



Transport and Communications Legislation Amendment Act (No. 3) 1992

No. 216 of 1992

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No. 216 of 1992

**An Act to amend various Acts relating to matters dealt
with by the Department of Transport and
Communications, and for related purposes**

[Assented to 24 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Transport and Communications
Legislation Amendment Act (No. 3) 1992*.

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Commencement

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

(2) Section 22 is taken to have commenced on 15 June 1988.

(3) Section 23 is taken to have commenced on 1 July 1988. 5

(4) Part 6 is taken to have commenced on 1 July 1991.

(5) Subject to subsection (9), Part 7 commences on a day to be fixed by Proclamation.

(6) Sections 14 and 19 commence on a day to be fixed by Proclamation. 10

(7) Sections 39, 41, 42, 56, 57 and 58 are taken to have commenced immediately after the commencement of Part 4 of the *Telecommunications Act 1991*.

(8) Paragraph 37(a) and sections 46 to 55 are taken to have commenced immediately after the commencement of Part 8 of the *Transport and Communications Legislation Amendment Act 1991*. 15

(9) If the commencement of Part 7 is not fixed by Proclamation published in the *Gazette* before 1 August 1993, Part 7 is repealed on that day.

(10) If the commencement of sections 14 and 19 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, those sections commence on the first day after the end of that period. 20

**PART 2—AMENDMENTS OF THE AUSTRALIAN
BROADCASTING CORPORATION ACT 1983** 25

Principal Act

3. In this Part, “Principal Act” means the *Australian Broadcasting Corporation Act 1983*’.

General powers of Corporation

4. Section 25 is amended by adding at the end of subsection (5) the following word and paragraph: 30

“; or (e) accepting any payment or other consideration for or in relation to any announcement, program or other matter provided by the Corporation’s international television service and its associated audio channels outside Australia.”. 35

Advertisements

5. Section 31 of the Principal Act is amended by adding at the end the following subsection:

“(3) Subsection (1) does not apply to:

5 (a) the televising or broadcasting of any matter by the Corporation’s international television service and its associated audio channels outside Australia; or

10 (b) the televising or broadcasting of any matter by the Corporation’s international television service and its associated audio channels inside Australia that is merely incidental to the televising or broadcasting of the matter outside Australia.”.

PART 3—AMENDMENTS OF THE AUSTRALIAN NATIONAL RAILWAYS COMMISSION ACT 1983

Principal Act

15 6. In this Part, “**Principal Act**” means the *Australian National Railways Commission Act 1983*².

Interpretation

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

20 “**‘National Rail Corporation’** means the company incorporated under the Corporations Law in the Australian Capital Territory as the National Rail Corporation Limited;

‘National Rail Corporation Agreement’ means the agreement approved by section 5 of the *National Rail Corporation Agreement Act 1992*.”.

General powers of Commission

8. Section 6 of the Principal Act is amended by inserting in subsection (1) “or of its duties” after “of its functions” (wherever occurring).

9. After section 6 of the Principal Act the following section is inserted:

Commission must take action to facilitate National Rail Corporation Agreement etc.

“6A.(1) The Commission must ensure that it, and its officers and employees:

35 (a) take all reasonable action that will facilitate; and

(b) refrain from taking any action that will impede;

the transfer to the National Rail Corporation of functions, and the transfer or leasing of, or the granting of access to, assets, in accordance with the National Rail Corporation Agreement.

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“(2) If the Minister is satisfied that the Commission has failed to comply with its obligations under subsection (1), the Minister may, in writing, request the Commission to take or refrain from taking specified action within a specified period and the Commission must comply with the request.”.

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**PART 4—AMENDMENTS OF THE BROADCASTING SERVICES
ACT 1992**

Principal Act

10. In this Part, “Principal Act” means the *Broadcasting Services Act 1992*³.

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Interpretation

11. Section 6 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “initial satellite licence”;

(b) by omitting from the definition of “associate” in subsection (1) everything after paragraph (e) and substituting:

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“but persons are not associates if the ABA is satisfied that they do not act together in any relevant dealings relating to that company, licence or newspaper, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company, licence or newspaper;”.

20

Subscription narrowcasting services

12. Section 17 of the Principal Act is amended by inserting in subparagraph (a)(iii) “or” after “period”.

Open narrowcasting services

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13. Section 18 of the Principal Act is amended by inserting in subparagraph (a)(iii) “or” after “period”.

Development of codes of practice

14. Section 123 of the Principal Act is amended by inserting after subsection (3) the following subsections:

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“(3A) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing commercial television broadcasting licensees and community television broadcasting licensees must ensure that:

(a) for the purpose of classifying films—those codes apply the film classification system administered by the Office of Film and Literature Classification; and

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(b) those codes provide for methods of modifying films having particular classifications under that system so that:

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- (i) the films are suitable to be broadcast; or
 - (ii) the films are suitable to be broadcast at particular times; and
- 5 (c) those codes require that films classified as ‘M’ may be broadcast only:
- (i) between the hours of 8:30 pm on a day and 5 am on the following day; or
 - (ii) between the hours of noon and 3 pm on any day that is a school day; and
- 10 (d) films classified as ‘MA’ may be broadcast only between the hours of 9 pm on a day and 5 am on the following day; and
- (e) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification.

15 “(3B) In developing codes of practice referred to in paragraph (2)(a), (b), or (c), industry groups representing commercial television broadcasting licensees and community television broadcasting licensees must ensure that films classified as ‘M’ or ‘MA’ do not portray material that goes beyond the previous ‘AO’ classification criteria.”.

20 **15.** After section 123 of the Principal Act the following section is inserted:

Review by the ABA

“123A.(1) The ABA must periodically conduct a review of the operation of subsection 123(3A) to see whether that subsection is in accordance with prevailing community standards.

25 “(2) If, after conducting such a review, the ABA concludes that that subsection is not in accordance with prevailing community standards, the ABA must recommend to the Minister appropriate amendments to this Act that would ensure that that subsection is in accordance with prevailing community standards.

30 “(3) If the Minister receives a recommendation under subsection (2), the Minister must cause a copy of the recommendation to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the recommendation.”.

Non-compliance with requirement to give evidence

35 **16.** Section 202 of the Principal Act is amended by adding at the end the following subsections:

“(4) It is a reasonable excuse for a person to refuse to answer a question or to produce a document if:

- (a) the person is a journalist; and
- 40 (b) the answer to the question or the production of the document

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would tend to disclose the identity of a person who supplied information in confidence to the journalist; and

- (c) the information has been used for the purposes of a television or radio program.

“(5) For the purposes of this section, ‘journalist’ means a person engaged in the profession or practice of reporting, photographing, editing, recording or making television or radio programs of a news, current affairs, information or documentary character.”. 5

Period of appointment of members and associate members

17. Section 157 of the Principal Act is amended by inserting after subsection (2) the following subsections: 10

“(2A) For the purposes of subsection (2), if:

- (a) at a particular time, a person ceases to hold an office (‘original office’) of member (other than the office of Chairperson or Deputy Chairperson); and 15

- (b) immediately after that time, the person begins to hold the office of Chairperson, or the office of Deputy Chairperson, for a period which ends before, or at the same time as, the end of the period specified in the instrument of the person’s appointment to the original office; 20

the person’s appointment to the office of Chairperson or Deputy Chairperson, as the case may be, is taken not to be a re-appointment.

“(2B) For the purposes of subsection (2), if:

- (a) at a particular time, a person ceases to hold the office of Deputy Chairperson; and 25

- (b) immediately after that time, the person begins to hold the office of Chairperson for a period which ends before, or at the same time as, the end of the period specified in the instrument of the person’s appointment to the office of Deputy Chairperson;

the person’s appointment to the office of Chairperson is taken not to be a re-appointment.”. 30

Appeals to the Administrative Appeals Tribunal

18. Section 204 of the Principal Act is amended:

- (a) by omitting “98(1)” and substituting “96(1)”;
(b) by omitting “99(2)” and substituting “98(2)”; 35
(c) by omitting “100(2)” and substituting “99(2)”.

Schedule 2

19. Schedule 2 to the Principal Act is amended by inserting after paragraphs 7(1)(g) and 9(1)(g) the following paragraph:

“(ga) the licensee will not broadcast films that are classified as ‘R’ 40

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unless the films have been modified as mentioned in paragraph 123(3A)(b);”.

Schedule 2

20. Schedule 2 to the Principal Act is amended:

(a) by inserting after clause 3 the following clause:

Broadcasting of election advertisements

“3A.(1) In this clause, ‘**broadcaster**’ means:

- (a) a commercial television broadcasting licensee; or
- (b) a commercial radio broadcasting licensee; or
- (c) a community broadcasting licensee; or
- (d) a subscription television broadcasting licensee; or
- (e) a person providing broadcasting services under a class licence.

“(2) If:

- (a) a broadcaster has a licence that has a licence area; and
- (b) an election to a Parliament is to be held; and
- (c) the licence area overlaps, contains or is contained in the area of Australia to which the election relates;

the broadcaster must not broadcast under the licence an election advertisement in relation to the election during the relevant period.

“(3) If:

- (a) a broadcaster has a licence that does not have a licence area; and
- (b) an election to a Parliament is to be held; and
- (c) a broadcasting service under the licence is normally received in the area of Australia to which the election relates;

the broadcaster must not broadcast an election advertisement in relation to the election during the relevant period as part of that service.

“(4) If:

- (a) a broadcaster provides a broadcasting service under a class licence; and
- (b) an election to a Parliament is to be held; and
- (c) the broadcasting service is normally received in the area of Australia to which the election relates;

the broadcaster must not broadcast an election advertisement in relation to the election during the relevant period as part of the service.”;

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- (b) by inserting in paragraph 7(1)(j) “3A,” after “3,”;
- (c) by inserting in paragraph 8(1)(i) “3A,” after “3,”;
- (d) by inserting in paragraph 9(1)(i) “3A,” after “3,”;
- (e) by inserting in paragraph 10(1)(i) “3A,” after “3,”;
- (f) by inserting in paragraph 11(1)(d) “3A,” after “3,”.

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PART 5—AMENDMENTS OF THE CIVIL AVIATION ACT 1988

Principal Act

21. In this Part, “Principal Act” means the *Civil Aviation Act 1988*⁴.

Charges for services and facilities

22. Section 66 of the Principal Act is amended: 10

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

“(2) The Board may make a determination:

- (a) fixing the amounts of charges; or
- (b) setting out a method by which the amounts of charges may be worked out; or 15
- (c) fixing penalties for the purpose of subsection (8).

“(2AA) A determination under paragraph (2)(a) or (b) must specify the persons by whom and the times when the amounts of the charges are payable.”; 20

- (b) by omitting paragraphs (3)(b) and (c) and substituting the following paragraphs:

“(b) if it fixes amounts of charges, sets out a method by which amounts of charges may be worked out or fixes a penalty—specifying the basis for the charges, method or penalty; and 25

(c) if it varies a charge, method or penalty—specifying the reasons for the variation.”;

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

“(12) The Board, or an officer authorised by the Board, may remit, refund or waive a charge, or part of it, if: 30

- (a) a written application is made by the person who incurred the charge; and
- (b) the Board or the officer is satisfied that exceptional circumstances or circumstances beyond the control of the person justify the remission, refund or waiver.”. 35

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Regulations etc.

23. Section 98 of the Principal Act is amended by inserting before paragraph (3)(a) the following paragraph:

“(aa) the design and manufacture of aircraft;”.

5 **PART 6—AMENDMENT OF THE FEDERAL AIRPORTS
CORPORATION ACT 1986**

Principal Act

24. In this Part, “Principal Act” means the *Federal Airports Corporation Act 1986*⁵.

10 **Land and buildings etc.**

25. Section 57E of the Principal Act is amended by omitting from paragraph (2)(a) “a Federal airport development site” and substituting “a Federal airport, or part of it, or a Federal airport development site, or part of it,”.

15 **PART 7—AMENDMENTS OF THE PROTECTION OF THE SEA
(PREVENTION OF POLLUTION FROM SHIPS) ACT 1983**

Principal Act

26. In this Part, “Principal Act” means the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*⁶.

20 **Interpretation**

27. Section 3 of the Principal Act is amended by inserting after paragraph (ag) of the definition of “the 1978 Protocol” the following paragraphs:

25 “(ah) the amendments to the Annex of the Protocol adopted on 6 March 1992 (a copy of the English text of which is set out in Schedule 13); and

 “(ai) the amendments to the Annex of the Protocol adopted on 6 March 1992 (a copy of the English text of which is set out in Schedule 14); and”.

30 **Prohibition of discharge of oil or oily mixtures into sea**

28. Section 9 is amended:

 (a) by omitting from subparagraph (4)(a)(iii) “60” and substituting “30”;

35 (b) by omitting from subparagraph (4)(b)(i) “and is more than 12 nautical miles from the nearest land”;

 (c) by omitting from subparagraph (4)(b)(iii) “100” and substituting “15”;

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- (d) by omitting from subparagraph (4)(b)(iv) “an oil discharge monitoring and control system, oily-water separating equipment, oil filtering equipment or other installation” and substituting “equipment”;
- (e) by omitting paragraphs (4)(e) and (f) and substituting the following paragraph: 5
- “(e) subject to subsection (4A), the discharge of oil or an oily mixture from a machinery space bilge of a ship that has a gross tonnage of 400 or more if:
- (i) the ship was delivered before 6 July 1993; and 10
- (ii) the oil or oily mixture did not originate from a cargo pump-room bilge; and
- (iii) the oil or oily mixture is not mixed with oil cargo residues; and
- (iv) the ship is not within a special area; and 15
- (v) the ship is more than 12 nautical miles from the nearest land; and
- (vi) the ship is proceeding *en route*; and
- (vii) the oil content of the effluent is less than 100 parts per 1,000,000 parts; and 20
- (viii) the ship has in operation oily-water separating equipment as required by regulations made by virtue of section 267A of the *Navigation Act 1912*.”;
- (f) by omitting paragraph (4)(h) and substituting the following paragraph: 25
- “(h) the discharge, within a special area from a ship that has a gross tonnage of less than 400 and is not an oil tanker of oil or an oily mixture, if the oil content of the effluent without dilution is less than 15 parts in 1,000,000 parts; or” 30
- (g) by inserting after subsection (4) the following subsection:
- “(4A) Paragraph (4)(e) does not apply after:
- (a) 6 July 1998; or
- (b) the date on which the ship is fitted with equipment of a kind described in Regulation 16 of the amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 and set out in Schedule 13 to this Act; 35
- whichever is the earlier.”. 40

New Schedules 13 and 14

29. The Principal Act is amended by adding at the end the Schedules set out in the Schedule to this Act.

**PART 8—AMENDMENTS OF THE RADIOCOMMUNICATIONS
ACT 1983**

Principal Act

5 **30.** In this Part, “**Principal Act**” means the *Radiocommunications Act 1983*⁷.

Transmitter licence

31. Section 24 of the Principal Act is amended by inserting after subsection (1A) the following subsection:

10 “(1B) Subsection (1A) does not prevent the Minister from granting a transmitter licence authorising operation of a radiocommunications transmitter for transmitting a broadcasting service if:

- 15 (a) the licence authorises operation of the transmitter only within a part of the spectrum that constitutes capacity reserved under paragraph 31(1)(a) of the *Broadcasting Services Act 1992*; and
- (b) the broadcasting service in question is a broadcasting service of a kind for which the capacity has been so reserved.”.

Broadcasting service transmitter licence

32. Section 24B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

20 “(1) If a broadcasting services bands licence (**‘the related licence’**) is allocated to a person under Part 4 or 6 of the *Broadcasting Services Act 1992*, the Minister must grant to that person a transmitter licence, in writing, to operate and to possess a specified radiocommunications transmitter or transmitters for the purpose of transmitting a broadcasting

25 service in accordance with the related licence.”.

**PART 9—AMENDMENTS OF THE SPECIAL BROADCASTING
SERVICE ACT 1991**

Principal Act

30 **33.** In this Part, “**Principal Act**” means the *Special Broadcasting Service Act 1991*⁸.

Advertising and sponsorship

34. Section 45 of the Principal Act is amended by inserting in subsection (1) “and section 70C” after “subsection (2)”.

35 **35.** After section 70B of the Principal Act the following section is inserted:

Broadcasting of election advertisements

“70C.(1) If:

- (a) an election to a Parliament is to be held; and
 - (b) a radio or television service provided by the SBS would normally be received in the area of Australia to which the election relates; 5
- the SBS must not broadcast an election advertisement in relation to the election during the relevant period as part of that service.

“(2) In this section:

‘**election**’ means an election to a Parliament;

‘**election advertisement**’, in relation to an election, means: 10

(a) an advertisement:

(i) that contains election matter that relates to that election; and

(ii) in respect of the broadcasting of which the SBS has received or is to receive, directly or indirectly, any money or other consideration; or 15

(b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or 20

(c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party; 25

‘**election matter**’, in relation to an election, means matter of any of the following kinds:

(a) matter commenting on, or soliciting votes for, a candidate at the election;

(b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs; 30

(c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs; 35

(d) matter referring to a meeting held or to be held in connection with the election;

‘**Parliament**’ means:

(a) the Parliament of the Commonwealth; or

(b) a State Parliament; or 40

(c) a legislature of a Territory;

'relevant period', in relation to an election, means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day."

**PART 10—AMENDMENTS OF THE TELECOMMUNICATIONS
ACT 1991**

Principal Act

36. In this Part, "**Principal Act**" means the *Telecommunications Act 1991*⁹.

Definitions

37. Section 5 of the Principal Act is amended:

(a) by omitting the definition of "**access agreement**" and substituting the following definition:

"**'access agreement'** means an agreement made between 2 or more carriers for the purposes of:

(a) subsection 137(2) or (3); or

(b) one or more supplementary access conditions of one or more general telecommunications licences or public mobile licences;

and has the additional meaning for which section 156 provides;";

(b) by inserting the following definition:

"**'Telecommunications Industry Ombudsman'** means the Telecommunications Industry Ombudsman appointed under an Ombudsman scheme entered into by the carriers in accordance with the conditions of their licences;";

Properties

38. Section 13 of the Principal Act is amended:

(a) by adding at the end of subsection (1) the following word and paragraph:

“; and (c) the title to the area is defined by reference to geographical coordinates.”;

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

“(3A) The regulations may prescribe the circumstances in which an area of land in relation to which there is a single freehold or leasehold title is not to constitute a property for the purposes of this Act.

“(3B) Despite paragraph (1)(c), the regulations may prescribe the circumstances in which an area of land, the title to which is defined otherwise than by reference to geographical coordinates, is a property if:

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- (a) the Minister has consulted each general carrier whose interests may, in the Minister's opinion, be affected by the proposed regulation; and
- (b) in the Minister's opinion, the regulation will not erode unduly the practical value of the general carriers' rights under sections 90 and 92." 5

General functions—overall responsibilities of AUSTEL

39. Section 36 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- “(a) economic and technical regulation of the Australian telecommunications industry, including in particular: 10
 - (i) the promotion of fair and efficient market conduct within the industry; and
 - (ii) the implementation of the Commonwealth Government's industry policies relating to telecommunications (including policies relating to the development of an internationally competitive telecommunications industry); and” 15

General functions—protection of public interest and consumers

40. Section 38 of the Principal Act is amended by inserting in paragraph (2)(d) “, the Telecommunications Industry Ombudsman” after “Ombudsman”. 20

General governmental obligations of AUSTEL

41. Section 48 of the Principal Act is amended by omitting from paragraph (a) “general”. 25

Minister may notify AUSTEL of policies of Commonwealth Government

42. Section 49 of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection: 30
 - “(1A) The Minister may notify AUSTEL of policies of the Commonwealth Government, relating to the development of an internationally competitive customer equipment industry, that are to apply to the issue, variation or cancellation of permits for customer equipment under Division 6 of Part 12. This subsection does not, by implication, limit the operation of subsection (1).”; 35
- (b) by omitting from subsection (3) “subsection (1)” and substituting “this section”.

Insertion of heading

43. The heading to Division 6 of Part 5 of the Principal Act is repealed and the following heading is substituted: 40

“PART 5A—PROTECTION OF COMMUNICATIONS”.

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

44. Section 88 of the Principal Act is amended:

- 5 (a) by omitting from subsection (1) “person who is an employee of a carrier” and substituting “prescribed person”;
- (b) by omitting from paragraph (1)(a) “the carrier” (wherever occurring) and substituting “a carrier or supplier”;
- 10 (c) by omitting from paragraph (1)(b) “an employee of the carrier” and substituting “a prescribed person”;
- (d) by omitting from subsection (2) “an employee of a carrier” and substituting “a prescribed person”;
- (e) by omitting from paragraph (2)(b) “an employee of the carrier” and substituting “a prescribed person”;
- 15 (f) by omitting from paragraph (3)(a) “an employee of the carrier” and substituting “a prescribed person”;
- (g) by omitting paragraphs (3)(h) and (i) and substituting the following paragraphs:
- “(h) if:
- 20 (i) the person who made the disclosure is an employee of a carrier or supplier; and
- (ii) the disclosure is made to, or to an employee of, another carrier or supplier; and
- (iii) the fact or document relates to:
- 25 (A) the operation or maintenance of a telecommunications network or facility operated by the other carrier or supplier; or
- (B) the supply of services by the other carrier or supplier by means of a
- 30 telecommunications network or facility; and
- (iv) the disclosure is made for the purpose of the carrying on by the other carrier or supplier of its business relating to the supply of services by means of a telecommunications network or facility
- 35 operated by the other carrier or supplier; or
- (ha) if:
- (i) the person who made the disclosure is a supplier; and
- 40 (ii) the disclosure is made to, or to an employee of, a carrier or another supplier; and
- (iii) the fact or document relates to:
- (A) the operation or maintenance of a

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- telecommunications network or facility operated by the carrier or other supplier; or
- (B) the supply of services by the carrier or other supplier by means of a telecommunications network or facility; and 5
- (iv) the disclosure is made for the purpose of the carrying on by the carrier or other supplier of its business relating to the supply of services by means of a telecommunications network or facility operated by the carrier or other supplier; or 10
- (i) if:
- (i) the person who made the disclosure is an employee of a carrier or supplier; and
- (ii) the disclosure is made to, or to an employee of, another carrier or supplier; and 15
- (iii) the fact or document relates to:
- (A) the operation or maintenance of a telecommunications network or facility operated by the first-mentioned carrier or supplier; or 20
- (B) the supply of services by the first-mentioned carrier or supplier by means of a telecommunications network or facility; and
- (iv) the disclosure is made for the purpose of the carrying on by the other carrier or supplier of its business relating to the supply of services by means of a telecommunications network or facility operated by the first-mentioned carrier or supplier; or 25
- (ia) if: 30
- (i) the person who made the disclosure is a supplier; and
- (ii) the disclosure is made to, or to an employee of, a carrier or other supplier; and
- (iii) the fact or document relates to: 35
- (A) the operation or maintenance of a telecommunications network or facility operated by the first-mentioned supplier; or
- (B) the supply of services by the first-mentioned supplier by means of a telecommunications network or facility; and 40
- (iv) the disclosure is made for the purpose of the carrying on by the carrier or other supplier of its business relating to the supply of services by means

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of a telecommunications network or facility operated by the first-mentioned supplier; or”;

(h) by omitting from subparagraph (3)(l)(i) “an employee of the carrier” and substituting “a prescribed person”;

5 **(i)** by inserting after paragraph (3)(l) the following paragraph:

“(la) if:

(i) the disclosure is made to the Telecommunications Industry Ombudsman, or to an employee of the Telecommunications Industry Ombudsman; and

10 (ii) the fact or document may assist the Telecommunications Industry Ombudsman in the consideration of a complaint made to the Telecommunications Industry Ombudsman; or”;

15 **(j)** by omitting from paragraph (4)(b) “an employee of the carrier” and substituting “a prescribed person”;

(k) by omitting paragraphs (4)(f) and (g) and substituting the following paragraphs:

“(f) if:

20 (i) the person who made the use is an employee of a carrier or supplier; and

(ii) the fact or document relates to:

(A) the operation or maintenance of a telecommunications network or facility operated by another carrier or supplier; or

25 (B) the supply of services by another carrier or supplier by means of a telecommunications network or facility; and

30 (iii) the use is made for the purpose of the carrying on by the other carrier or supplier of its business relating to the supply of services by means of a telecommunications network or facility operated by the other carrier or supplier; or

(fa) if:

35 (i) the person who made the use is a supplier; and

(ii) the fact or document relates to:

(A) the operation or maintenance of a telecommunications network or facility operated by a carrier or other supplier; or

40 (B) the supply of services by a carrier or other supplier by means of a telecommunications network or facility; and

(iii) the use is made for the purpose of the carrying on by the carrier or other supplier of its business

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relating to the supply of services by means of a telecommunications network or facility operated by the carrier or other supplier; or

- (g) if:
- (i) the person who made the use is an employee of a carrier or supplier; and 5
 - (ii) the fact or document relates to:
 - (A) the operation or maintenance of a telecommunications network or facility operated by the carrier or supplier; or 10
 - (B) the supply of services by the carrier or supplier by means of a telecommunications network or facility; and
 - (iii) the use is made for the purpose of the carrying on by any other carrier or supplier of its business relating to the supply of services by means of a telecommunications network or facility operated by the first-mentioned carrier or supplier; or 15
- (ga) if:
- (i) the person who made the use is a supplier; and 20
 - (ii) the fact or document relates to:
 - (A) the operation or maintenance of a telecommunications network or facility operated by the supplier; or
 - (B) the supply of services by the supplier by means of a telecommunications network or facility; and 25
 - (iii) the use is made for the purpose of the carrying on by a carrier or other supplier of its business relating to the supply of services by means of a telecommunications network or facility operated by the first-mentioned supplier; or”; 30
- (l) by omitting from the definition of “employee” in subsection (5) “of an eligible service”;
- (m) by inserting in subsection (5) “or supplier” after “carrier” (wherever occurring) in the definition of “communication in the course of telecommunications carriage”; 35
- (n) by inserting in subsection (5) the following definitions:
- “ ‘prescribed person’ means:
- (a) an employee of a carrier; or 40
 - (b) a supplier; or
 - (c) an employee of a supplier;

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‘supplier’ means a person who supplies an eligible service under a class licence.”.

Restriction on use or disposal of certain reserved line links

5 **45.** Section 102 of the Principal Act is amended by adding at the end the following subsections:

 “(3) If a reserved line link that is permitted to be installed or maintained under section 98 or subsection 99(1) or 101(1) is vested in, transferred to or otherwise acquired by another person by operation of law or otherwise, that other person:

- 10 (a) must not use the line link except:
- (i) for the purpose of using it as mentioned in that section or subsection; or
 - (ii) for or in relation to the supply of a telecommunications service to or by a general carrier; and
- 15 (b) must not dispose of the line link except to a general carrier.

 “(4) If a reserved line link, which is permitted to be installed or maintained under subsection 100(1) or 100(3), is vested in, transferred to or otherwise acquired by another person by operation of law or otherwise, that other person:

- 20 (a) must not use the line link except:
- (i) as provided in, and in accordance with any conditions specified in, the authorisation; or
 - (ii) for or in relation to the supply of a telecommunications service to or by a general carrier; and
- 25 (b) must not dispose of the line link except to a general carrier.”.

Carriers’ rights to interconnection to networks of, and supply of telecommunications services by, other carriers

46. Section 137 of the Principal Act is amended:

- 30 (a) by inserting in subsection (2) “or networks” after “network” (second occurring);
- (b) by inserting in subsection (2) “or carriers” after “other carrier” (wherever occurring);
- (c) by inserting in subsection (3):
- (i) “or carriers” after “another carrier”;
 - 35 (ii) “or carriers” after “other carrier”;
- (d) by inserting in subsection (4) “or networks” after “network” (second occurring);
- (e) by inserting in subsection (4) “or carriers” after “other carrier”.

AUSTEL's role in negotiations for access agreements

47. Section 139 of the Principal Act is amended:

- (a) by inserting in subsection (1) "or more" after "2";
- (b) by omitting from paragraph (1)(a) "a supplementary access condition of a licence held by one of them" and substituting "one or more supplementary access conditions"; 5
- (c) by omitting from subsection (1) "either or both" and substituting "any or all".

Minister may determine principles to govern charging for access

48. Section 140 of the Principal Act is amended: 10

- (a) by inserting in subsection (1) "or carriers" after "carrier" (wherever occurring);
- (b) by omitting from subsection (1) "another" and substituting "any other";
- (c) by adding at the end of paragraph (1)(d) "or conditions". 15

Access agreements must comply with charging principles

49. Section 141 of the Principal Act is amended:

- (a) by inserting "or carriers" after "carrier" (wherever occurring);
- (b) by omitting from paragraph (1)(a) "another" and substituting "any other"; 20
- (c) by omitting from paragraph (1)(b) "the carriers" and substituting "some or all of those carriers";
- (d) by omitting from subsection (7) "2".

Application for registration

50. Section 146 of the Principal Act is amended by omitting paragraph (2)(b) and substituting the following paragraph: 25

- "(b) the agreement was made for the purposes of one or more supplementary access conditions of a licence or licences and contains only terms and conditions reasonably necessary for the purposes of complying with the condition or conditions; or". 30

Decision on request

51. Section 148 of the Principal Act is amended by omitting from paragraph (1)(a) "person" and substituting "party".

Arbitration by AUSTEL of terms of access

52. Section 154 of the Principal Act is amended: 35

- (a) by inserting in subsection (1) "or more" after "2";
- (b) by omitting from subsection (1) "either or both" and substituting "any or all";
- (c) by inserting in paragraph (3)(a) "or networks" after "network";

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(d) by omitting paragraph (4)(b) and substituting the following paragraph:

“(b) state how far it is necessary or desirable for a carrier or carriers to supply those telecommunications services to any other carrier or carriers for the purposes of the other carrier or carriers supplying telecommunications services; and”;

(e) by omitting from paragraph (4)(c) “one carrier is” and substituting “carrier is, or carriers are, as the case may be.”;

(f) by omitting from paragraph (5)(d) “the one carrier to the other” and substituting “a carrier or carriers to any other carrier or carriers”;

(g) by inserting in paragraph (5)(d) “or networks” after “network” (wherever occurring);

(h) by omitting subsection (6) and substituting the following subsection:

“(6) A determination made for the purposes of one or more supplementary access conditions of one or more licences held by a carrier or carriers must set out:

(a) the obligations of the carrier or carriers under the condition or conditions so far as they relate to the matter to which the arbitration relates; and

(b) the terms and conditions on which the carrier or carriers must comply with those obligations.”;

(i) by inserting in subsection (7) “or carriers” after “carrier”;

(j) by inserting in subsection (8) “or carriers” after “carrier”.

Arbitration where carriers cannot agree on variation of access agreement

53. Section 157 is amended:

(a) by inserting in paragraph (1)(a) “or more” after “2”;

(b) by inserting at the beginning of paragraph (1)(b) “any or all of”.

Steps to be taken in the arbitration

54. Section 166 of the Principal Act is amended by omitting from paragraph (1)(b) and (c) “the other” and substituting “each other”.

Party may request AUSTEL to treat material as confidential

55. Section 167 is amended:

(a) by omitting from paragraph (1)(b) “the other party” and substituting “another party or parties”;

(b) by inserting in paragraph (2)(a) “or parties” after “other party”;

(c) by omitting from paragraph (2)(b) “other party whether it

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- objects” and substituting “other party or parties whether there is any objection”;
- (d) by omitting subsection (3) and substituting the following subsection: 5
- “(3) If there is an objection to AUSTEL complying with a request, a party objecting may inform AUSTEL of its objection and of the reasons for it.”;
- (e) by omitting from paragraph (4)(b) “by the other party”;
- (f) by omitting from paragraph (4)(c) “either party” and substituting “any party”; 10
- (g) by omitting from subsection (4) “the other party” (last occurring) and substituting “any other party”.

Issue of permits

56. Section 258 of the Principal Act is amended by adding at the end of subsection (3) the following word and paragraph: 15
- “; and (d) the issuing of the permit is not contrary to policies notified by the Minister under subsection 49(1A)”.

Variation of permits

57. Section 260 of the Principal Act is amended by adding at the end of subsection (3) the following word and paragraph: 20
- “; and (c) the variation is not contrary to policies notified by the Minister under subsection 49(1A)”.

Cancellation of permits

58. Section 263 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection: 25
- “(1) AUSTEL may cancel a permit, by written notice given to the holder of the permit, if:
- (a) AUSTEL is satisfied that the holder of a permit has contravened the conditions of the permit; or
- (b) the cancellation is authorised by policies notified to AUSTEL under subsection 49(1A).” 30

Reference of matters to Ombudsman or Telecommunications Industry Ombudsman

59. Section 339 is amended: 35
- (a) by inserting in paragraph (1)(a) “or the Telecommunications Industry Ombudsman” before “; and”;
- (b) by inserting in paragraph (1)(b) “or the Telecommunications Industry Ombudsman” after “Ombudsman”;
- (c) by inserting in subsection (2) “or to the Telecommunications

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Industry Ombudsman” after “Ombudsman” (wherever occurring);

- (d) by inserting in subsection (3) “to the Ombudsman” after “subsection (2)”.

5 Protection from civil actions

60. Section 345 of the Principal Act is amended:

- (a) by adding at the end the following word and paragraphs:

“; or (c) the making of a complaint to the Telecommunications Industry Ombudsman; or

- 10 (d) subject to subsection (2), the making of a statement to, or the giving of a document or information to, the Telecommunications Industry Ombudsman in connection with the consideration by the Telecommunications Industry Ombudsman of a complaint.”;

15

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

“(2) Paragraph (1)(d) does not apply to the making of a statement, or the giving of a document or information, by:

- 20 (a) a carrier; or
(b) a person who supplies an eligible service and who is participating in the Ombudsman scheme under which the Telecommunications Industry Ombudsman has been appointed.”.

20

25

**PART 11—VALIDATION OF CERTAIN NOTIFICATIONS
UNDER THE TELECOMMUNICATIONS ACT 1989**

Validation of certain notifications under the *Telecommunications Act 1989*

61.(1) The following are taken to have been valid notifications of policies under section 28 of the *Telecommunications Act 1989*:

- 30 (a) the notification of policies by the Minister for Telecommunications and Aviation Support, dated 1 December 1989;
- (b) any notification of an amendment of the policies mentioned in paragraph (a);
- 35 (c) any notification of an amended version of the policies mentioned in paragraph (a).

35

(2) AUSTEL is taken to have had all the powers necessary to give full effect to the notifications of policies referred to in subsection (1) in issuing, varying or cancelling permits under Division 4 of Part 5 of the *Telecommunications Act 1989*.

40

**PART 12—AMENDMENT OF THE TELECOMMUNICATIONS
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL
AMENDMENTS) ACT 1991**

Principal Act

62. In this Part, “**Principal Act**” means the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991*¹⁰. 5

Existing carriers may continue to operate pending grant of licence

63. Section 7 of the Principal Act is amended by adding at the end the following subsection:

“(3) A corporation to which this section applies is taken to have 10
been a general carrier within the meaning of the *Telecommunications Act 1991*, otherwise than for the purposes of Divisions 2 and 3 of Part 5, and Parts 8 and 9 of the Act, during the period beginning on 1 July 1991 and ending on the day on which the corporation became the holder of a general telecommunications licence in force under Part 5.”. 15

**PART 13—AMENDMENTS OF THE BROADCASTING
SERVICES (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) ACT 1992**

Principal Act

64. In this Part, “**Principal Act**” means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*¹¹. 20

Pending applications for grant of licences under the Broadcasting Act

65. Section 12 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Subsection (2) does not apply to an application if the 25
application has not been referred to the Tribunal or to the ABA under paragraph 82A(4)(a) of the Broadcasting Act before the commencement of this subsection.”.

Application of provisions of the Broadcasting Act in relation to keeping accounts and unpaid licence fees 30

66. Section 22 of the Principal Act is amended:

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

“(1A) The amendments made by sections 19 and 21 of the *Broadcasting Amendment Act (No. 2) 1991* have effect for the purposes of the continued operation of sections 123 and 123A 35
of the Broadcasting Act under subsection (1) of this section.

“(1B) Section 20 of the *Broadcasting Amendment Act (No. 2) 1991* has effect in relation to:

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(a) a commercial radio broadcasting licence referred to in paragraph 5(1)(a), (d) or (f); and

(b) a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e);

5 as if section 123 of the Broadcasting Act had not been repealed by section 28 of this Act.

Note: this subsection has the effect of applying to these licences the section (section 123AA) that section 20 of the *Broadcasting Amendment Act (No. 2) 1991* sought to insert in the Broadcasting Act.”;

10 (b) by inserting in subsection (2) “, 123AA” after “123” (first occurring);

(c) by inserting in subsection (2) “or (1B)” after “(1)” (first occurring).

SCHEDULE

Section 29

INSERTION OF NEW SCHEDULES

SCHEDULE 13

Section 9

**1992 AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF
1978 RELATING TO THE INTERNATIONAL CONVENTION FOR
THE PREVENTION OF POLLUTION FROM SHIPS, 1973**

(Discharge criteria of Annex 1 of MARPOL 73/78)

RESOLUTION MEPC 51(32)
adopted on 6 March 1992

**AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF 1978
RELATING TO THE INTERNATIONAL CONVENTION FOR
THE PREVENTION OF POLLUTION FROM SHIPS, 1973**

(Discharge criteria of Annex 1 of MARPOL 73/78)

THE MARINE ENVIRONMENT PROTECTION COMMITTEE.

RECALLING Article 38(a) of the Convention on the International Maritime Organization concerning the functions of the Committee,

NOTING article 16 of the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1973 Convention"), and article VI of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1978 Protocol"), which confers upon the appropriate body of the Organization the function of considering and adopting amendments to the 1973 Convention, as modified by the 1978 Protocol (MARPOL 73/78),

RECALLING the objective of MARPOL 73/78 to achieve the complete elimination of intentional pollution of the marine environment by oil,

DESIRING in this regard to reduce even further operational pollution from ships,

HAVING CONSIDERED, at its thirty-second session, amendments to the 1978 Protocol proposed and circulated in accordance with article 16(2)(a) of the 1973 Convention,

1. **ADOPTS**, in accordance with article 16(2)(d) of the 1973 Convention, amendments to the Annex of the 1978 Protocol, the text of which is set out in the Annex to the present resolution;

SCHEDULE---continued

2. DETERMINES, in accordance with article 16(2)(f)(iii) of the 1973 Convention, that the amendments shall be deemed to have been accepted on 6 January 1993, unless prior to this date one third or more of the Parties, or the Parties the combined merchant fleets of which constitute fifty per cent or more of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments;
3. INVITES the Parties to note that, in accordance with article 16(2)(g)(ii) of the 1973 Convention, the amendments shall enter into force on 6 July 1993 upon their acceptance in accordance with paragraph 2 above;
4. REQUESTS the Secretary-General, in conformity with article 16(2)(e) of the 1973 Convention, to transmit to all Parties to MARPOL 73/78 certified copies of the present resolution and the text of the amendments contained in the Annex;
5. FURTHER REQUESTS the Secretary-General to transmit copies of the resolution and its Annex to the Members of the Organization which are not Parties to MARPOL 73/78.

ANNEX

AMENDMENTS TO ANNEX 1 OF MARPOL 73/78

The regulations of Annex 1 are amended as follows:

1 Regulation 9

- .1 The existing text of paragraph (1)(a)(iv) is replaced by the following:
“(iv) The instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile”.
- .2 The existing text of paragraph (1)(b) is replaced by the following:
“(b) from a ship of 400 tons gross tonnage and above other than an oil tanker and from machinery space bilges excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue:
 - (i) the ship is not within a special area;
 - (ii) the ship is proceeding en route;
 - (iii) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (iv) the ship has in operation equipment as required by regulation 16 of this Annex.”
- .3 Paragraph (4) is amended by deleting the entire second sentence, including subitems (a) - (d).
- .4 A new paragraph (7) is added as follows:

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SCHEDULE—continued

- “(7) In the case of a ship, referred to in regulation 16(6) of this Annex, not fitted with equipment as required by regulation 16(1) or 16(2) of this Annex, the provisions of paragraph 1(b) of this regulation will not apply until 6 July 1998 or the date on which the ship is fitted with such equipment, whichever is the earlier. Until this date any discharge from machinery space bilges into the sea of oil or oily mixtures from such a ship shall be prohibited except when all the following conditions are satisfied:
- (a) the oily mixture does not originate from the cargo pump-room bilges;
 - (b) the oily mixture is not mixed with oil cargo residues;
 - (c) the ship is not within a special area;
 - (d) the ship is more than 12 nautical miles from the nearest land;
 - (e) the ship is proceeding en route;
 - (f) the oil content of the effluent is less than 100 parts per million; and
 - (g) the ship has in operation oily-water separating equipment of a design approved by the Administration, taking into account the specification recommended by the Organization*.”

A footnote should be added to paragraph (7)(g) as follows:

“* Reference is made to the Recommendation on International Performance Specifications for Oily-Water Separating Equipment and Oil Content Meters adopted by the Organization by resolution A.393(X).”

2 Regulation 10

.1 Paragraph (2)(b) is amended to read:

“(b) any discharge into the sea of oil or oily mixture from a ship of less than 400 tons gross tonnage, other than an oil tanker, shall be prohibited while in a special area, except when the oil content of the effluent without dilution does not exceed 15 parts per million”.

.2 Paragraph (3)(b)(v) is amended by changing the cross-reference therein from 16(7) to 16(5).

3 Regulation 16

The existing text of this regulation is replaced by the following:

SCHEDULE—continued

“Regulation 16

**Oil discharge monitoring and control system
and oil filtering equipment**

- (1) Any ship of 400 tons gross tonnage and above but less than 10,000 tons gross tonnage shall be fitted with oil filtering equipment complying with paragraph (4) of this regulation. Any such ship which carries large quantities of oil fuel shall comply with paragraph (2) of this regulation or paragraph (1) of regulation 14.
- (2) Any ship of 10,000 tons gross tonnage and above shall be provided with oil filtering equipment, and with arrangements for an alarm and for automatically stopping any discharge of oily mixture when the oil content in the effluent exceeds 15 parts per million.
- (3) (a) The Administration may waive the requirements of paragraphs (1) and (2) of this regulation for any ship engaged exclusively on voyages within special areas provided that all of the following conditions are complied with:
 - (i) the ship is fitted with a holding tank having a volume adequate, to the satisfaction of the Administration, for the total retention on board of the oily bilge water;
 - (ii) all oily bilge water is retained on board for subsequent discharge to reception facilities;
 - (iii) the Administration has determined that adequate reception facilities are available to receive such oily bilge water in a sufficient number of ports or terminals the ship calls at;
 - (iv) the International Oil Pollution Prevention Certificate, when required, is endorsed to the effect that the ship is exclusively engaged on the voyages within special areas; and
 - (v) the quantity, time, and port of the discharge are recorded in the Oil Record Book.
- (b) The Administration shall ensure that ships of less than 400 tons gross tonnage are equipped, as far as practicable, to retain on board oil or oily mixtures or discharge them in accordance with the requirements of regulation 9(1)(b) of this Annex.
- (4) Oil filtering equipment referred to in paragraph (1) of this regulation shall be of a design approved by the Administration and shall be such as will ensure that any oily mixture discharged into the sea after passing through the system has an oil content not exceeding 15 parts per million. In considering the design of

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SCHEDULE—continued

such equipment, the Administration shall have regard to the specification recommended by the Organization*.

- (5) Oil filtering equipment referred to in paragraph (2) of this regulation shall be of a design approved by the Administration and shall be such as will ensure that any oily mixture discharged into the sea after passing through the system or systems has an oil content not exceeding 15 parts per million. It shall be provided with alarm arrangements to indicate when this level cannot be maintained. The system shall also be provided with arrangements such as will ensure that any discharge of oily mixtures is automatically stopped when the oil content of the effluent exceeds 15 parts per million. In considering the design of such equipment and arrangements, the Administration shall have regard to the specification recommended by the Organization*.
- (6) For ships delivered before 6 July 1993 the requirements of this regulation shall apply by 6 July 1998 provided that these ships can operate with oily-water separating equipment (100 ppm equipment).”

A footnote should be added to paragraphs (4) and (5) as follows:

“* Reference is made to the Recommendation on International Performance Specifications for Oily-Water Separating Equipment and Oil Content Meters adopted by the Organization by resolution A.393(X).”

4 Regulation 21

- .1 Subparagraph (c) is amended by deleting the first five words, i.e., “in any special area and”.
- .2 Subparagraph (d) is deleted.

5 Forms A and B of Supplements to the IOPP Certificate

Items 2.2 and 2.3 in both Forms A and B of Supplements to the IOPP Certificate are replaced by the following:

“2.2 Type of oil filtering equipment fitted:

2.2.1 Oil filtering (15 ppm) equipment (regulation 16(4))

2.2.2 Oil filtering (15 ppm) equipment with alarm and automatic stopping device (regulation 16(5))

2.3 The ship is allowed to operate with the existing equipment until 6 July 1998 (regulation 16(6)) and fitted with:

2.3.1 Oily-water separating (100 ppm) equipment

2.3.2 Oil filtering (15 ppm) equipment without alarm

2.3.3 Oil filtering (15 ppm) equipment with alarm and manual stopping device ”

SCHEDULE 14

Section 9

**1992 AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF
1978 RELATING TO THE INTERNATIONAL CONVENTION FOR
THE PREVENTION OF POLLUTION FROM SHIPS, 1973**

(New regulations 13F and 13G and related amendments to
Annex I of MARPOL 73/78)

RESOLUTION MEPC.52(32)
adopted on 6 March 1992

**AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF 1978
RELATING TO THE INTERNATIONAL CONVENTION FOR
THE PREVENTION OF POLLUTION FROM SHIPS, 1973**

(New regulations 13F and 13G and related amendments to Annex I of
MARPOL 73/78)

THE MARINE ENVIRONMENT PROTECTION COMMITTEE,

RECALLING Article 38(a) of the Convention on the International
Maritime Organization concerning the functions of the Committee,

NOTING article 16 of the International Convention for the
Prevention of Pollution from Ships, 1973 (hereinafter referred to as the
“1973 Convention”), and article VI of the Protocol of 1978 relating to
the International Convention for the Prevention of Pollution from
Ships, 1973 (hereinafter referred to as the “1978 Protocol”), which
confer upon the appropriate body of the Organization the function of
considering and adopting amendments to the 1973 Convention, as
modified by the 1978 Protocol (MARPOL 73/78),

NOTING ALSO resolution A.675(16) on prevention of oil pollution,

RECOGNIZING the severity of marine pollution incidents resulting
from tanker casualties,

DESIRING to improve the requirements for the design and
construction of oil tankers to prevent oil pollution in the event of
collision or grounding,

HAVING CONSIDERED, at its thirty-second session, amendments
to the 1978 Protocol proposed and circulated in accordance with article
16(2)(a) of the 1973 Convention,

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SCHEDULE—continued

1. **ADOPTS**, in accordance with article 16(2)(d) of the 1973 Convention, amendments to the Annex of the 1978 Protocol, the text of which is set out in the Annex to the present resolution;
2. **DETERMINES**, in accordance with article 16(2)(f)(iii) of the 1973 Convention, that the amendments shall be deemed to have been accepted on 6 January 1993, unless prior to this date one third or more of the Parties, or the Parties the combined merchant fleets of which constitute fifty per cent or more of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments;
3. **INVITES** the Parties to note that, in accordance with article 16(2)(g)(ii) of the 1973 Convention the amendments shall enter into force on 6 July 1993 upon their acceptance in accordance with paragraph 2 above;
4. **REQUESTS** the Secretary-General, in conformity with article 16(2)(e) of the 1973 Convention, to transmit to all Parties to MARPOL 73/78 certified copies of the present resolution and the text of the amendments contained in the Annex;
5. **FURTHER REQUESTS** the Secretary-General to transmit copies of the resolution and its Annex to the Members of the Organization which are not Parties to MARPOL 73/78;
6. **AGREES** to develop as a matter of urgency:
 - (a) guidelines for approval of alternative methods of design and construction of oil tankers as called for in regulation 13F(5);
 - (b) guidelines for approval of alternative structural or operational arrangements as called for in regulation 13G(7); and
 - (c) guidelines for an enhanced programme of surveys and inspections as called for in regulation 13G(3).

ANNEX

AMENDMENTS TO ANNEX I OF MARPOL 73/78

Regulation 1

Definitions

The following new paragraph (8)(c) is inserted after the existing paragraph (8)(b):

- “(c) Notwithstanding the provisions of subparagraph (a) of this paragraph, conversion of an existing oil tanker to meet the requirements of regulation 13F or 13G of this Annex shall not be deemed to constitute a major conversion for the purpose of this Annex.”

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SCHEDULE—continued

New regulations 13F and 13G

The following new regulations 13F and 13G are inserted after the existing regulation 13E:

REGULATION 13F OF ANNEX I OF MARPOL 73/78

Prevention of oil pollution in the event of collision or stranding

(1) This regulation shall apply to oil tankers of 600 tons deadweight and above:

- (a) for which the building contract is placed on or after 6 July 1993, or
- (b) in the absence of a building contract, the keels of which are laid or which are at a similar stage of construction on or after 6 January 1994, or
- (c) the delivery of which is on or after 6 July 1996, or
- (d) which have undergone a major conversion:
 - (i) for which the contract is placed after 6 July 1993; or
 - (ii) in the absence of a contract, the construction work of which is begun after 6 January 1994; or
 - (iii) which is completed after 6 July 1996.

(2) Every oil tanker of 5,000 tons deadweight and above shall:

- (a) in lieu of regulation 13E, as applicable, comply with the requirements of paragraph (3) unless it is subject to the provisions of paragraphs (4) and (5); and
- (b) comply, if applicable, with the requirements of paragraph (6).

(3) The entire cargo tank length shall be protected by ballast tanks or spaces other than cargo and fuel oil tanks as follows:

(a) Wing tanks or spaces

Wing tanks or spaces shall extend either for the full depth of the ship's side or from the top of the double bottom to the uppermost deck, disregarding a rounded gunwale where fitted. They shall be arranged such that the cargo tanks are located inboard of the moulded line of the side shell plating, nowhere less than the distance w which, as shown in figure 1, is measured at any cross-section at right angles to the side shell, as specified below:

$$w = 0.5 + \frac{DW}{20,000} \text{ (m) or}$$

$w = 2.0$ m, whichever is the lesser.

The minimum value of $w = 1.0$ m.

(b) Double bottom tanks or spaces

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At any cross-section the depth of each double bottom tank or space shall be such that the distance h between the bottom of the cargo tanks and the moulded line of the bottom shell plating measured at right angles to the bottom shell plating as shown in figure 1 is not less than specified below:

$h = B/15$ (m) or

$h = 2.0$ m, whichever is the lesser.

The minimum value of $h = 1.0$ m.

- (c) Turn of the bilge area or at locations without a clearly defined turn of the bilge

When the distances h and w are different, the distance w shall have preference at levels exceeding 1.5 h above the baseline as shown in figure 1.

- (d) The aggregate capacity of ballast tanks

On crude oil tankers of 20,000 tons deadweight and above and product carriers of 30,000 tons deadweight and above, the aggregate capacity of wing tanks, double bottom tanks, forepeak tanks and afterpeak tanks shall not be less than the capacity of segregated ballast tanks necessary to meet the requirements of regulation 13. Wing tanks or spaces and double bottom tanks used to meet the requirements of regulation 13 shall be located as uniformly as practicable along the cargo tank length. Additional segregated ballast capacity provided for reducing longitudinal hull girder bending stress, trim, etc., may be located anywhere within the ship.

- (e) Suction wells in cargo tanks

Suction wells in cargo tanks may protrude into the double bottom below the boundary line defined by the distance h provided that such wells are as small as practicable and the distance between the well bottom and bottom shell plating is not less than 0.5 h .

- (f) Ballast and cargo piping

Ballast piping and other piping such as sounding and vent piping to ballast tanks shall not pass through cargo tanks. Cargo piping and similar piping to cargo tanks shall not pass through ballast tanks. Exemptions to this requirement may be granted for short lengths of piping, provided that they are completely welded or equivalent.

- (4) (a) Double bottom tanks or spaces as required by paragraph (3)(b) may be dispensed with, provided that the design of the tanker is such that the cargo and vapour pressure exerted on the bottom shell plating forming a single boundary between the

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cargo and the sea does not exceed the external hydrostatic water pressure, as expressed by the following formula:

$$f \cdot h_c \cdot \rho_c \cdot g + 100\Delta p \leq d_n \cdot \rho_s \cdot g$$

where:

h_c = height of cargo in contact with the bottom shell plating in metres

ρ_c = maximum cargo density in t/m³

d_n = minimum operating draught under any expected loading condition in metres

ρ_s = density of sea water in t/m³

Δp = maximum set pressure of pressure/vacuum valve provided for the cargo tank in bars

f = safety factor = 1.1

g = standard acceleration of gravity (9.81 m/s²).

- (b) Any horizontal partition necessary to fulfil the above requirements shall be located at a height of not less than B/6 or 6 metres, whichever is the lesser, but not more than 0.6D, above the baseline where D is the moulded depth amidships.
- (c) The location of wing tanks or spaces shall be as defined in paragraph (3)(a) except that, below a level 1.5 h above the baseline where h is as defined in paragraph (3)(b), the cargo tank boundary line may be vertical down to the bottom plating, as shown in figure 2.

(5) Other methods of design and construction of oil tankers may also be accepted as alternatives to the requirements prescribed in paragraph (3), provided that such methods ensure at least the same level of protection against oil pollution in the event of collision or stranding and are approved in principle by the Marine Environment Protection Committee based on guidelines developed by the Organization.

(6) For oil tankers of 20,000 tons deadweight and above the damage assumptions prescribed in regulation 25(2)(b) shall be supplemented by the following assumed bottom raking damage:

(a) longitudinal extent:

(i) ships of 75,000 tons deadweight and above:

0.6 L measured from the forward perpendicular

(ii) ships of less than 75,000 tons deadweight:

0.4 L measured from the forward perpendicular

(b) transverse extent: B/3 anywhere in the bottom

(c) vertical extent: breach of the outer hull.

(7) Oil tankers of less than 5,000 tons deadweight shall:

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- (a) at least be fitted with double bottom tanks or spaces having such a depth that the distance h specified in paragraph (3)(b) complies with the following:

$$h = B/15 \text{ (m) with a minimum value of } h = 0.76 \text{ m;}$$

in the turn of the bilge area and at locations without a clearly defined turn of the bilge, the cargo tank boundary line shall run parallel to the line of the mid-ship flat bottom as shown in figure 3; and

- (b) be provided with cargo tanks so arranged that the capacity of each cargo tank does not exceed 700 m^3 unless wing tanks or spaces are arranged in accordance with paragraph (3)(a) complying with the following:

$$w = 0.4 + \frac{2.4 DW}{20,000} \text{ (m)}$$

with a minimum value of $w = 0.76 \text{ m}$.

(8) Oil shall not be carried in any space extending forward of a collision bulkhead located in accordance with regulation II-1/11 of the International Convention for the Safety of Life at Sea, 1974, as amended. An oil tanker that is not required to have a collision bulkhead in accordance with that regulation shall not carry oil in any space extending forward of the transverse plane perpendicular to the centreline that is located as if it were a collision bulkhead located in accordance with that regulation.

(9) In approving the design and construction of oil tankers to be built in accordance with the provisions of this regulation, Administrations shall have due regard to the general safety aspects including the need for the maintenance and inspections of wing and double bottom tanks or spaces.

SCHEDULE—continued

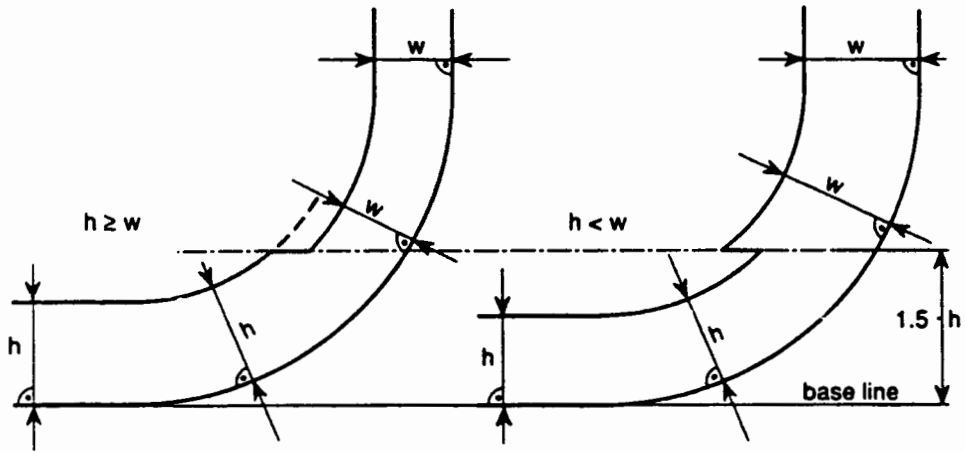


Figure 1

Cargo tank boundary lines for the purpose of paragraph (3)

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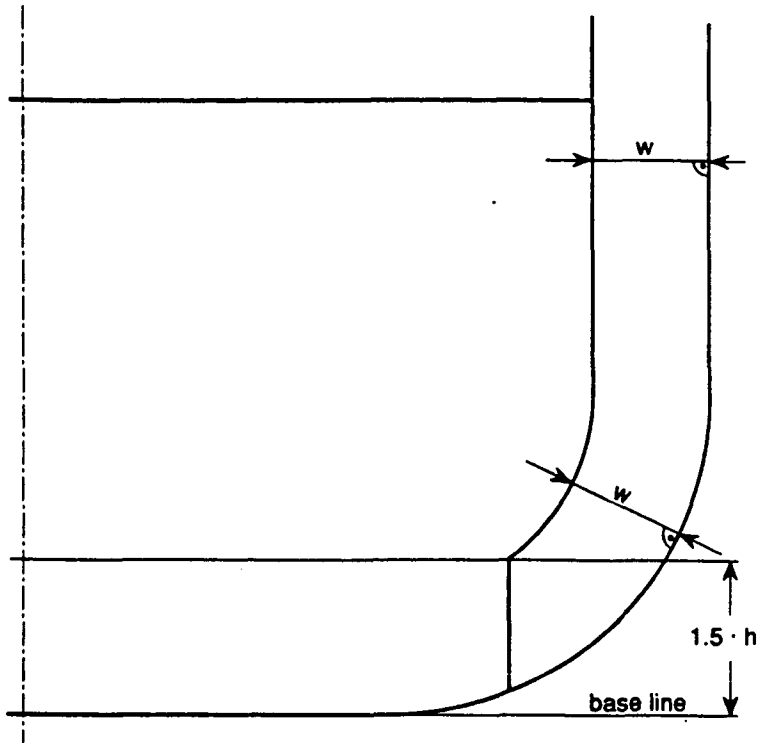


Figure 2

Cargo tank boundary lines for the purpose of paragraph (4)

SCHEDULE—continued

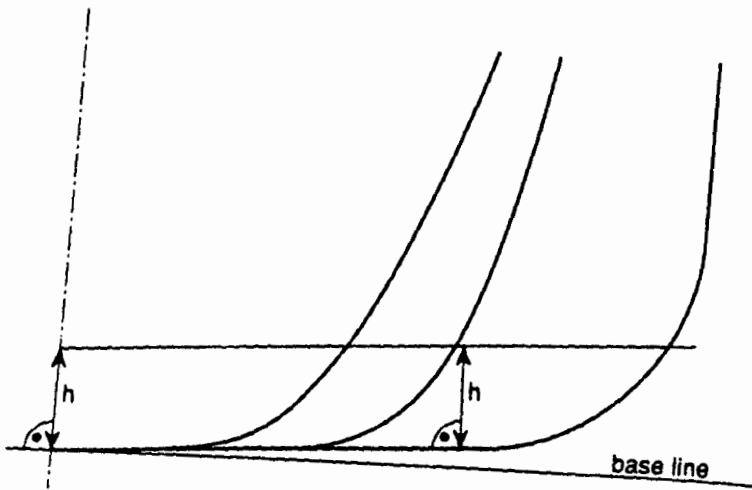


Figure 3
Cargo tank boundary lines for the purpose of paragraph (7)

SCHEDULE—continued

REGULATION 13G OF ANNEX I OF MARPOL 73/78

Prevention of oil pollution in the event of collision or stranding

Measures for existing tankers

- (1) This regulation shall:
 - (a) apply to crude oil tankers of 20,000 tons deadweight and above and to product carriers of 30,000 tons deadweight and above, which are contracted, the keels of which are laid, or which are delivered before the dates specified in regulation 13F(1) of this Annex; and
 - (b) not apply to oil tankers complying with regulation 13F of this Annex, which are contracted, the keels of which are laid, or are delivered before the dates specified in regulation 13F(1) of this Annex; and
 - (c) not apply to oil tankers covered by subparagraph (a) above which comply with regulation 13F(3)(a) and (b) or 13F(4) or 13F(5) of this Annex, except that the requirement for minimum distances between the cargo tank boundaries and the ship side and bottom plating need not be met in all respects. In that event, the side protection distances shall not be less than those specified in the International Bulk Chemical Code for type 2 cargo tank location and the bottom protection shall comply with regulation 13E(4)(b) of this Annex.
- (2) The requirements of this regulation shall take effect as from 6 July 1995.
- (3)
 - (a) An oil tanker to which this regulation applies shall be subject to an enhanced programme of inspections during periodical, intermediate and annual surveys, the scope and frequency of which shall at least comply with the guidelines developed by the Organization.
 - (b) An oil tanker over five years of age to which this regulation applies shall have on board, available to the competent authority of any Government of a State Party to the present Convention, a complete file of the survey reports, including the results of all scantling measurement required, as well as the statement of structural work carried out.
 - (c) This file shall be accompanied by a condition evaluation report, containing conclusions on the structural condition of the ship and its residual scantlings, endorsed to indicate that it has been accepted by or on behalf of the flag Administration. This file and condition evaluation report shall be prepared in a standard format as contained in the guidelines developed by the Organization.

SCHEDULE—continued

(4) An oil tanker not meeting the requirements of a new oil tanker as defined in regulation 1(26) of this Annex shall comply with the requirements of regulation 13F of this Annex not later than 25 years after its date of delivery, unless wing tanks or double bottom spaces, not used for the carriage of oil and meeting the width and height requirements of regulation 13E(4), cover at least 30% of L_1 for the full depth of the ship on each side or at least 30% of the projected bottom shell area ΣPA_s within the length L_1 , where L_1 and the projected bottom shell area ΣPA_s are as defined in regulation 13E(2), in which case compliance with regulation 13F is required not later than 30 years after its date of delivery.

(5) An oil tanker meeting the requirements of a new oil tanker as defined in regulation 1(26) of this Annex shall comply with the requirements of regulation 13F of this Annex not later than 30 years after its date of delivery.

(6) Any new ballast and load conditions resulting from the application of paragraph (4) of this regulation shall be subject to approval of the Administration which shall have regard, in particular, to longitudinal and local strength, intact stability and, if applicable, damage stability.

(7) Other structural or operational arrangements such as hydrostatically balanced loading may be accepted as alternatives to the requirements prescribed in paragraph (4), provided that such alternatives ensure at least the same level of protection against oil pollution in the event of collision or stranding and are approved by the Administration based on guidelines developed by the Organization.

Regulation 24(4)

Limitation of size and arrangement of cargo tanks

The existing text of paragraph (4) is replaced by the following:

“(4) The length of each cargo tank shall not exceed 10 metres or one of the following values, whichever is the greater:

(a) Where no longitudinal bulkhead is provided inside the cargo tanks:

$$(0.5 \frac{b_i}{B} + 0.1) L$$

but not to exceed 0.2 L

(b) Where a centreline longitudinal bulkhead is provided inside the cargo tanks:

$$(0.25 \frac{b_i}{B} + 0.15) L$$

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- (c) Where two or more longitudinal bulkheads are provided inside the cargo tanks:
- (i) for wing cargo tanks:
0.2 L
 - (ii) for centre cargo tanks:
 - (1) if $\frac{b_i}{B}$ is equal to or greater than one fifth:
0.2 L
 - (2) if $\frac{b_i}{B}$ is less than one fifth:
 - Where no centreline longitudinal bulkhead is provided:
 $(0.5 \frac{b_i}{B} + 0.1) L$
 - Where a centreline longitudinal bulkhead is provided:
 $(0.25 \frac{b_i}{B} + 0.15) L$
- (d) “ b_i ” is the minimum distance from the ship’s side to the outer longitudinal bulkhead of the tank in question measured inboard at right angles to the centreline at the level corresponding to the assigned summer freeboard.”

**AMENDMENTS TO THE RECORD OF CONSTRUCTION AND
EQUIPMENT FOR OIL TANKERS (FORM B)**

The following new paragraph 5.8 is inserted after the existing paragraph 5.7:

“5.8 Double hull construction

- 5.8.1 The ship is required to be constructed according to regulation 13F and complies with the requirements of:
- .1 paragraph (3) (double hull construction)
 - .2 paragraph (4) (mid-height deck tankers with double side construction)
 - .3 paragraph (5) (alternative method approved by the Marine Environment Protection Committee)
- 5.8.2 The ship is required to be constructed according to and complies with the requirements of regulation 13F(7) (double bottom requirements)

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- 5.8.3 The ship is not required to comply with the requirements of regulation 13F
- 5.8.4 The ship is subject to regulation 13G and:
- .1 is required to comply with regulation 13F not later than
- .2 is so arranged that the following tanks or spaces are not used for the carriage of oil
- 5.8.5 The ship is not subject to regulation 13G ”
-

NOTES

1. No. 6, 1983, as amended. For previous amendments, see No. 91, 1983; Nos. 65 and 67, 1985; No. 2, 1986 (as amended by No. 76, 1986); No. 63, 1989; Nos. 99 and 180, 1991; and Nos. 94 and 105, 1992.
2. No. 140, 1983, as amended. For previous amendments, see No. 65, 1985; No. 76, 1986; No. 100, 1987; Nos. 55, 75, 87, 99 and 122, 1988; No. 21, 1989; Nos. 101 and 173, 1991; and Nos. 94 and 118, 1992.
3. No. 110, 1992.
4. No. 63, 1988, as amended. For previous amendments, see No. 55, 1988; Nos. 6 and 21, 1989; No. 25, 1990; No. 11, 1991; Nos. 101 and 173, 1991; and No. 71, 1992.
5. No. 4, 1986, as amended. For previous amendments, see Nos. 55, 57, 63, 99 and 150, 1988; Nos. 6 and 21, 1989; No. 26, 1990 (as amended by No. 11, 1991); No. 73, 1990; Nos. 11, 101 and 173, 1991; and No. 71, 1992.
6. 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; No. 6, 1989; Nos. 23 and 78, 1990; Nos. 11 and 101, 1991; and No. 71, 1992.
7. No. 130, 1983, as amended. For previous amendments, see No. 165, 1984; Nos. 65, 67 and 119, 1985; No. 76, 1986; No. 69, 1987; Nos. 36 and 99, 1988; Nos. 59 and 63, 1989; and Nos. 28 and 203, 1991.
8. No. 180, 1991, as amended. For previous amendments, see Nos. 105 and 118, 1992.
9. No. 98, 1991, as amended. For previous amendments, see Nos. 145, 173 and 180, 1991; and Nos. 71, 105 and 118, 1992.
10. No. 99, 1991, as amended. For previous amendments, see No. 145, 1991; Nos. 71, 105 and 118, 1992.
11. No. 105, 1992.

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*[Minister's second reading speech made in—
Senate on 12 November 1992
House of Representatives on 18 December 1992 a.m.]*