

59. Section 12 of the Principal Act is amended:

- (a) by omitting paragraphs (2) (b) and (c) and substituting the following word and paragraph:

“and (b) include:

(i) such information relating to how the ship is likely to be used while it is owned by the applicant; and

(ii) such other information;

as is required by the form; and”;

- (b) by inserting after subsection (2) the following subsection:

“(2A) An application in relation to a ship may specify a category or categories in which, in the applicant’s opinion, the ship will fall while it is owned by the applicant.”;

- (c) by omitting paragraph (3) (a) and substituting the following paragraph:

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

“(a) if the Secretary is satisfied that the application complies with subsection (2)—give a category certificate for the ship specifying the category or categories into which, in the Secretary’s opinion (having regard to the information included in the form), the ship could fall while it is owned by the applicant; or”.

60. Section 18 of the Principal Act is repealed and the following section is substituted:

Determination of prices and costs

“18. (1) In this section:

‘**guidelines**’ means guidelines determined by the Minister under subsection (8).

“(2) The Secretary may, by signed writing, determine the amount that is, for the purposes of this Act, to be taken as the price paid for a ship by a shipowner who has made a claim for a grant under subsection 8 (1) or (2) in relation to the ship if the Secretary thinks that the amount the shipowner claims was the price paid, or that was in fact the price paid, for the ship:

- (a) is incorrect; or
- (b) has been fixed in order to obtain an increase in the grant; or
- (c) is unduly higher than prices paid by other persons for comparable ships; or
- (d) has been increased because of the influence of a commercial, financial or other relationship between the shipowner and the person who sold the ship (other than a relationship created by the sale itself); or
- (e) is an unreasonable price because of a prescribed reason; or
- (f) is excessive having regard to the guidelines.

“(3) In determining the amount that is to be taken as the price paid for the ship, the Secretary:

- (a) must have regard to the guidelines; and
- (b) may have regard to:
 - (i) the prices of comparable ships; and
 - (ii) any valuation of the ship made under section 19; and
 - (iii) such other matters as the Secretary thinks appropriate.

“(4) The Secretary may, by signed writing, determine the amount that is, for the purposes of this Act, to be taken as the cost of converting a ship in relation to which the shipowner has made a claim for a grant under subsection 8 (3) if the Secretary thinks that the amount the shipowner claims was, or that was in fact, the cost of converting the ship:

- (a) is incorrect; or
- (b) has been fixed in order to obtain an increase in the grant; or

*Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990*

- (c) is unduly higher than costs incurred in relation to comparable conversions of comparable ships; or
- (d) has been increased because of the influence of a commercial, financial or other relationship between the shipowner and the person who carried out the conversion (other than a relationship created by the agreement to carry out the conversion); or
- (e) includes charges for work done that was not required to convert the ship from an ineligible ship into an eligible ship; or
- (f) is unreasonable because of a prescribed reason; or
- (g) is excessive having regard to the guidelines.

“(5) In determining the amount that is to be taken as the cost of converting the ship, the Secretary:

- (a) must have regard to the guidelines; and
- (b) may have regard to:
 - (i) the cost of comparable conversions of other ships; and
 - (ii) the work required to convert the ship from an ineligible ship into an eligible ship; and
 - (iii) any valuation of the cost of the conversion made under section 19; and
 - (iv) such other matters as the Secretary thinks appropriate.

“(6) The Secretary may, by signed writing, determine the amount that is, for the purposes of this Act, to be taken to be the cost of structural or equipment changes to a ship in relation to which the shipowner has made a claim for a grant under subsection 8 (6) if the Secretary thinks that the amount the shipowner claims was, or that was in fact, the cost of the changes:

- (a) is incorrect; or
- (b) has been fixed in order to obtain an increase in the grant; or
- (c) is unduly higher than costs incurred in relation to comparable changes to comparable ships; or
- (d) has been increased because of the influence of a commercial, financial or other relationship between the shipowner and the person who carried out the changes (other than a relationship created by the agreement to carry out the changes); or
- (e) includes charges for:
 - (i) structural or equipment changes that are not of a kind referred to in paragraph 8 (6) (b); or
 - (ii) other work that is not required as part of a modification of a kind in relation to which grant under subsection 8 (6) is payable; or
- (f) is unreasonable because of a prescribed reason; or
- (g) is excessive having regard to the guidelines.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

“(7) In determining the amount that is to be taken as the cost of structural or equipment changes to the ship, the Secretary:

- (a) must have regard to the guidelines; and
- (b) may have regard to:
 - (i) the cost of comparable changes to other ships; and
 - (ii) the work involved in the changes; and
 - (iii) any valuation of the cost of the changes under section 19; and
 - (iv) such other matters as the Secretary thinks appropriate.

“(8) The Minister may, by writing, determine guidelines in relation to the following matters:

- (a) the circumstances in which an amount that is claimed was, or that was in fact, the price paid for a ship, the cost of converting a ship, or the cost of structural or equipment changes to a ship, is excessive;
- (b) the way in which the Secretary is, under this section, to determine the amount that is, for the purposes of this Act, to be taken as the price paid for a ship, the cost of converting a ship, or the cost of structural or equipment changes to a ship.

“(9) A determination under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”

Valuation of ships etc.

61. Section 19 of the Principal Act is amended:

- (a) by omitting from paragraph (b) “(1) or (2)” and substituting “(2), (4) or (6)”;
- (b) by omitting from paragraph (c) “, or the cost of the conversion of the ship,” and substituting “, the cost of converting the ship, or the cost of the structural or equipment changes to the ship,”.

Evidence of crewing

62. Section 21 of the Principal Act is amended:

- (a) by inserting in paragraph (1) (a) “(other than a grant under subsection 8 (6))” after “grant”;
- (b) by adding at the end the following subsections:

“(3) Where a grant has been paid under subsection 8 (6) in respect of a ship, the shipowner must, within one month after the end of:

- (a) the period of a year starting when the grant was paid; and
- (b) each of the next 2 years;

lodge a written report with the Secretary relating to the year.

“(4) The report must:

- (a) be in the approved form; and

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

- (b) state whether or not the ship was operated at any time during the year concerned with a different number of crew from the number of the first crew engaged for the ship after the modification concerned; and
- (c) include such information relating to any period during which the ship was so operated with a different number of crew as is required by the form.”.

Repayment of grants

63. Section 26 of the Principal Act is amended by inserting in paragraphs (1) (a) and (2) (a) “(other than a grant under subsection 8 (6))” after “grant”.

Application for review

64. Section 38 of the Principal Act is amended by omitting from subsection (2) “(1) or (2)” (wherever occurring) and substituting “(2), (4) or (6)”.

Application of amendments relating to determination of price of ships etc.

65. (1) The amendments of sections 18, 19 and 38 of the Principal Act made by this Act apply in relation to claims for grant made on or after 7 September 1989.

(2) Guidelines determined by the Minister under subsection 18 (8) of the Principal Act as amended by this Act within 2 months after the day on which this Act receives the Royal Assent may be expressed to apply in relation to claims for grant made on or after 7 September 1989.

(3) Nothing in this section is to be taken to authorise the making of a claim for grant under subsection 8 (6) of the Principal Act as amended by this Act before the day on which this Act receives the Royal Assent.

**PART 16—AMENDMENTS OF THE TELECOMMUNICATIONS
ACT 1989**

Principal Act

66. In this Part, “Principal Act” means the *Telecommunications Act 1989*¹⁵.

**Supply of reserved services within Australia otherwise than by
satellite-based facilities**

67. Section 56 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) OTC may supply a reserved service:

- (a) between places within an external Territory (other than places all of which are within a particular prescribed external Territory); and

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

- (b) between places within an external Territory and places within Australia that are outside the external Territory.”.

Supply of reserved services within Australia by satellite-based facilities

68. Section 57 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) OTC may, by means of satellite-based facilities, supply a reserved service:

- (a) between places within an external Territory; and
(b) between places within an external Territory and places within Australia that are outside the external Territory.”.

Sale or supply of customer equipment for which there is no permit

69. Section 115 of the Principal Act is amended by inserting “or supply” after “sell”.

Associate members

70. Section 160 of the Principal Act is amended:

- (a) by inserting in subsection (6) “174 or” after “section”;
(b) by adding at the end the following subsection:

“(7) An associate member may resign by writing signed and delivered to the Minister.”.

Resignation

71. Section 174 of the Principal Act is amended by omitting “Minister” and substituting “Governor-General”.

**PART 17—AMENDMENTS OF THE TELECOMMUNICATIONS
AND POSTAL SERVICES (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) ACT 1989**

Principal Act

72. In this Part, “Principal Act” means the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*¹⁶.

73. Section 75 of the Principal Act is repealed and the following section is substituted:

Repeal

“75. The *Postal Services Act 1975* is repealed.”.

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

Existing Managing Director

74. Section 87 of the Principal Act is amended by omitting from subsection (2) “that section, and the previous Act,” and substituting “the previous Act”.

75. Section 90 of the Principal Act is repealed and the following section is substituted:

Repeal

“90. The *Telecommunications Act 1975* is repealed.”.

NOTES

1. No. 50, 1920, as amended. For previous amendments, see No. 93, 1936; Nos. 6 and 89, 1947; No. 80, 1950; No. 39, 1960; No. 72, 1961; No. 8, 1963; No. 93, 1966; No. 79, 1971; Nos. 130 and 216, 1973; No. 124, 1974; No. 91, 1977; No. 19, 1979; No. 27, 1980; No. 80, 1982; No. 39, 1983; Nos. 69 and 108, 1984; No. 69, 1986; No. 63, 1988; and Nos. 6 and 45, 1989.
2. No. 21, 1984, as amended. For previous amendments, see No. 128, 1988; and No. 63, 1989.
3. No. 6, 1988.
4. No. 64, 1989.
5. No. 54, 1989.
6. No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973; No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; Nos. 68, 79, 80, 134 and 184, 1987; Nos. 56, 99, 109, 146 and 147, 1988; and Nos. 29, 31 and 63, 1989.
7. No. 146, 1988.
8. No. 130, 1985, as amended. For previous amendments, see Nos. 76 and 168, 1986; Nos. 39 and 99, 1988; and No. 29, 1989.
9. No. 65, 1989.
10. No. 4, 1913, as amended. For previous amendments, see No. 32, 1919; No. 1, 1921; No. 8, 1925; No. 8, 1926; No. 49, 1934; No. 30, 1935; No. 1, 1943; No. 80, 1950; No. 109, 1952; No. 96, 1953; No. 46, 1956; No. 36, 1958; No. 96, 1961; No. 1, 1965; No. 93, 1966; No. 60, 1967; No. 62, 1968; Nos. 1 and 117, 1970; No. 28, 1972; No. 216, 1973; Nos. 91 and 157, 1976; Nos. 98 and 155, 1979; Nos. 70 and 87, 1980;

Transport and Communications Legislation Amendment (No. 2)
No. 23, 1990

NOTES—continued

Nos. 10, 36, 61 and 74, 1981; No. 80, 1982; Nos. 39, 40, 84 and 136, 1983; No. 72, 1984; Nos. 65 and 193, 1985; Nos. 76, 132, 163 and 167, 1986; No. 141, 1987; Nos. 34, 57, 87, 99 and 127, 1988; and Nos. 6 and 63, 1989.

11. No. 87, 1980, as amended. For previous amendments, see No. 57, 1988.
12. No. 23, 1946, as amended. For previous amendments, see No. 69, 1952; No. 26, 1958; No. 85, 1963; No. 93, 1966; Nos. 31 and 139, 1968; No. 9, 1971; No. 216, 1973; No. 56, 1975; No. 37, 1976; No. 36, 1978; No. 19, 1979; No. 177, 1980; Nos. 61 and 115, 1981; Nos. 66 and 80, 1982; Nos. 39, 91, 92 and 136, 1983; Nos. 18, 63, 72 and 165, 1984; Nos. 65 and 119, 1985; No. 76, 1986; No. 69, 1987; Nos. 36 and 129, 1988; and Nos. 21 and 63, 1989.
13. No. 41, 1983, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; Nos. 81 and 167, 1986; No. 141, 1987; Nos. 57 and 99, 1988; and No. 6, 1989.
14. No. 74, 1987, as amended. For previous amendments, see No. 6, 1989.
15. No. 53, 1989.
16. No. 63, 1989.

*[Minister's second reading speech made in—
House of Representatives on 21 December 1989
Senate on 20 December 1989]*