



Transport and Communications Legislation Amendment Act (No. 2) 1993

No. 5 of 1994

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Amendments of Acts
4. Savings provisions relating to certain Air Operators' Certificates
5. Transitional provision relating to certain Air Operators' Certificates
6. Treatment of certain payments made to National Rail Corporation after 30 June 1992
7. Application—subsection 30(2) of the *Seafarers Rehabilitation and Compensation Act 1992*
8. Application—section 39 of the *Seafarers Rehabilitation and Compensation Act 1992*
9. Application—sections 28, 49 and 50 of the *Seafarers Rehabilitation and Compensation Act 1992*

SCHEDULE AMENDMENTS OF ACTS



Transport and Communications Legislation Amendment Act (No. 2) 1993

No. 5 of 1994

**An Act to amend various Acts relating to transport and
communications, and for related purposes**

[Assented to 18 January 1994]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Transport and Communications Legislation Amendment Act (No. 2) 1993*.

Commencement

2.(1) Subject to subsections (2) to (10) (inclusive), this Act commences on the day on which it receives the Royal Assent.

(2) The amendments contained in items 15, 35 and 115 to 128 (inclusive) of the Schedule commence 28 days after the day on which this Act receives the Royal Assent.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

(3) The amendments contained in items 1, 2, 3, 20, 21, 22, 23 and 25 of the Schedule commence on a day to be fixed by Proclamation, being a day not before the day on which the Protocol inserting 83 bis into the Convention on International Civil Aviation comes into force in relation to Australia.

(4) The amendment contained in item 50 of the Schedule is taken to have commenced on 17 January 1989.

(5) The amendments contained in item 41 of the Schedule are taken to have commenced on 20 June 1990.

(6) The amendment contained in item 46 of the Schedule is taken to have commenced on 1 July 1990.

(7) The amendment contained in item 9 of the Schedule is taken to have commenced on 22 October 1990.

(8) The amendments contained in items 47, 48, 49 and 129 of the Schedule are taken to have commenced on 25 November 1991.

(9) The amendments contained in items 4, 5, 6 and 7 of the Schedule are taken to have commenced on 1 July 1992.

(10) The amendments contained in items 111 and 112 of the Schedule are taken to have commenced on 24 June 1993.

Amendments of Acts

3. The Acts specified in the Schedule are amended as set out in the Schedule, but the amendments commence as provided by section 2.

Savings provisions relating to certain Air Operators' Certificates

4.(1) If:

- (a) an Air Operator's Certificate was purportedly issued under section 27 of the *Civil Aviation Act 1988* before the amendments of that Act contained in items 19, 30, 31, 32 and 33 commence; and
- (b) the Certificate was expressed to authorise the flying or operation of aircraft included in a class of aircraft described in the Certificate rather than of a particular aircraft during a period that began before; and
- (c) the Certificate had not expired, or been cancelled, before those amendments commence;

the Certificate is taken to have been as validly issued as it would have been if those amendments had been in force at the time when the Certificate was issued.

(2) If:

- (a) an Air Operator's Certificate was purportedly issued under section 27 of the *Civil Aviation Act 1988* before the amendments of that Act contained in items 19, 30, 31, 32 and 33 commence; and

Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994

- (b) despite subsection 27(7) of the *Civil Aviation Act 1988*, the Certificate had been issued without specifying the term of its operation; and
- (c) the Certificate had not been cancelled before the amendments commence;

the Certificate is taken to have been validly issued for a term ending on 1 July 1994.

Transitional provision relating to certain Air Operators' Certificates

5.(1) If:

- (a) an Air Operator's Certificate was issued under section 27 of the *Civil Aviation Act 1988* before the amendments of that Act contained in items 19, 30, 31, 32 and 33 commence; and
- (b) the Certificate authorised a foreign registered aircraft, or is, under subsection 4(1), taken to have authorised a foreign registered aircraft included in a class of aircraft, to undertake domestic commercial flights; and
- (c) the Certificate, or the particular authorisation included or taken to be included within the Certificate, had not expired, or been cancelled, before the amendments commence;

that Certificate continues to authorise that aircraft or those aircraft to undertake those flights, in accordance with its terms, for 3 months after the amendments commence or until it expires or is cancelled, whichever first occurs.

(2) In this section:

“domestic commercial flight” and **“foreign registered aircraft”** have the same respective meaning as they have for the purposes of the *Civil Aviation Act 1988* as amended by this Act.

Treatment of certain payments made to National Rail Corporation after 30 June 1992

6.(1) If:

- (a) at any time after 30 June 1992 and before this Act receives the Royal Assent, payments were made to the National Rail Corporation Limited (the **“Company”**) from the Australian Land Transport Development Trust Fund in respect of a project to which this section applies; and
- (b) the Commonwealth and the other shareholders of the Company have, during that period, agreed, or subsequently agree, that, in return for the payments, there will be issued to the Commonwealth shares in the Company having a nominal value equivalent to the payments;

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

the payments are to be treated as if they had been properly made as additional capital contributions in respect of the project under paragraph 15(1)(ba) of the *Australian Land Transport Development Act 1988* as amended by this Act.

(2) In subsection (1):

“**project to which this section relates**” means any of the following projects:

- (a) the upgrading of the Sydney-Melbourne line;
- (b) the upgrading of the Sydney-Brisbane line;
- (c) the upgrading of the Dynon Freight Terminal.

Application—subsection 30(2) of the *Seafarers Rehabilitation and Compensation Act 1992*

7.(1) The amendment of subsection 30(2) of the *Seafarers Rehabilitation and Compensation Act 1992* contained in item 94 of the Schedule applies only in respect of a funeral that takes place after this section commences.

(2) In relation to that amendment, the first relevant year for the purposes of the application of section 23 of that Act is the period of 12 months beginning on 1 July 1993.

Application—section 39 of the *Seafarers Rehabilitation and Compensation Act 1992*

8. The amendment of subsection 39(8) of the *Seafarers Rehabilitation and Compensation Act 1992* contained in item 95 of the Schedule applies only in respect of a claim under that Act that is made after this section commences.

Application—sections 28, 49 and 50 of the *Seafarers Rehabilitation and Compensation Act 1992*

9. The amendments of sections 28, 49 and 50 of the *Seafarers Rehabilitation and Compensation Act 1992* contained in items 91, 92, 97, 98, 99 and 100 of the Schedule apply only in respect of journeys made after this section commences.

SCHEDULE

Section 3

AMENDMENTS OF ACTS

Air Navigation Act 1920

1. After paragraph 3A(2)(h):

Insert:

“(i) the Protocol inserting in the Convention Article 83 bis, approved by the Assembly of the International Civil Aviation Organization on 6 October 1980; and”.

2. Section 4:

After “9” insert “, 9A”.

3. After Schedule 9:

Insert:

“SCHEDULE 9A

Section 4

PROTOCOL

relating to an amendment to the
Convention on International Civil Aviation
signed at Montreal on 6 October 1980

**THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION**

HAVING MET in its Twenty-third Session at Montreal on 6 October 1980,

HAVING NOTED Resolutions A21-22 and A22-28 on lease, charter and interchange of aircraft in international operations,

HAVING NOTED the draft amendment to the Convention on International Civil Aviation prepared by the 23rd Session of the Legal Committee,

HAVING NOTED that it is the general desire of Contracting States to make a provision for the transfer of certain functions and duties from the State of registry to the State of the operator of the aircraft in the case of lease, charter or interchange or any similar arrangements with respect to such aircraft,

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994

SCHEDULE—continued

Insert after Article 83 the following new Article 83 *bis*:

‘Article 83 bis

Transfer of certain functions and duties

(a) Notwithstanding the provisions of Articles 12, 30, 31 and 32(a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32(a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.

(b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.

(c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77.’,

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, ninety-eight as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force, and
3. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the English, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the proposed amendment above-mentioned and the matter hereinafter appearing:
 - a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
 - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.
 - c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

- d) The protocol shall come into force in respect of the States which have ratified it on the date on which the ninety-eighth instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all States parties to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,
This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Twenty-third Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montreal on the sixth day of October of the year one thousand nine hundred and eighty, in a single document in the English, French, Russian, and Spanish languages, each of which shall be of equal authenticity. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all States parties to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.”.

Australian Land Transport Development Act 1988

4. Title:

Repeal the title, substitute:

“An Act to establish a Trust Fund for the purposes of the development and maintenance of land transport systems, and for related purposes”.

5. After paragraph 15(1)(b):

Insert:

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(ba) to an approved railway authority for payment as an additional capital contribution in respect of a capital railway project to be undertaken by the authority;”.

6. Section 15:

Add at the end:

“(3) An amount is not to be paid out of the Fund to an approved railway authority as an additional capital contribution in respect of a capital railway project to be undertaken by the authority unless:

- (a) in response to an invitation from the Minister under paragraph 26(1)(c), the authority has submitted to the Minister particulars of the project; and
- (b) if the authority has a corporate plan—the Minister is satisfied that the undertaking of the project by the authority is consistent with the plan; and
- (c) it has been agreed:
 - (i) if the authority is incorporated under the Corporations Law of a State or of an internal Territory and the Commonwealth is a shareholder in the authority—between the other shareholders and the Commonwealth; or
 - (ii) in any other case—between the authority and the Commonwealth;
that shares in the authority having an equivalent nominal value to the payment from the Fund will be issued to the Commonwealth:
 - (iii) on payment from the Fund to the authority of all of the additional capital contributions proposed in respect of that project; or
 - (iv) at such later time as is agreed.”.

7. Before section 29:

Insert in Part IV:

Manner of application of this Part to different payments from Fund

“28A.(1) The provisions of this Part apply to all payments from the Fund under paragraph 15(1)(a), (b), (c) or (d).

“(2) Subject to subsection (3), the provisions of this Part apply in respect of payments from the Fund under paragraph 15(1)(ba) in respect of projects of approved railway authorities:

- (a) as if, so far as assets acquired under those projects are concerned, paragraph 32(1)(n) were omitted; and
- (b) as if section 31 and paragraph 32(1)(p) were omitted.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(3) If an approved railway authority to which payment is made under paragraph 15(1)(ba) is a company incorporated under the Corporations Law of a State or of an internal Territory, the obligations of the authority and of its directors and of officers under subsection (2) apply only to the extent that those obligations are consistent with obligations of the authority and of its directors and officers under that Corporations Law.”.

8. Section 32:

Add at the end:

“(3) Paragraph 32(1)(n) does not apply:

(a) to the sale or other disposal to the National Rail Corporation Limited of an asset; or

(b) to the granting to the National Rail Corporation Limited of a lease of an asset having a term of at least 20 years;

in accordance with subclause 5(5) of the Agreement set out in the Schedule to the *National Rail Corporation Agreement Act 1992*.

Australian Maritime Safety Authority Act 1990

9. Subsection 26(2):

Omit “reasonable”, substitute “reasonably”.

Australian National Railways Commission Act 1983

10. Subsections 43(4), (5) and (6):

Omit “\$1,000 or imprisonment for 6 months, or both”, substitute “Imprisonment for 6 months”.

11. Subsection 66A(7):

(a) Omit all words from and including “punishable”.

(b) Add at the end:

“Penalty: 10 penalty units.”.

12. Subsection 69(1):

After “railway” insert “owned or”.

13. Subsection 69(2):

After “railways” insert “owned or”.

14. Subsection 70(1):

After “railway” insert “owned or”.

15. Subsection 78(1):

(a) Omit “shall not do any act or thing that, to his knowledge,”, substitute “must not, intentionally or recklessly, do any act or thing that”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

(b) Omit “\$20,000 or imprisonment for 10 years, or both”, substitute “Imprisonment for 10 years”.

16. Subsections 78(3) and (4):

Omit the subsections.

17. Paragraph 79(1)(h):

Omit “a fine of \$500 for breaches”, substitute “15 penalty units for each breach”.

18. Section 80:

Omit “a fine of \$500 for offences”, substitute “15 penalty units for each offence”.

Civil Aviation Act 1988

19. Subsection 3(1):

Insert:

“**‘Council’** means the Council of the International Civil Aviation Organization;

‘country where the aircraft is registered’, in relation to an aircraft registered under a joint registration plan or an international registration plan, means any Contracting State that is a member of the international operating agency that established the plan;

‘domestic commercial flight’ means a flight:

- (a) that is undertaken wholly within Australia for a purpose prescribed as a commercial purpose for the purposes of subsection 27(9); and
- (b) that is not undertaken as a part of a flight into or out of Australian territory;

‘foreign registered aircraft’ means an aircraft registered:

- (a) in a foreign country; or
- (b) under a joint registration plan or an international registration plan;

‘international operating agency’ has the same meaning as in the Civil Aviation Regulations;

‘international registration plan’ has the same meaning as in the Civil Aviation Regulations;

‘joint registration plan’ has the same meaning as in the Civil Aviation Regulations;

‘time-in-service’, in relation to an aircraft, has the same meaning as in the Civil Aviation Regulations;”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

20. Subsection 3(1) (definition of “Australian aircraft”):

Add at the end:

“Note: Some references to Australian aircraft may be affected by the operation of section 4A.”.

21. Subsection 3(1):

Insert:

“‘**83 bis agreement**’ means an agreement entered into under Article 83 bis of the Chicago Convention;”.

22. After section 4:

Insert:

Application to aircraft subject to 83 bis agreements

“4A.(1) In this section:

‘**function**’ includes duties;

‘**this Act**’ includes the regulations.

“(2) Despite anything in this Act, a provision in this Act (the ‘**applied provision**’) applies to an aircraft that is registered in a Contracting State as if the aircraft were an Australian aircraft if:

- (a) an 83 bis agreement to which Australia is a party and which is in force has the effect of transferring a function of the Contracting State as the State of registry in respect of the aircraft to Australia; and
- (b) the agreement states that the applied provision relates to that function.

“(3) Despite anything in this Act, a provision in this Act (the ‘**disapplied provision**’) does not apply to an Australian aircraft if:

- (a) an 83 bis agreement to which Australia is a party and which is in force has the effect of transferring a function of Australia as the State of registry in respect of the aircraft to a Contracting State; and
- (b) the agreement states that the disapplied provision relates to that function.

“(4) Despite anything in this Act, a reference in this Act (other than subsections (2) and (3) of this section) to or in relation to:

- (a) a Contracting State in which an aircraft is registered;

includes a reference to or in relation to:

- (b) another Contracting State to which any function of the State of registry in respect of that aircraft has been transferred under an 83 bis agreement that has effect in relation to Australia in accordance with Article 83 bis of the Chicago Convention.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(5) If:

(a) Australia has entered into an 83 bis agreement; or

(b) an 83 bis agreement to which Australia is a party has been amended;

the Authority must, as soon as practicable, publish a *Gazette* notice setting out particulars of the agreement or amendment.

“(6) Without limiting subsection (5), the notice must set out:

(a) the Contracting State that is the other party to the agreement; and

(b) the date of commencement of the agreement or amendment; and

(c) the aircraft to which the agreement or amendment relates; and

(d) the functions of the State of registry in respect of the aircraft that are transferred under the agreement or amendment; and

(e) the provisions of this Act that are stated in the agreement or amendment to be related to the functions.

“(7) If an 83 bis agreement has ceased to be in force, the Authority must, as soon as practicable, publish a *Gazette* notice setting out particulars of that cessation.

“(8) A notice under subsection (5) or (7) is evidence of the matters stated in it.”.

23. After paragraph 7(a):

Insert:

“(aa) foreign aircraft specified in any 83 bis agreement that has the effect of transferring functions or duties; and”.

24. Before paragraph 7(b):

Insert:

“(ab) the provision of services referred to in section 10A; and”.

25. Paragraph 7(b):

Insert “subject to any 83 bis agreement,” before “Australian aircraft”.

26. After section 10:

Insert:

Additional functions—consultancy services for foreign countries or agencies

“10A.(1) The Authority may, under a contract with a foreign country or with an agency of a foreign country, provide consultancy services for that country or agency in relation to the regulation of the safety of air navigation or any other matter in which the Authority has expertise.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(2) Those services may include the performance of regulatory functions in relation to foreign aircraft under the law of a foreign country.”.

27. Subsection 19(3):

Omit “Penalty: \$500.”, substitute “Penalty: 5 penalty units.”.

28. Subsection 23A(2):

Omit “Penalty: \$3,000.”, substitute “Penalty: 30 penalty units.”.

29. Subsection 23B(2):

Omit “Penalty: \$3,000.”, substitute “Penalty: 30 penalty units.”.

30. Subsection 27(2):

Omit “Except as authorised by a Certificate”, substitute “Except as authorised by a Certificate, or by a permission under section 27A”.

31. After subsection 27(2):

Insert:

“(2A) A Certificate may authorise the flying or operation of an aircraft, other than the operation of a foreign registered aircraft on domestic commercial flights, by authorising the flying or operation of aircraft included in a class of aircraft described in the Certificate.

“(2B) A Certificate may be issued only to a natural person or to a body having legal personality.”.

32. After section 27:

Insert:

**Permission for operation of foreign registered aircraft
without Air Operator’s Certificate**

“27A.(1) If:

- (a) a person wishes to operate a foreign registered aircraft on domestic commercial flights; and
- (b) the Authority has not entered into an agreement of a kind referred to in paragraph 28A(1)(a) that is necessary to permit the issue of an Air Operator’s Certificate authorising that operation;

the person may apply for a permission for the aircraft to be so operated.

“(2) The Authority may only grant the permission if it is satisfied that to do so will not adversely affect the safety of air navigation.

“(3) The permission may be granted only for a period of not more than 7 days specified in the permission starting on a day specified in the permission.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(4) A permission has effect subject to any conditions relating to the operation, maintenance and airworthiness of the aircraft covered by the permission:

- (a) that the Authority considers necessary in the interests of the safety of air navigation; and
- (b) that are specified by the Authority in the permission.

“(5) The Authority may, at any time, by written notice given to the holder of the permission, vary the conditions or impose further conditions if the Authority considers it necessary to do so in the interests of the safety of air navigation.

“(6) If the Authority becomes satisfied that it is necessary to do so in the interests of the safety of air navigation, it may, by oral or written notice given to the holder of a permission given under this section, cancel the permission.”.

33. Section 28:

Repeal the section, substitute:

Exercise of discretion by Authority

“28.(1) If:

- (a) a person applies for a permission under this Part (other than a permission under section 27A); and
- (b) the Authority is satisfied that the applicant has complied with, or established the capability to comply with, the provisions of this Act, and of the regulations, that relate to safety, including provisions relating to the competence of persons to do anything that would be covered by the permission;

the Authority must give the permission.

“(2) If:

- (a) a person applies for an Air Operator’s Certificate under this Part; and
- (b) the Authority is satisfied that the applicant has complied with, or established the capability to comply with, the provisions of this Act, and of the regulations, that relate to safety, including provisions relating to the competence of persons to do anything that would be covered by the Certificate; and
- (c) if the Certificate sought will authorise the operation of a foreign registered aircraft on domestic commercial flights—the Authority is also satisfied that the additional conditions referred to in subsection 28A(1) have been met;

SCHEDULE—continued

the Authority must issue the Certificate.

“(3) The Authority must not, under this Part:

- (a) impose or vary a condition in respect of a permission other than a permission under section 27A; or
- (b) suspend or cancel such a permission;

except for the purpose of ensuring compliance with the provisions of this Act, and of the regulations, that relate to safety.

“(4) Subject to subsection (6), the Authority must not:

- (a) impose or vary a condition of an Air Operator’s Certificate that is not a mixed authority Certificate and that authorises the operation of a foreign registered aircraft on domestic commercial flights; or
- (b) impose or vary a condition relating to the authorisation of the operation of a foreign registered aircraft on domestic commercial flights that is contained in a mixed authority Certificate; or
- (c) suspend or cancel an Air Operator’s Certificate of the kind to which paragraph (a) applies or an authorisation of the kind to which paragraph (b) applies;

except to ensure that the aircraft’s operation, maintenance and airworthiness are of a standard that the Authority considers necessary in the interests of the safety of air navigation.

“(5) Subject to subsection (6), the Authority must not:

- (a) impose or vary a condition of an Air Operator’s Certificate that does not authorise the operation of a foreign registered aircraft on domestic commercial flights; or
- (b) impose or vary a condition relating to any authorisation of an operation (other than the operation of a foreign registered aircraft on domestic commercial flights) that is contained in a mixed authority Certificate; or
- (c) suspend or cancel an Air Operator’s Certificate of the kind to which paragraph (a) applies or an authorisation of the kind to which paragraph (b) applies;

except to ensure compliance with the provisions of this Act, and of the regulations, relating to safety.

“(6) If a person to whom an Air Operator’s Certificate is issued makes a written request to the Authority for the revocation of the Certificate, the Authority must cancel the Certificate.

“(7) In this section:

‘mixed authority Certificate’ means an Air Operator’s Certificate authorising:

Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994

SCHEDULE—continued

- (a) the operation of a foreign registered aircraft on domestic commercial flights; and
- (b) other operations.

Additional conditions for issue of Air Operator’s Certificate in relation to certain foreign registered aircraft

“28A.(1) The additional conditions of which the Authority must be satisfied for the purposes of paragraph 28(2)(c) are:

- (a) that the Authority has entered into agreements with:
 - (i) the authority responsible for regulating civil aviation in the country where the aircraft is registered; and
 - (ii) if, when the application for the Certificate is made, the aircraft is operating in another country under an Air Operator’s Certificate, or a document to substantially the same effect, issued by the authority responsible for regulating civil aviation in that other country (a ‘**foreign certificate**’)—the body that issued the foreign certificate; and
- (b) that each agreement sets out the areas of responsibility of the parties to the agreement in relation to the supervision of flight operations, the maintenance, and the airworthiness, of aircraft covered by the agreement; and
- (c) that the applicant has informed the Authority:
 - (i) of the aircraft’s type, serial number and registration marks; and
 - (ii) of the country where the aircraft is registered; and
 - (iii) of the name and address of the person in whose name the aircraft is registered; and
- (d) that the applicant has informed the Authority:
 - (i) of the age and total time-in-service of the aircraft; and
 - (ii) of the country in which any person who operated the aircraft in the period of one year immediately before the application for the certificate had his or her principal place of business; and
 - (iii) of the country or countries in which maintenance, other than daily maintenance, was carried out on the aircraft during that year; and
- (e) that the applicant has given the Authority a copy of either:
 - (i) the certificate of airworthiness of the aircraft; or
 - (ii) a document to substantially the same effect as such a certificate;

SCHEDULE—continued

- that was issued by the authority responsible for regulating civil aviation in the country where the aircraft is registered; and
- (f) that the applicant has given the Authority a statement that the aircraft complies with the airworthiness requirements of Annex 8 of the Chicago Convention or with such other airworthiness standard as the Authority directs; and
 - (g) if the aircraft is leased—that the applicant has given the Authority:
 - (i) the name and address of the person responsible for operational control of the aircraft under the lease agreement (whether or not that person is the applicant); and
 - (ii) a statement signed by that person to the effect that that person, together with the other parties to the lease agreement, understand their respective responsibilities under the applicable regulations; and
 - (h) if the aircraft is leased—that the applicant for the certificate has given the Authority a description of the lease provisions.

“(2) In this section:

‘daily maintenance’, in relation to an aircraft, means maintenance carried out on a daily basis, and, without limiting the generality of the expression, includes pre-flight inspections and servicing but does not include:

- (a) scheduled maintenance of the aircraft; or
- (b) checks of the aircraft’s systems; or
- (c) maintenance of the aircraft to comply with an airworthiness directive issued by an authority responsible for civil aviation; or
- (d) any modifications of, or repairs to, the aircraft.”.

34. Subsection 30A(6):

Omit “Penalty: \$3,000.”, substitute “Penalty: 30 penalty units.”.

35. Section 30A:

Add at the end:

“(9) In this section:

‘civil aviation authorisation’ includes an Air Operator’s Certificate.”.

36. Subsection 32AB(3):

Omit the subsection, substitute:

“(3) A person must not, without reasonable excuse, fail to comply with subsection (2).

Penalty: 1 penalty unit.”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

37. Subsection 32AJ(2):

Omit “Penalty: \$3,000.”, substitute “Penalty: 30 penalty units.”.

38. Subsection 32AK(2):

Omit “Penalty: \$3,000.”, substitute “Penalty: 30 penalty units.”.

39. Subsection 65(7):

Omit “, and the person shall comply with the requirement”.

40. Subsection 65(8):

Omit the subsection, substitute:

“(8) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (7).

Penalty: 2 penalty units.”.

41. Subsections 66(2A), (3A), (3B), (5A) and (6A):

Omit “*Prices Surveillance Authority Act 1983*”, substitute “*Prices Surveillance Act 1983*”.

42. Paragraph 98(3)(p):

Omit “\$5,000.”, substitute “50 penalty units.”.

Civil Aviation (Carriers’ Liability) Act 1959

43. Section 22H:

Renumber the section as section 25H.

Federal Airports Corporation Act 1986

44. Subsection 16(3):

Omit “*Tribunals*”, substitute “*Tribunal*”.

45. Subsection 42(1):

Omit “section (1A)”, substitute “subsection (1A)”.

46. Subsections 56(2A), (4A), (4B), (6A) and (7AA):

Omit “*Prices Surveillance Authority Act 1983*”, substitute “*Prices Surveillance Act 1983*”.

47. Paragraph 72(1)(h):

Insert “or Federal airport development sites” after “Federal airport”.

48. Paragraph 72(1)(p):

Insert “or Federal airport development sites” after “Federal airport”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

49. Paragraph 72(1)(q):

Insert “or Federal airport development sites” after “Federal airport”.

Interstate Road Transport Act 1985

50. Subsection 4A(6):

Omit “to” (fourth occurring).

Lighthouses Act 1911

51. Subsection 8(2):

Omit “the Minister or any authorized officer”, substitute “the Authority or authorised person”.

Navigation Act 1912

52. Subsection 6(1) (paragraph (c) of the definition of “consul”):

Omit “d’affaires”, substitute “d’affaires”.

53. Subsection 6(1) (definition of “ship”):

After “except in” insert “Part IIIA, in”.

54. Subsection 15(1A):

Omit the subsection.

55. Paragraph 15(2)(a):

Omit all the words after “to be evidenced,”, substitute “including, in particular, the obtaining of certificates and other documents to be held by masters, officers and seamen as evidence that they are qualified masters, officers or seamen of particular designations for the purposes of this Act;”.

56. Paragraphs 15(2)(d) and (e):

Omit “, seamen and pilots”, substitute “and seamen”.

57. Subsection 139(1):

Omit the penalty.

58. Subsection 139(2):

Add at the end the following penalty:
“Penalty: 10 penalty units.”.

59. Subsection 173(2):

Omit “paragraph (1)(b)”, substitute “subsection (1)”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

60. After Part III:

Insert:

“PART IIIA—PILOTAGE

Application of Part

“186A.(1) In this section:

‘Australian coastal sea’ has the same meaning as in section 8.

“(2) This Part applies only to pilots and pilotage in relation to ships in, or in transit to or from, any part of Australian coastal sea that is specified in the regulations.

“(3) Subject to subsection (1), this Part applies to all ships, including ships to which Part II does not apply.

“(4) Section 2 does not have effect in relation to a provision of this Part.

“(5) This Part is not intended to affect the operation of any law of a State or Territory governing pilots or pilotage in relation to a port in the State or Territory.”.

Definitions:

“186B. In this Part:

‘certificate’ includes a licence issued to a pilot under regulations made under section 186C;

‘licensed pilot’ means a person who is licensed as a pilot under this Act.

Qualifications of pilots etc.

“186C.(1) For the purposes of this Part, the regulations may make provisions in relation to:

- (a) standards of competence to be attained; and
- (b) other conditions to be satisfied by a person in order to be licensed as a pilot under this Act; and
- (c) licensing of pilots.

“(2) Without limiting subsection (1), the conditions may include conditions as to age, character, health, nationality, citizenship or residence.

“(3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision in relation to any of the following:

- (a) the manner in which the attainment of a standard or the satisfaction of a condition is to be evidenced, including the obtaining of certificates and other documents to be held by pilots as evidence that they are licensed as pilots under this Act;

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

- (b) the issue, recall, surrender, replacement, form and recording of such certificates and other documents;
- (c) the duration, variation, renewal, suspension and cancellation of such certificates and other documents;
- (d) the instruction, training and examination of pilots, including the gaining of sea service and other experience, the conduct of examinations, the conditions for admission to examinations and the appointment and remuneration of examiners;
- (e) the recognition, for the purposes of this Act, in whole or in part and whether conditionally or unconditionally, of certificates and other documents granted or issued to or in respect of pilots under this Act as in force before this section's commencement, or under the laws of a State or Territory;
- (f) the reconsideration of decisions made under regulations made for the purposes of subsection (1);
- (g) the exemption of persons, in whole or in part and whether conditionally or unconditionally, from any requirement under regulations made for the purposes of subsection (1).

“(4) In subsection (3), ‘**decision**’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Regulations may make other provisions relating to pilotage etc.

“186D. For the purposes of this Part, the regulations may also make provisions in relation to:

- (a) the duties of a licensed pilot and the manner in which a licensed pilot is to discharge his or her duties; and
- (b) the professional relationship between a licensed pilot and the master or other officers of a ship, including provisions in relation to the professional liability of a licensed pilot and limitation of that liability; and
- (c) the keeping and maintaining by a licensed pilot of records relating to pilotage carried out by the pilot.

Unqualified person performing duties of licensed pilot

“186E.(1) A person who is not a licensed pilot must not knowingly:

- (a) represent himself or herself to be a licensed pilot; or
- (b) without reasonable excuse, perform duties that are the duties of a licensed pilot under the regulations.

Penalty: 20 penalty units.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(2) A person must not knowingly take another person who is not a licensed pilot into employment to perform duties that, under the regulations, are the duties of a licensed pilot.

Penalty: 20 penalty units.

Abuse of alcohol and other drugs

“186F.(1) If a licensed pilot is, while on board a ship, under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person’s capacity to carry out the person’s duties as pilot is impaired, the person is guilty of an offence.

Penalty: Imprisonment for 12 months.

“(2) If:

(a) a licensed pilot is, while on board a ship, under the influence of alcohol or any other drug (whether medicinal or otherwise) to such an extent that the person’s capacity to carry out the person’s duties as pilot is impaired; and

(b) the impairment causes or contributes to:

(i) the loss or destruction of, or damage to, the ship, its cargo or equipment; or

(ii) the loss or destruction of, or damage to, another ship, its cargo or equipment; or

(iii) death or injury to another person;

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.”.

61. Subsection 329B(1):

Omit “322,”.

62. Subsection 389A(6):

Omit “or seaman”, substitute “, seaman or pilot that is issued under this Act”.

63. Section 389A:

Add at the end:

“(7) For the purposes of subsection (6), ‘**certificate**’, in relation to a pilot, includes a licence issued to a pilot under regulations made under section 186C.”.

64. Subsection 397(2):

Omit “subsections 125(1),”, substitute “subsection 125(1), section 186E, subsections”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

65. Section 401:

Add at the end:

“(4) In this section:

‘**certificate**’ includes a licence issued to a pilot under regulations made under section 186C.”.

66. Subsection 410(1):

Add at the end the following penalty:

“Penalty: 5 penalty units.”.

67. Subsection 425(1AA):

After “III,” insert “IIIA.”.

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

68. Schedule 13 (clause 5 of the Preamble to Resolution MEPC.51(32)):

Omit “MAROL”, substitute “MARPOL”.

69. Schedule 13 (paragraph (3)(a) of new Regulation 16):

Omit “requirements”, substitute “requirements”.

Qantas Sale Act 1992

70. Part 5 of the Schedule (amendment of the *Federal Airports Corporation Act 1986*):

Omit the amendment, substitute:

Federal Airports Corporation Act 1986

71. Subsection 3(1) (paragraph (g) of the definition of ‘authority of the Commonwealth’):

Omit ‘, other than Qantas Airways Limited’.”.

Seafarers Rehabilitation and Compensation Act 1992

72. Section 3 (definitions of “Comcare” and “Comcare officer”):

Omit “CERC Act”, substitute “*Safety Rehabilitation and Compensation Act 1988*”.

73. Section 3 (definition of “trainee”):

Omit the definition, substitute:

“‘**trainee**’ means:

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

- (a) a company trainee; or
- (b) an industry trainee;”.

74. Section 3 (definition of “CERC Act”):

Omit the definition.

75. Section 3:

Insert:

“**‘authorised insurer’** means a general insurance company under the *Insurance Act 1973* or an insurer that carries on State insurance (whether or not the State insurance extends beyond the limits of the State concerned);

‘company trainee’ means a person (other than an industry trainee) who:

- (a) although ordinarily employed or engaged as a seafarer, is not so employed or engaged but is undergoing a training course as required by his or her employer; or
- (b) is undergoing a training course as required by his or her employer before becoming a seafarer;

‘industry trainee’ means a person (other than a company trainee) who:

- (a) although ordinarily employed or engaged as a seafarer, is not so employed or engaged but is undergoing an approved industry training course; or
- (b) is undergoing an approved industry training course before becoming a seafarer;

‘journey’, in relation to a journey to which subsection 28(6), 49(6A) or 50(2A) applies, includes part of that journey;”.

76. Subsection 4(1) (paragraph (b) of the definition of “employee”):

Omit the paragraph, substitute:

- “(b) a company trainee; or
- (ba) an industry trainee; or”.

77. Subsection 4(1) (paragraph (c) of the definition of “employee”):

After “person” insert “(other than a company trainee or an industry trainee)”.

78. Subsection 4(2):

Omit the subsection, substitute:

“(2) For the purposes of this Act, an industry trainee or a person mentioned in paragraph (c) of the definition of ‘employee’ is taken to be employed by the Fund until he or she next becomes a seafarer, and his or her employment is taken to be constituted by his or her attendance:

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

- (a) in the case of an industry trainee—at an approved industry training course; and
- (b) in the case of a person mentioned in paragraph (c) of the definition of ‘employee’—at a Seafarers Engagement Centre for the purpose of registering availability for employment or engagement on a prescribed ship.”.

79. Subsection 4(3):

- (a) After “seafarer” (first occurring) insert “or of a company trainee”.
- (b) After “seafarer” (second occurring) insert “or company trainee”.

80. Paragraph 9(2)(c):

Omit “prescribed”, substitute “required”.

81. Paragraph 9(2)(d):

Insert “if the employee is a person mentioned in paragraph (c) of the definition of ‘employee’ in subsection 4(1)—” before “while”.

82. Subparagraph 9(2)(e)(v):

Omit “an approved industry training course”, substitute “a required course of training”.

83. Subsection 9(3):

Omit “(1)(e)(i)”, substitute “(2)(e)(i)”.

84. Subsection 9(4):

Omit “(1)”, substitute “(2)”.

85. Section 9:

Add at the end:

“(5) In this section:

‘required course of training’ means:

- (a) in relation to a company trainee—a training course that the trainee was required by the employer to undergo; or
- (b) in relation to an industry trainee—an approved industry training course.”.

86. Subsection 13(5):

Omit “industrial agreement”, substitute “certified agreement”.

87. Paragraph 13(6)(b):

Omit “industrial agreement”, substitute “certified agreement”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

88. After subsection 19(1):

Insert:

“(1A) In addition, this Act applies to the employment of employees on any prescribed ship that is:

- (a) an off-shore industry vessel in relation to which a declaration under subsection 8A(2) of the Navigation Act is in force; or
- (b) a trading ship in relation to which a declaration under subsection 8AA(2) of that Act is in force.”.

89. Subsection 19(5):

Omit “This Act does not apply”, substitute “Subsection (3) does not have the effect of applying this Act”.

90. Section 20:

Omit “CERC Act”, substitute “*Safety Rehabilitation and Compensation Act 1988*”.

91. Subsections 28(6) and (7):

Omit the subsections, substitute:

“(6) Subject to subsection (7), if compensation in respect of the cost of medical treatment is payable under subsection (1), the employer is liable to pay to the employee an amount of compensation in respect of expenditure reasonably incurred by the employee in doing either or both of the following:

- (a) making a journey necessary for the purpose of obtaining that medical treatment;
- (b) remaining, for the purpose of obtaining that treatment, at a place to which the employee has made a journey for that purpose.

“(6A) The amount of compensation that the employer is liable to pay in respect of the journey is:

- (a) in relation to a journey by means of public transport or ambulance services—an amount equal to the expenditure reasonably incurred in undertaking that journey; or
- (b) in relation to a journey by means of private motor vehicle—an amount worked out using the formula:

Specified rate per kilometre × Number of kilometres travelled

where:

‘**Specified rate per kilometre**’ means such rate per kilometre as the Minister specifies by written notice under this paragraph in respect of journeys to which this paragraph applies;

SCHEDULE—continued

‘Number of kilometres travelled’ means the number of whole kilometres that the employer determines to have been the reasonable length of such a journey (including the return part of the journey).

“(6B) The amount of compensation that the employer is liable to pay in respect of the employee remaining at a place for the purpose of obtaining the treatment is an amount equal to the expenditure so reasonably incurred in remaining for that purpose.

“(7) Compensation is not payable under subsection (6) unless:

- (a) in relation to a journey to which paragraph (6A)(a) applies—the employee’s injury reasonably required the use of public transport or ambulance services (as the case may be) regardless of the distance involved; or
- (b) in relation to a journey to which paragraph (6A)(b) applies—the reasonable length of such a journey exceeded 50 kilometres.”.

92. Subsection 28(8):

After “(6)” insert “, (6A), (6B)”.

93. Subsection 29(10):

Omit “this section”, substitute “subsection (3) or (4)”.

94. Subsection 30(2):

Omit “\$1,889.60”, substitute “\$3,500”.

95. Subsection 39(8):

Omit the subsection, substitute:

“(8) Subsection (7) does not apply to one or more of the following:

- (a) the impairment constituted by the loss, or the loss of the use, of a finger;
- (b) the impairment constituted by the loss, or the loss of the use, of a toe;
- (c) the impairment constituted by the loss of the sense of taste;
- (d) the impairment constituted by the loss of the sense of smell.”.

96. Section 48:

Omit “CERC Act”, substitute “*Safety Rehabilitation and Compensation Act 1988*”.

97. Subsection 49(6):

Omit all the words after “examination of an employee”.

98. After subsection 49(6):

Insert:

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“(6A) Subject to subsection (6C), the employer is liable to pay to the employee an amount of compensation in respect of expenditure reasonably incurred by the employee in doing either or both of the following:

- (a) making a journey necessary for the purpose of undergoing the examination;
- (b) remaining, for the purpose of undergoing the examination, at a place to which the employee has made a journey for that purpose.

“(6B) The amount of compensation that the employer is liable to pay in respect of the journey is:

- (a) in relation to a journey by means of public transport or ambulance services—an amount equal to the expenditure reasonably incurred in undertaking that journey; or
- (b) in relation to a journey by means of private motor vehicle—an amount worked out using the formula:

Specified rate per kilometre × Number of kilometres travelled

where:

‘**Specified rate per kilometre**’ means such rate per kilometre as the Minister specifies by written notice under this paragraph in respect of journeys to which this paragraph applies;

‘**Number of kilometres travelled**’ means the number of whole kilometres that the employer determines to have been the reasonable length of such a journey (including the return part of the journey).

“(6C) The amount of compensation that the employer is liable to pay in respect of the employee remaining at a place for the purpose of undergoing the examination is an amount equal to the expenditure so reasonably incurred in remaining for that purpose.

“(6D) Compensation is not payable under subsection (6A) unless:

- (a) in relation to a journey to which paragraph (6B)(a) applies—the employee’s injury reasonably required the use of public transport or ambulance services (as the case may be) regardless of the distance involved; or
- (b) in relation to a journey to which paragraph (6B)(b) applies—the reasonable length of such a journey exceeded 50 kilometres.”.

99. Subsection 49(7):

Omit “subsection (6)”, substitute “subsections (6A), (6B), (6C) and (6D)”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

100. After subsection 50(2):

Insert:

“(2A) Subject to subsection (2C), the employer is liable to pay to the employee an amount of compensation in respect of expenditure reasonably incurred by the employee in doing either or both of the following:

- (a) making a journey necessary for the purpose of undertaking the rehabilitation program;
- (b) remaining, for the purpose of undertaking the program, at a place to which the employee has made a journey for that purpose.

“(2B) The amount of compensation that the employer is liable to pay in respect of the journey is:

- (a) in relation to a journey by means of public transport or ambulance services—an amount equal to the expenditure reasonably incurred in undertaking that journey; or
- (b) in relation to a journey by means of private motor vehicle—an amount worked out using the formula:

Specified rate per kilometre × Number of kilometres travelled

where:

‘**Specified rate per kilometre**’ means such rate per kilometre as the Minister specifies by written notice under this paragraph in respect of journeys to which this paragraph applies;

‘**Number of kilometres travelled**’ means the number of whole kilometres that the employer determines to have been the reasonable length of such a journey (including the return part of the journey).

“(2C) The amount of compensation that the employer is liable to pay in respect of the employee remaining at a place for the purpose of undertaking the rehabilitation program is an amount equal to the expenditure so reasonably incurred in remaining for that purpose.

“(2D) Compensation is not payable under subsection (2A) unless:

- (a) in relation to a journey to which paragraph (2B)(a) applies—the employee’s injury reasonably required the use of public transport or ambulance services (as the case may be) regardless of the distance involved; or
- (b) in relation to a journey to which paragraph (2B)(b) applies—the reasonable length of such a journey exceeded 50 kilometres.

“(2E) In deciding questions arising under subsections (2A), (2B), (2C) and (2D), the employer must have regard to the following matters:

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

- (a) the means of transport available to the employee for the journey;
- (b) the route or routes by which the employee could have travelled;
- (c) the accommodation available to the employee.”.

101. Subsection 59(1):

Omit “This section”, substitute “Subject to subsection (1A), this section”.

102. After subsection 59(1):

Insert:

“(1A) A reference in subsection (1) to compensation paid for the benefit of a dependant under this Act does not include a reference to compensation paid under subsection 29(5).”.

103. Section 65:

Repeal the section, substitute:

Claims may not be made in certain cases

“65. If an amount is paid for the benefit of a dependant of a deceased employee under subsection 29(3) or (4), no other dependant of that employee is entitled to claim compensation under either of those subsections after the day on which that amount is so paid.”.

104. After subsection 66(1):

Insert:

“(1A) An employee must not be required to be examined by more than one legally qualified medical practitioner in any examination that the employee is required to undergo under subsection (1).”.

105. Subsection 93(4):

Omit the subsection.

106. Subsection 97(4):

Omit the subsection.

107. Subsection 119(3):

Omit the subsection, substitute:

“(3) At a meeting of the Authority:

- (a) the quorum is formed by at least 3 members; and
- (b) the following members must be present:

- (i) at least one member referred to in paragraph 109(a) or (b); and

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

- (ii) at least one member referred to in paragraph 109(c); and
- (iii) at least one member referred to in paragraph 109(d).”.

108. Subsection 119(7):

Omit “and the Deputy Chairperson is present at the meeting”.

109. Subsection 119(8):

Omit the subsection.

110. Paragraph 129(1)(d):

Omit “policy or insurance”, substitute “policy of insurance”.

111. Paragraph 130(4)(b):

Omit “or”.

112. Paragraph 130(4)(c):

Omit the paragraph.

113. Section 142:

(a) After “10(1)(b),” insert “paragraph 28(6A)(b),”.

(b) After “44(3),” insert “paragraph 49(6B)(b) or 50(2B)(b), or subsection”.

Seafarers Rehabilitation and Compensation Levy Act 1992

114. Section 7:

Add at the end:

“(2) Before advising the Governor-General about the making of a regulation under subsection (1), the Minister must consult the Authority with respect to the following matters:

- (a) the need to ensure that the Fund has adequate financial reserves for the purposes of its prudential management;
- (b) reasonable estimates of the Fund’s present and future liabilities under the *Seafarers Rehabilitation and Compensation Act 1992*;
- (c) the cost of administering the Authority in connection with the performance or exercise of the Fund’s functions, powers and obligations under that Act.

“(3) A failure to consult as required by subsection (2) does not affect the validity of a regulation made under subsection (1).”.

Telecommunications Act 1991

115. Section 5:

Insert:

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

“**‘allocation’**, in relation to a number in respect of telecommunications services to be provided across a public telecommunications network, includes reservation for the future use of that number;”.

116. Subsections 88(1) and (2):

Omit “fact”, substitute “information”.

117. Subsection 88(3):

Omit “a fact or document”, substitute “information or a document”.

118. Paragraphs 88(3)(d) and (e):

Omit “fact”, substitute “information”.

119. Subparagraph 88(3)(e)(i):

After “information” insert “or a document”.

120. Subparagraphs 88(3)(h)(iii), (ha)(iii), (i)(iii), (ia)(iii), (l)(iii) and (la)(ii):

Omit “fact”, substitute “information”.

121. Subsection 88(4):

Omit “a fact or document”, substitute “information or a document”.

122. Paragraphs 88(4)(a) and (c):

Omit “fact”, substitute “information”.

123. Subparagraph 88(4)(c)(i):

After “information” insert “or a document”.

124. Subparagraphs 88(4)(f)(ii), (fa)(ii), (g)(ii) and (ga)(ii):

Omit “fact”, substitute “information”.

125. Subsection 88(5):

Insert:

“**‘information’** includes opinion;”.

126. After section 241:

Insert:

Allocation of numbers to be in accordance with section 242

“241A. On and after the commencement of this section, any allocation of a number in respect of telecommunications services to be provided across a public telecommunications network must be made in accordance with section 242.”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

127. Subsections 242(3) and (4):

Omit the subsections, substitute:

“(3) If a person (including a carrier):

- (a) is, or has been, allocated a number by AUSTEL under subsection (1); or
- (b) is, or has been, otherwise allocated a number in respect of telecommunications services to be provided across a public telecommunications network; or
- (c) otherwise controls the allocation of a number in respect of such telecommunications services;

the person may allocate that number to another person in respect of such telecommunications services only under this subsection.

“(4) An allocation of a number under subsection (1) or (3) must be made in accordance with:

- (a) the policies set out in the national numbering plan; and
- (b) any determination under section 242B applicable in relation to that number.”.

128. After section 242:

Insert (in Division 2 of Part 11):

Charges in respect of allocation or use of numbers

“242A.(1) In this section:

‘**numbers**’ means numbers in respect of telecommunications services to be provided across a public telecommunications network;

‘**use**’, in relation to a number, means the continuing use of that number by a person after the allocation of that number to that person.

“(2) This section applies to:

- (a) the use, after this section commences, of numbers allocated before or after this section commences; and
- (b) any further allocation, after this section commences, of numbers allocated before or after this section commences; and
- (c) any allocation of numbers made after this section commences.

“(3) Subject to subsection (4), nothing in this Act or the *Telecommunications (Numbering Fees) Act 1991* prevents a person from charging a fee in respect of any allocation or use of numbers to which this section applies.

“(4) Such a fee may only be charged in accordance with:

SCHEDULE—continued

- (a) the policies set out in the national numbering plan; and
- (b) any determination under section 242B applicable in relation to that number.

Conditions in respect of allocation or use of numbers

“242B.(1) In this section:

‘numbers’ means numbers in respect of telecommunications services to be provided across a public telecommunications network;

‘use’, in relation to a number, means the continuing use of that number by a person after the allocation of that number to that person.

“(2) This section applies to:

- (a) the use, after this section commences, of numbers allocated before or after this section commences; and
- (b) any further allocation, after this section commences, of numbers allocated before or after this section commences; and
- (c) any allocation of numbers made after this section commences.

“(3) AUSTEL may, in writing, determine conditions that are applicable in relation to any allocation or use of numbers to which this section applies.

“(4) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(5) AUSTEL must not determine conditions that are inconsistent with the policies set out in the national numbering plan.

“(6) Without limiting subsection (3), AUSTEL may determine under that subsection conditions including:

- (a) conditions relating to the prohibition of, or any restrictions on, the allocation or use of numbers; or
- (b) conditions relating to the charging of fees in relation to the allocation or use of numbers.

Note 1: An example of a condition referred to in paragraph (6)(a) is a condition to the effect that a number which was allocated by a carrier to a user of telecommunications services provided by that carrier does not revert to that carrier merely because the user has elected to have the services provided by another carrier.

Note 2: An example of a condition referred to in paragraph (6)(b) is a condition specifying the basis on which a fee in relation to the allocation of a number is to be calculated. Another example of a condition referred to in that paragraph is a condition prohibiting the charging of fees in relation to classes of numbers.

Note 3: AUSTEL may issue directions to a carrier in respect of compliance of these conditions (see sections 39 and 46).”.

*Transport and Communications Legislation
Amendment (No. 2) No. 5, 1994*

SCHEDULE—continued

Transport and Communications Legislation Amendment Act 1991

129. Schedule (amendment to subsection 65(2) of the *Federal Airports Corporation Act 1986*):

Omit “(d)”, substitute “(e)”.

NOTES ABOUT SECTION HEADINGS

1. On the day on which the *Navigation Act 1912* is amended by this Act, the heading to section 15 of that Act is altered by omitting “, **seamen and pilots**” and substituting “**and seamen**”.
2. On the day on which the *Seafarers Rehabilitation and Compensation Act 1992* is amended by this Act, the heading to section 20 of that Act is altered by omitting “**CERC Act employees**” and substituting “**employees within the meaning of the Safety Rehabilitation and Compensation Act 1988**”.

[*Minister’s second reading speech made in—
Senate on 21 October 1993
House of Representatives on 25 November 1993*]