



Australian Postal Corporation Amendment Act 1994

No. 142 of 1994

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Australian Postal Corporation Amendment Act 1994

No. 142 of 1994

An Act to amend the *Australian Postal Corporation Act 1989* and Part VIIA of the *Crimes Act 1914*, and for related purposes

[Assented to 5 December 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Postal Corporation Amendment Act 1994*.

Commencement

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

(2) Paragraphs 4(a) and (f), 14(c) and (d) and 16(a) commence on 1 January 1995.

PART 2—AMENDMENT OF THE AUSTRALIAN POSTAL CORPORATION ACT 1989

Principal Act

3. In this Part, “**Principal Act**” means the *Australian Postal Corporation Act 1989*¹.

Interpretation—definitions

4. Section 3 of the Principal Act is amended:

(a) by omitting “(other than a registered publication)” from the definition of “standard postal article”;

(b) by omitting “500” from paragraph (a) of the definition of “standard postal article” and substituting “250”;

(c) by omitting subparagraphs (c)(ii) and (iii) of the definition of “standard postal article” and substituting the following word and subparagraphs:

“and (ii) the shorter sides of which are not more than 122 mm long;
and

(iii) the longer sides of which are not more than 237 mm long;
and”;

(d) by omitting the definition of “office” and substituting the following definition:

“ ‘**office**’, in relation to Australia Post, means an office (in Australia or outside Australia):

(a) established by Australia Post for the supply of postal services;
or

(b) conducted by an agent of Australia Post;”;

(e) by omitting the definition of “government director”;

(f) by omitting the definition of “registered publication”;

(g) by inserting the following definitions:

“ ‘**reserved services**’ means the activities that Australia Post has, because of section 29, the exclusive right to engage in;

‘**thing**’ includes a living thing;”.

Repeal of section 6 and substitution of new section

5. Section 6 of the Principal Act is repealed and the following section is substituted:

Interpretation—meaning of subsidiary

“6. For the purposes of this Act, a body corporate is a subsidiary of another body corporate if, under the Corporations Law, the first body corporate is a subsidiary of the other body corporate.”.

Specific postal and postal related powers

6. Section 18 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (a), (b), (c), (f) and (g) “and”;
- (b) by omitting paragraph (d) and substituting the following paragraphs:
 - “(d) to supply electronic mail services; and
 - (da) to supply telecommunications services as defined in section 5 of the *Telecommunications Act 1991*; and”;
- (c) by omitting paragraph (e) and substituting the following paragraphs:
 - “(e) to supply document exchange services and contract mail management services; and
 - (ea) to supply mail house services (which may include, for example, the provision of a mail order service and the doing of things incidental to the provision of such a service); and”.

Role of the Board

7. Section 23 of the Principal Act is amended by omitting from paragraph (b) “proper, efficient and economical manner” and substituting “manner that is proper, efficient and, as far as practicable, consistent with sound commercial practice”.

Community service obligations

8. Section 27 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- “(2) The principal purpose of the letter service is, by physical means:
 - (a) to carry, within Australia, letters that Australia Post has the exclusive right to carry; and
 - (b) to carry letters between Australia and places outside Australia.”.

Insertion of new section

9. After section 28 of the Principal Act the following section is inserted in Division 1 of Part 3:

Australia Post may return letters received from foreign postal authorities

“28A.(1) This section applies to letters and other postal articles received by Australia Post from a foreign postal authority, whether they are for delivery within Australia or not.

“(2) Subject to subsection (3), if, under a convention, Australia is permitted to return a letter or postal article, Australia Post may return the article in accordance with the convention despite its obligations under this Division.

“(3) The Minister may give written directions to the Board, consistent with the convention, about how the power to return articles should be exercised (including whether that power should be exercised in particular circumstances).

“(4) The Board must ensure that Australia Post complies with any directions under subsection (3).

“(5) If the Minister gives a direction under subsection (3), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.”.

Insertion of new Division

10. After Division 1 of Part 3 of the Principal Act the following Division is inserted:

“Division 1A—Performance standards and audits

Interpretation

“28B. In this Division:

‘**performance audit report**’ means a report under section 28D;

‘**prescribed performance standards**’ has the meaning given by subsection 28C(1).

Performance standards to be met by Australia Post

“28C.(1) The regulations may prescribe performance standards (the ‘**prescribed performance standards**’) to be met by Australia Post.

“(2) The prescribed performance standards must relate to:

- (a) the frequency, speed or accuracy of mail delivery; or
- (b) the availability or accessibility of:
 - (i) post-boxes or other mail lodgement points; or
 - (ii) offices of Australia Post or other places from which Australia Post products or services may be purchased.

Auditor-General to report on compliance with prescribed performance standards

“28D.(1) The Auditor-General must, in relation to the financial year starting on 1 July 1994 and each later financial year, audit, and report on, the extent to which, during the financial year, Australia Post met the prescribed performance standards that were in force.

“(2) The audit must be conducted in accordance with the methodology that the Auditor-General determines is consistent with prevailing performance audit methodology, and a statement of the methodology used in conducting the audit must be included in the report.

“(3) The Auditor-General may request Australia Post to supply information that the Auditor-General considers is reasonably necessary to perform the audit, and Australia Post must comply with the request.

“(4) The Auditor-General must give the report to the Minister on or before 1 November in the next financial year.

“(5) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Service improvement plans

“28E.(1) If, in a performance audit report, the Auditor-General reports that Australia Post has not met a prescribed performance standard, Australia Post must prepare a service improvement plan to ensure it meets that prescribed performance standard as soon as practicable.

“(2) The service improvement plan must be given to the Minister on or before 1 March in the financial year after the financial year to which the performance audit report relates.

“(3) The Minister must cause a copy of the service improvement plan to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.”.

Services reserved to Australia Post etc.

11. Section 29 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Subject to section 30, Australia Post has the exclusive right to carry letters within Australia, whether the letters originated within or outside Australia.

“(2) The reservation of services to Australia Post under subsection (1) extends to:

- (a) the collection, within Australia, of letters for delivery within Australia; and
- (b) the delivery of letters within Australia.”.

Exceptions to reserved services

12. Section 30 of the Principal Act is amended:

- (a) by omitting from subsection (1) “services reserved to Australia Post” and substituting “reserved services”;

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- (b) by omitting from subsection (1) “include:” and substituting “include any of the following:”;
- (c) by omitting from paragraph (1)(a) “500” and substituting “250”;
- (d) by omitting paragraph (1)(c) and substituting the following paragraph:
 - “(c) the carriage of a newspaper, magazine, book, catalogue or leaflet, whether or not directed to a particular person or address and whether or not enclosed in any sort of cover;”;
- (e) by omitting from paragraph (1)(e) “10” and substituting “4”;
- (f) by omitting paragraph (1)(f);
- (g) by inserting after paragraph (1)(g) the following paragraph:
 - “(ga) the carriage of a letter from an office of the individual or organisation sending the letter to another office of that individual or organisation;”;
- (h) by inserting after paragraph (1)(h) the following paragraph:
 - “(ha) the carriage of a letter to an office of Australia Post where it is then lodged for delivery under a bulk interconnection service (within the meaning of section 32A);”;
- (i) by inserting after paragraph (1)(m) the following paragraph:
 - “(ma) the carriage of a letter, in the course of a document exchange service:
 - (i) from one service centre of the service to another service centre of the service; or
 - (ii) within a service centre of the service;”;
- (j) by omitting from paragraph (1)(p) “and”;
- (k) by inserting after subsection (1) the following subsections:
 - “(1A) For the purpose of paragraph (1)(ga):
 - (a) the reference to an **office** of an individual or organisation includes a reference to any place where the individual or organisation carries on business or conducts operations; and
 - (b) a place where a business is conducted under a franchise agreement or arrangement is an **office** of the franchisee but is not, merely because that business is conducted there, an office of the franchisor; and
 - (c) subject to paragraph (d), the reference to an **organisation** is a reference to:
 - (i) a body corporate; or
 - (ii) a partnership; or
 - (iii) a Department of State of the Commonwealth or of a State; or

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- (iv) a Department or administrative unit of the Public Service of a Territory; or
 - (v) a body, authority, agency or service, whether incorporated or not, established by the Commonwealth or a State or Territory, or by or under a law of the Commonwealth or a State or Territory; or
 - (vi) any other unincorporated body; and
- (d) if a body, authority, agency or service covered by subparagraph (c)(v) is also part of a Department or administrative unit covered by subparagraph (c)(iii) or (iv), the body, authority agency or service is taken to be an organisation that is separate from the organisation constituted by that Department or administrative unit.

“(1B) For the purposes of paragraph (1)(ma), a **service centre** of a document exchange service is a place conducted by, or under the control of, the provider of the service where, under the terms of the service, all persons who, under those terms, are entitled to use the service may:

- (a) deposit documents for carriage by the service; and
- (b) collect documents carried by the service.”.

Actions for infringement of reserved services etc.

13. Section 31 of the Principal Act is amended by omitting from subsection (1) “an exclusive right that Australia Post has under this Division” and substituting “Australia Post’s exclusive right to undertake the reserved services”.

Terms and conditions generally

14. Section 32 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (2)(a), (b), (c), (d) and (e) “and”;
- (b) by omitting from paragraph (2)(e) “that is not the nearest office of Australia Post”;
- (c) by omitting from paragraph (2)(f) “articles); and” and substituting “articles.”;
- (d) by omitting paragraph (2)(g).

Insertion of new sections

15. After section 32 of the Principal Act the following sections are inserted:

Terms and conditions—bulk interconnection service

“32A.(1) This section applies to a service supplied by Australia Post (a ‘**bulk interconnection service**’) under which bulk quantities of letters are delivered within Australia at reduced rates provided that:

- (a) they are lodged at an office of Australia Post specified as mentioned in paragraph (2)(a); and
- (b) they have, before being lodged, been sorted in accordance with the terms and conditions of the service.

“(2) The terms and conditions of a bulk interconnection service must:

- (a) specify the offices of Australia Post at which letters must be lodged for delivery under the service; and
- (b) allow letters to be lodged for delivery under the service at any office so specified; and
- (c) provide for the rate reduction mentioned in subsection (1) to include a component that is Australia Post’s estimate of the average transport costs per letter avoided by Australia Post in respect of letters lodged for delivery under the service.

“(3) The terms and conditions of a bulk interconnection service are not required to be limited to the matters mentioned in this section.

Regulations may provide for inquiries into certain disputes about bulk interconnection services

“32B.(1) The regulations may provide:

- (a) for the Trade Practices Commission:
 - (i) to inquire into a dispute, between Australia Post and a person who wishes to use a bulk interconnection service, about the amount of the rate reduction that should be given to the person under the bulk interconnection service; and
 - (ii) to make a recommendation to the Minister about the amount of that rate reduction; and
- (b) procedures for persons to notify the Trade Practices Commission of a dispute of the kind referred to in paragraph (a); and
- (c) for the conduct of inquiries, and for the making of recommendations, provided for under paragraph (a); and
- (d) for the provision of information by the Prices Surveillance Authority or Australia Post to the Trade Practices Commission in connection with the exercise of powers conferred on the Trade Practices Commission under paragraph (a); and
- (e) for the matters to be taken into account by the Trade Practices Commission in exercising powers conferred under paragraph (a); and
- (f) that, in spite of section 49, the Minister may, if he or she thinks fit, direct Australia Post to act in accordance with a recommendation made by the Trade Practices Commission in relation to the amount of the rate reduction that should be given to a person under a bulk interconnection service; and

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- (g) for the matters to be taken into account by the Minister in deciding whether to give a direction provided for under paragraph (f); and
- (h) for the notification of:
 - (i) directions given by the Minister as provided for under paragraph (f); and
 - (ii) decisions of the Minister not to give such directions; and
- (i) in relation to the operation of directions given by the Minister as provided for under paragraph (f).

“(2) The regulations may provide as specified in subsection (1) in spite of anything in the *Trade Practices Act 1974* or the *Prices Surveillance Act 1983*.

Terms and conditions—incoming overseas mail service

“32C.(1) This section applies to a service supplied by Australia Post (an **‘incoming overseas mail service’**) under which letters received by Australia Post from a country or place outside Australia are carried and delivered within Australia.

“(2) The terms and conditions of an incoming overseas mail service must, so far as they relate to charges for the service, comply with whichever of the following paragraphs applies:

- (a) if a convention applies to the service—the charges must be determined in accordance with the convention;
- (b) if paragraph (a) does not apply—the charges must be the same as those that would apply to the provision of a like service by Australia Post for the carriage and delivery within Australia of letters collected within Australia.

“(3) The terms and conditions of an incoming overseas mail service are not required to be limited to the matters mentioned in this section.”.

Certain postage charges subject to Ministerial review

16. Section 33 of the Principal Act is amended:

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

“(1) This section applies to the rate of postage for the carriage within Australia of standard postal articles by ordinary post.”;

- (b) by inserting after paragraph (4)(a) the following paragraph:

“(aa) changes in the Consumer Price Index as published by the Australian Statistician from time to time; and”.

Insertion of new section

17. After section 33 of the Principal Act the following section is inserted:

Postage stamps not to be sold etc. for less than usual retail price

“33A.(1) A person authorised by Australia Post to sell postage stamps must not:

- (a) sell a valid Australian stamp for less than its usual retail price; or
- (b) give away a valid Australian stamp free of charge.

“(2) Australia Post must not sell a valid Australian stamp for less than its usual retail price unless the sale is pursuant to an agreement between Australia Post and another person under which the person buys the stamp for the purpose of re-selling it at its usual retail price.

“(3) If a person has engaged, or is proposing to engage, in conduct that involves, or would involve, an infringement of subsection (1), Australia Post may apply to the Federal Court for relief.

“(4) The relief that may be granted includes an injunction and, at the option of Australia Post, either damages or an account of profits.

“(5) The Federal Court may grant an interim injunction pending determination of an application under subsection (3) if, in the Court’s opinion, it is desirable to do so.

“(6) The power of the Federal Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is imminent danger of substantial damage to Australia Post if the person engages in conduct of that kind.

“(7) For the purposes of the application of this section to a postage stamp that consists of an imprinted or printed mark (for example a mark produced by a franking machine):

- (a) the mark is taken to be issued within Australia by Australia Post if Australia Post has authorised the use of the mark for the purpose of paying postage for postal articles; and
- (b) the mark is sold if a charge is made for the imprinting or printing of the mark onto the cover, or onto a label to be fixed to the cover, of a postal article; and
- (c) the usual retail price of the mark is the amount Australia Post usually charges for the imprinting or printing of the mark.

“(8) In this section:

‘Australia Post’ does not include an agent of Australia Post;

‘valid Australian stamp’ means:

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- (a) a postage stamp issued within Australia by Australia Post that is still valid; or
- (b) an envelope, or other postal stationery, issued within Australia by Australia Post on which a postage stamp that is still valid is imprinted.”.

Minister may direct certain variations of corporate plans

18. Section 40 of the Principal Act is amended:

- (a) by omitting from subsection (1) “30” and substituting “60”;
- (b) by adding at the end the following subsection:

“(4) If the Minister gives a direction under subsection (1), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.”.

General matters to be included in annual reports

19. Section 43 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (a) to (k) (inclusive) “and”;
- (b) by inserting after paragraph (f) the following paragraph:

“(fa) include a statement about compliance, during the year, with the performance standards referred to in paragraph 27(4)(b) (these standards relate to Australia Post’s community service obligations); and”;

- (c) by adding at the end the following word and paragraph:

“; and (o) include, in relation to:

(i) each subsection of section 90J (other than subsections 90J(2) and (4)); and

(ii) each subsection of section 90K;

a record of the number of times during the year that information or documents were disclosed in reliance on that subsection and of the persons, authorities or bodies to which information or documents were so disclosed.”.

Financial matters to be included in annual reports

20. Section 44 of the Principal Act is amended:

- (a) by adding at the end of paragraphs (a), (b), (c), (d) and (e) “and”;
- (b) by omitting from paragraph (d) “payable” and substituting “paid or proposed to be paid”;
- (c) by adding at the end the following word, paragraph and subsection:

“; and (h) include the financial information that the Minister requests in relation to each of the following categories of Australia Post’s activities:

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- (i) the reserved services (taken as a whole);
- (ii) its other activities (taken as a whole).

“(2) A request under paragraph (1)(h) must be made by notice in writing given to Australia Post.”.

Requirements for financial statements

21. Section 45 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “prescribed under the *Companies Act 1981* for” and substituting “applicable under the Corporations Law to”;
- (b) by omitting from subsection (3) “*Companies Act 1981*” and substituting “Corporations Law”;
- (c) by omitting from subsection (3) “that Act” and substituting “that Law”.

Payments of dividends to Commonwealth

22.(1) Section 54 of the Principal Act is amended:

- (a) by omitting from subsection (3) “30” and substituting “45”;
- (b) by inserting after subsection (4) the following subsection:

“(4A) If the Minister gives a direction under paragraph (3)(b), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.”.

(2) The amendment made by paragraph (1)(a) applies to recommendations received by the Minister after the commencement of this section.

Interim dividends

23.(1) Section 55 of the Principal Act is amended:

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

“(1) The Board must, within 60 days after 31 December in each financial year, by written notice to the Minister, recommend that Australia Post pay a specified amount, or not pay any amount, to the Commonwealth on account of the dividend that may become payable under section 54 for the financial year.”;

- (b) by omitting from subsection (3) “30” and substituting “45”;
- (c) by adding at the end the following subsection:

“(5) If the Minister gives a direction under paragraph (3)(b), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.”.

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(2) The amendment made by paragraph (1)(a) applies to the financial year starting on 1 July 1994 and to subsequent financial years.

(3) The amendment made by paragraph (1)(b) applies to recommendations received by the Minister after the commencement of this section.

Repeal of section 73 and substitution of new section

24.(1) Section 73 of the Principal Act is repealed and the following section is substituted:

Appointment of directors

“73.(1) The directors are to be appointed by the Governor-General on the nomination of the Minister.

“(2) The Minister must consult with the Chairperson before nominating a person for appointment as a director.

“(3) In nominating persons for appointment as directors, the Minister must have regard to the need to ensure that the directors collectively possess an appropriate balance of expertise and, in particular, include a person who the Minister, after consultations with representatives of industrial organisations representing employees, is satisfied has an appropriate understanding of the interests of employees.

“(4) The appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.”.

(2) The amendment made by subsection (1) applies to the appointment of persons as directors after the commencement of this section.

Repeal of section 74 and substitution of new section

25. Section 74 of the Principal Act is repealed and the following section is substituted:

Term of appointment

“74.(1) A director holds office, subject to this Act, for such term as is specified in the instrument of appointment.

“(2) The term specified must be 5 years or less.”.

Termination of appointment

26. Section 79 of the Principal Act is amended by omitting subsections (5) and (6) and substituting the following subsection:

“(5) If:

(a) the Minister is of the opinion that the Board has failed to comply with an obligation under section 41, 46 or 47; and

(b) the Minister proposes that the appointment of all directors or specified directors be terminated;
the Governor-General is to terminate the appointment of all directors, or the specified directors, as the case may be.”.

Appointment

27.(1) Section 83 of the Principal Act is amended:

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

“(1) The Managing Director is to be appointed by the Board.”;

(b) by omitting from subsection (2) “Minister shall” and substituting “Board must”.

(2) The amendments made by subsection (1) apply to the first appointment of a person as Managing Director made after the commencement of this section and to subsequent appointments.

Acting Managing Director

28.(1) Section 88 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsection:

“(1) The Board may appoint a director or another person to act as Managing Director:

(a) during a vacancy in the office of Managing Director; or

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

(2) The amendment made by subsection (1) applies to the first appointment of a person to act as Managing Director made after the commencement of this section and to subsequent appointments.

Insertion of new Part

29. After Part 7 of the Principal Act the following Part is inserted:

“PART 7A—APPLICATION OF STATE AND TERRITORY LAWS

Australia Post not entitled to immunities or privileges of Commonwealth

“90A. For the purposes of the laws of the Commonwealth, or of a State or Territory, Australia Post is not entitled to any immunity or privilege of the Commonwealth except so far as express provision is made by this Act or any other law of the Commonwealth, or by a law of the State or Territory.

Discriminatory laws do not apply

“90B. A law of a State or Territory does not apply to Australia Post if, apart from this section, it would:

- (a) apply to Australia Post; and
- (b) so apply as to discriminate against Australia Post.

State or Territory laws do not apply retrospectively before 1 January 1991

“90C. A law of a State or Territory that, apart from this section, would:

- (a) operate retrospectively back to a time before 1 January 1991; and
- (b) as so operating, apply to Australia Post;

only applies to Australia Post on and after that day.

Laws relating to buildings, structures and facilities do not apply

“90D.(1) This section applies to a building that is the property of Australia Post if, immediately before 1 January 1991:

- (a) the building was the property of Australia Post and was occupied or in use by Australia Post; or
- (b) the building was under construction, alteration or demolition by, or on behalf of, Australia Post.

“(2) While this section applies to the building, laws of the States and Territories that deal with any of the following matters do not apply to the building:

- (a) the standards applicable to the design or the construction of buildings;
- (b) the approval of the construction of buildings;
- (c) the occupancy or use of buildings;
- (d) the alteration or demolition of buildings.

“(3) In this section:

‘**building**’ includes a structure or facility.”.

Insertion of new Part

30. After Part 7A of the Principal Act the following Part is inserted:

“PART 7B—DEALING WITH ARTICLES AND THEIR CONTENTS

“Division 1—Interpretation

Definitions

“90E. In this Part:

‘**ASIO**’ means the Australian Security Intelligence Organization;

‘**ASIO Act**’ means the *Australian Security Intelligence Organization Act 1979*;

- ‘authorised ASIO officer’** has the meaning given by section 90F;
- ‘authorised discloser’** has the meaning given by section 90FA;
- ‘authorised examiner’** has the meaning given by section 90FB;
- ‘customs duty’** means any duty of customs imposed under a law of the Commonwealth;
- ‘customs officer’** means an Officer of Customs within the meaning of the *Customs Act 1901*;
- ‘employee of Australia Post’**, when used in this Division (other than section 90FB) or in Division 2, 4 or 5, includes a person who performs services for or on behalf of Australia Post and an employee of such a person;
- ‘information’** includes suspicions, suppositions or opinions;
- ‘in the course of post’**, in relation to an article, means the article:
- (a) is being carried by post; or
 - (b) has been collected or received by Australia Post for carriage by post, but has not been delivered by Australia Post;
- ‘sales tax on imports’** means sales tax payable under the *Sales Tax Assessment Act 1992* in respect of imported goods within the meaning of that Act;
- ‘specially protected’** has the meaning given by subsections 90G(2) and (3).

Meaning of “authorised ASIO officer”

“90F.(1) For the purposes of Division 2, an **authorised ASIO officer** is an officer or employee of ASIO authorised in writing by a person mentioned in subsection (2) to receive disclosures under this Part.

“(2) These are the persons who may give an authorisation:

- (a) the Director-General of Security;
- (b) an officer or employee of ASIO authorised in writing by the Director-General of Security to give authorisations for the purposes of this section.

Meaning of “authorised discloser”

“90FA. For the purposes of a provision of Division 2, an **authorised discloser** is an employee of Australia Post appointed in writing by Australia Post to make disclosures under that provision.

Meaning of “authorised examiner”

“90FB.(1) For the purposes of a provision of Division 3, an **authorised examiner** is a person appointed under subsection (2) or (3) to exercise powers under that provision.

“(2) Australia Post may, by writing, appoint an employee of Australia Post to exercise powers under a provision of Division 3 (including section 90P).

“(3) Australia Post may, by writing, appoint a person who is not an employee of Australia Post to exercise powers under section 90P.

“Division 2—Limits on use or disclosure of information and documents

“Subdivision A—Use or disclosure by current employees of Australia Post

Application of Subdivision

“90G.(1) This Subdivision applies to a person who is an employee of Australia Post and to information or a document acquired or received by the person if:

- (a) the person acquired or received the information or document in the course of his or her employment as an employee of Australia Post; and
- (b) the information or document:
 - (i) is, or relates to, an article, or some or all of the contents or substance of an article, that has been carried by post or is in the course of post; or
 - (ii) relates to services supplied, or intended to be supplied, to another person by Australia Post; or
 - (iii) relates to the affairs or personal particulars (including name or address) of another person.

“(2) Subject to subsection (3), the information or document is **specialty protected** if subparagraph (1)(b)(i) is satisfied in relation to the information or document, whether or not subparagraph (1)(b)(ii) or (iii) is also satisfied in relation to it.

“(3) The information or document is not **specialty protected** if:

- (a) in the case of information—the information is clearly visible on, or through, the outside of the cover of the article; or
- (b) in the case of a document—the document consists of the outside of the cover of the article.

Prohibition on use or disclosure by current employees

“90H.(1) For the purposes of this section, the use or disclosure of the information or document by the person is **prohibited conduct** if the use or disclosure is not permitted by section 90J, 90K or 90L.

“(2) If the person knowingly or recklessly engages in prohibited conduct, the person is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years.

“(3) For the purposes of a prosecution for an offence against subsection (2) relating to the use or disclosure of the information or document:

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- (a) the use or disclosure is to be taken not to have been permitted by section 90J, 90K or 90L unless the defendant presents or points to evidence that suggests a reasonable possibility that the use or disclosure was permitted by a provision (the ‘**authorising provision**’) of one of those sections; and
- (b) if the defendant does so produce or point to evidence—the use or disclosure is to be taken to be permitted by the section that contains the authorising provision unless the prosecution proves, beyond reasonable doubt, that the use or disclosure was not permitted by the authorising provision.

Permitted use or disclosure whether or not information or document is specially protected

Application of section

“90J.(1) This section applies to the use or disclosure of the information or document whether or not it is specially protected.

Disclosure in performance of duties

“(2) The person may use or disclose the information or document in the performance of duties as an employee of Australia Post.

Disclosure under warrants

“(3) The person may disclose the information or document as required by or under a warrant issued under a law of the Commonwealth or of a State or Territory.

Disclosure as a witness

“(4) The person may disclose the information or document as a witness summonsed to give evidence, or to produce documents, in a court of law.

Disclosure under a law of the Commonwealth

“(5) The person may disclose the information or document as required by or under a law of the Commonwealth.

Disclosure under certain laws establishing Commissions

“(6) The person may disclose the information or document as required by or under:

- (a) the New South Wales Crime Commission Act 1985 of New South Wales; or
- (b) the Independent Commission Against Corruption Act 1988 of New South Wales; or
- (c) the *Criminal Justice Act 1989* of Queensland; or
- (d) any other prescribed law of a State or Territory that establishes a Commission or other body to conduct investigations or inquiries.

Disclosure to reduce threat to life or health

“(7) The person may disclose the information or document to an officer or employee of a police force or service, fire service, ambulance service or other organisation providing emergency services if the person believes, on reasonable grounds, that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person.

Disclosure of suspicions to authorised ASIO officers

“(8) The person may disclose the information to an authorised ASIO officer if:

- (a) the person is an authorised discloser; and
- (b) the information is a reasonable suspicion that an article consists of or contains anything that is or may be relevant to security within the meaning of the ASIO Act.

Disclosure of suspicions where reasonably necessary for enforcement of criminal law

“(9) The person may disclose the information if:

- (a) the person is an authorised discloser; and
- (b) the information is a reasonable suspicion that an article consists of or contains anything that is or may be evidence of an offence.

Extra situations in which use or disclosure is permitted if information or document is not specially protected

Application of section

“90K.(1) This section only applies to the use or disclosure of the information or document if it is not specially protected.

Disclosure to assist in notification of next of kin

“(2) The person may disclose the information or document to an officer or employee of a police force or service, fire service, ambulance service or other organisation providing emergency services if the person believes, on reasonable grounds, that the disclosure is necessary to assist in the notification of the next of kin of a person who is seriously injured or who has died.

Disclosure to customs officers

“(3) The person may disclose the information or document to a customs officer if:

- (a) the person is an authorised discloser; and
- (b) there are reasonable grounds for believing that the information or document relates to anything:
 - (i) on which customs duty is payable; or

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- (ii) on which sales tax on imports is payable; or
- (iii) that is being carried in contravention of a law of the Commonwealth relating to importing things into, or exporting things from, Australia.

Disclosure to authorised ASIO officers

“(4) The person may disclose the information or document to an authorised ASIO officer if the person is an authorised discloser.

Disclosure for the enforcement of laws or protection of public revenue

- “(5) The person may disclose the information or document if:
- (a) the person is an authorised discloser; and
 - (b) the disclosure is reasonably necessary for:
 - (i) the enforcement of the criminal law; or
 - (ii) the enforcement of a law imposing a pecuniary penalty; or
 - (iii) the protection of the public revenue.

Disclosure of personal information by consent

“90L. If the information relates to the affairs or personal particulars (including name or address) of another person, the person may disclose the information (whether or not it is specially protected) if the disclosure:

- (a) is made with the other person’s consent given in writing on a form obtained from an office of Australia Post; and
- (b) is made to a person or an organisation covered by the consent; and
- (c) is recorded by Australia Post.

“Subdivision B—Use or disclosure by former employees of Australia Post

Application of Subdivision

“90LA.(1) This Subdivision applies to a person who was an employee of Australia Post and to information or a document acquired or received by the person if:

- (a) the person acquired or received the information or document in the course of his or her employment as an employee of Australia Post; and
- (b) the information or document:
 - (i) is, or relates to, an article, or some or all of the contents or substance of an article, that has been carried by post or is in the course of post; or
 - (ii) relates to services supplied, or intended to be supplied, to another person by Australia Post; or

(iii) relates to the affairs or personal particulars (including name or address) of another person.

“(2) Subject to subsection (3), the information or document is **specialy protected** if subparagraph (1)(b)(i) is satisfied in relation to the information or document, whether or not subparagraph (1)(b)(ii) or (iii) is also satisfied in relation to it.

“(3) The information or document is not **specialy protected** if:

- (a) in the case of information—the information is clearly visible on, or through, the outside of the cover of the article; or
- (b) in the case of a document—the document consists of the outside of the cover of the article.

Prohibition on use or disclosure by former employees

“90LB.(1) For the purposes of this section, the use or disclosure of the information or document by the person is **prohibited conduct** if the use or disclosure is not permitted by section 90LC or 90LCA.

“(2) If the person knowingly or recklessly engages in prohibited conduct, the person is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years.

“(3) For the purposes of a prosecution for an offence against subsection (2) relating to the use or disclosure of the information or document:

- (a) the use or disclosure is to be taken not to have been permitted by section 90LC or 90LCA, unless the defendant presents or points to evidence that suggests a reasonable possibility that the use or disclosure was permitted by a provision (the ‘**authorising provision**’) of one of those sections; and
- (b) if the defendant does so produce or point to evidence—the use or disclosure is to be taken to be permitted by the section that contains the authorising provision unless the prosecution proves, beyond reasonable doubt, that the use or disclosure was not permitted by the authorising provision.

Permitted use or disclosure whether or not information or document is specialy protected

Application of section

“90LC.(1) This section applies to the use or disclosure of the information or document whether or not it is specialy protected.

Disclosure under warrants

“(2) The person may disclose the information or document as required by or under a warrant issued under a law of the Commonwealth or of a State or Territory.

Disclosure as a witness

“(3) The person may disclose the information or document as a witness summonsed to give evidence, or to produce documents, in a court of law.

Disclosure under a law of the Commonwealth

“(4) The person may disclose the information or document as required by or under a law of the Commonwealth.

Disclosure under certain laws establishing Commissions

“(5) The person may disclose the information or document as required by or under:

- (a) the New South Wales Crime Commission Act 1985 of New South Wales; or
- (b) the Independent Commission Against Corruption Act 1988 of New South Wales; or
- (c) the *Criminal Justice Act 1989* of Queensland; or
- (d) any other prescribed law of a State or Territory that establishes a Commission or other body to conduct investigations or inquiries.

Extra situations in which use or disclosure is permitted if information or document is not specially protected

Application of section

“90LCA.(1) This section only applies to the use or disclosure of the information or document if it is not specially protected.

Disclosure to authorised ASIO officers

“(2) The person may disclose the information or document to an authorised ASIO officer.

Disclosure for the enforcement of laws or protection of public revenue

“(3) The person may disclose the information or document if the disclosure is reasonably necessary for:

- (a) the enforcement of the criminal law; or
- (b) the enforcement of a law imposing a pecuniary penalty.

“Subdivision C—Secondary use or disclosure by other people

Application of Subdivision

“90LD.(1) Subject to subsection (2), this Subdivision applies to a person and to information or a document acquired or received by the person if:

- (a) the person acquired or received the information or document directly, or indirectly through one or more persons, from an employee or former employee of Australia Post who acquired or received the information or document in the course of his or her employment as an employee of Australia Post; and

- (b) the information or document:
 - (i) is, or relates to, some or all of the contents or substance of an article that has been carried by post or is in the course of post; or
 - (ii) relates to services supplied, or intended to be supplied, to another person by Australia Post; or
 - (iii) relates to the affairs or personal particulars (including any address) of another person; and
- (c) Subdivision A does not apply to the person and the information or document.

“(2) This Subdivision does not apply to a person and to information or a document acquired or received by the person if:

- (a) the person is an officer or employee of ASIO and the information or document is or may be relevant to security within the meaning of the ASIO Act; or
- (b) the person acquired or received the information as a result, whether direct or indirect, of a disclosure of the information or document to a court.

Prohibition on secondary use or disclosure by other people

“90LE.(1) For the purposes of this section, the use or disclosure of the information or document by the person is **prohibited conduct** if the use or disclosure is not permitted by section 90LF.

“(2) If the person knowingly or recklessly engages in prohibited conduct, the person is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years.

Secondary use or disclosure permitted if for same purpose as original disclosure or use

“90LF.(1) This section applies to the use or disclosure of the information or document if the person acquired or received the information or document as a result, whether direct or indirect, of a disclosure or use (the ‘**original disclosure**’) of the information or document that was permitted under section 90J, 90K, 90LC or 90LCA.

“(2) The person may use or disclose the information or document if the use or disclosure is for the same purpose as the purpose for which the original disclosure was made.

“Subdivision D—Miscellaneous

Division does not authorise opening or examining

“90LG. Nothing in this Division authorises a person to open, or examine the contents of, an article that has been carried by post or that is in the course of post.

Division does not affect powers etc. in relation to things other than information or documents

“90LH. This Division only applies to the use or disclosure of information or documents. It does not affect the powers and duties of Australia Post and employees of Australia Post in relation to articles or their contents so far as they consist of or contain things other than information or documents.

“Division 3—Limits on opening and examining articles

Articles to which Division applies

“90M.(1) Subject to subsection (2), this Division applies to an article while it is in the course of post.

“(2) This Division does not apply to an article while it is out of the control (whether temporarily or otherwise) of Australia Post.

Prohibition on opening or examining article

“90N.(1) For the purposes of this section, the opening of the article, or the examination of its contents, is **prohibited conduct** if:

- (a) the opening or examination is not permitted by any of sections 90P to 90S; or
- (b) the opening or examination is permitted by section 90Q or 90S but occurs otherwise than at a place determined in writing by the Board for the purpose of opening or examining the article, or a class of articles that includes the article.

“(2) A person who knowingly or recklessly engages in prohibited conduct is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years.

Examining without opening

“90P. An authorised examiner may examine the article or its contents by any means that does not involve unfastening or physically interfering with the cover of the article. For example, the article or its contents may be examined by X-ray, metal detector or odour detector.

Undeliverable articles

“90Q.(1) This section applies to the article if it:

- (a) cannot be delivered to the intended recipient because it is not addressed, or it is inadequately or incorrectly addressed; and
- (b) cannot be returned to the sender because it does not bear the sender’s address, or because the sender’s address is not shown, or is inadequately or incorrectly shown.

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“(2) An authorised examiner may open the article and examine its contents for the purpose of obtaining sufficient information to:

- (a) deliver the article to the intended recipient; or
- (b) return the article to the sender.

“(3) Subject to section 90X, after an authorised examiner has opened and examined the article, he or she must:

- (a) if sufficient information is found to deliver the article to the intended recipient—close up the article and return it to the normal course of carriage; or
- (b) if paragraph (a) does not apply but sufficient information is found to return the article to the sender—close up the article and return it to the sender; or
- (c) otherwise—deal with the article in accordance with the applicable provisions of the terms and conditions determined under section 32.

Repair

“90R.(1) An authorised examiner may open the article for the purpose of repairing it or its contents so that the article may be made safe for carriage by post.

“(2) Subject to section 90X, after an authorised examiner has made the repairs (if any) to the article or its contents that he or she thinks appropriate, the authorised examiner must close up the article and return it to the normal course of carriage.

Articles on which customs duty is payable etc.

“90S.(1) This section applies if:

- (a) the article is in the course of post between Australia and a place outside Australia; and
- (b) either or both of the following conditions is or are satisfied:
 - (i) a customs officer has requested an authorised examiner to open the article;
 - (ii) there are reasonable grounds for believing that the article consists of, or contains, anything:
 - (A) on which customs duty is payable; or
 - (B) on which sales tax on imports is payable; or
 - (C) that is being carried in contravention of a law of the Commonwealth relating to the importation into, or exportation from, Australia of that thing.

“(2) An authorised examiner may open the article in the presence of a customs officer.

“(3) A customs officer in whose presence the article is opened may examine the article to check whether it consists of or contains anything described in sub-subparagraph (1)(b)(ii)(A), (B) or (C).

“(4) Subject to section 90X, if the article is found not to consist of or contain anything referred to in sub-subparagraph (1)(b)(ii)(A), (B) or (C), the authorised examiner must close up the article and return it to the normal course of carriage.

“(5) Subject to section 90X, if the article is found to consist of or contain anything referred to in sub-subparagraph (1)(b)(ii)(A), (B) or (C), the article and its contents must be dealt with in accordance with any applicable laws of the Commonwealth relating to customs duty, sales tax, or imports or exports, as the case requires.

Articles to carry notice of opening etc.

“90V.(1) This section applies if:

- (a) an article has been opened as permitted by a provision of this Division; and
- (b) the article is to be returned to the normal course of carriage.

“(2) Before the article is returned to the normal course of carriage, Australia Post must cause to be endorsed on the cover of the article, or on a label affixed to its cover, a notification that the article has been opened by Australia Post and that explains briefly (by reference to a provision of this Division or otherwise) the purpose for which the article was opened.

“(3) A failure to comply with subsection (2) does not make the opening of the article an offence.

Permitted or required dealings are not prohibited by section 90H, 90LB or 90LE

“90W. Nothing that a person does by way of dealing with an article as permitted or required by this Division constitutes a use or disclosure of information or a document to which section 90H, 90LB or 90LE applies.

Articles may be dealt with under other provisions despite obligations under this Division

“90X.(1) If section 90Z or 90ZA applies to an article opened or examined under this Division, the article may be dealt with under that section despite any provision of this Division that says what must happen to the article after being opened or examined.

“(2) If regulations dealing with the forfeiture of articles carried by post apply to an article opened or examined under this Division, the article may be dealt with under those regulations despite any provision of this Division that says what must happen to the article after being opened or examined.

“Division 4—Dealing with dangerous, offensive etc. articles

Articles to which Division applies

“90Y.(1) Subject to subsection (2), this Division applies to an article while it is in the course of post.

“(2) This Division does not apply to an article while it is out of the control (whether temporarily or otherwise) of Australia Post.

Dealing with dangerous or deleterious things

“90Z. If an employee of Australia Post knows, or has reasonable grounds for suspecting, that the article contains something that is or could be explosive, dangerous or deleterious, the article may be dealt with in accordance with the applicable provisions of the terms and conditions agreed or determined under section 32.

Destruction of physically offensive things

“90ZA.(1) If the article is physically offensive it may be destroyed immediately by an employee of Australia Post.

“(2) Australia Post must ensure that, before the article is destroyed, the following information is recorded, to the extent to which it is evident without unfastening or physically interfering with the article’s cover:

- (a) the sender’s name and address;
- (b) the intended recipient’s name and address;
- (c) what the article contains.

“(3) If the sender’s name and address has been recorded, Australia Post must, as soon as practicable after the article’s destruction, cause written notice to be given to the sender:

- (a) advising of the article’s destruction and the reasons for its destruction; and
- (b) stating the following information, if it has been recorded:
 - (i) the intended recipient’s name and address;
 - (ii) what the article contained.

“(4) If the sender’s name and address has not been recorded but the intended recipient’s name and address has been recorded, Australia Post must, as soon as practicable after the article’s destruction, cause written notice to be given to the intended recipient:

- (a) advising of the article’s destruction and the reasons for its destruction; and
- (b) stating what the article contained, if that information has been recorded.

“(5) Words, pictures or graphics in the article, regardless of their nature, do not make the article physically offensive for the purposes of this section.

Permitted dealings are not prohibited by section 90H, 90LB, 90LE or 90N

“90ZB. Nothing that a person does by way of dealing with an article as permitted by this Division constitutes:

- (a) a use or disclosure of information or a document to which section 90H, 90LB or 90LE applies; or
- (b) an opening or examination of the article to which section 90N applies.

“Division 5—Miscellaneous

Australia Post and employees not liable for actions in good faith under this Part

“90ZC. Neither Australia Post, nor an employee of Australia Post, is liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in the exercise or performance, or purported exercise or performance, of a power or duty under this Part.”

Repeal of sections 91 and 92

31. Sections 91 and 92 of the Principal Act are repealed.

Unclaimed money

32.(1) Section 98 of the Principal Act is amended by omitting from subsection (3) “5” and substituting “2”.

(2) The amendment made by subsection (1) applies to amounts paid into the Unclaimed Money Fund after the commencement of this section.

Regulations

33. Section 102 of the Principal Act is amended by omitting paragraph (f).

PART 3—AMENDMENT OF THE CRIMES ACT 1914

Principal Act

34. In this Part, “Principal Act” means the *Crimes Act 1914*².

Interpretation—definitions

35. Section 85E of the Principal Act is amended by inserting the following definition:

“ ‘carried by post’ means carried by or through Australia Post;”.

Repeal of section 85L and substitution of new section

36. Section 85L of the Principal Act is repealed and the following section is substituted:

Tampering with mail-bags

“85L.(1) A person must not fraudulently open or tamper with a mail-bag.

Penalty: Imprisonment for 5 years.

“(2) A person must not knowingly or recklessly open a mail-bag unless the person is authorised to do so by Australia Post.

Penalty: Imprisonment for 2 years.”

Repeal of section 85X and substitution of new section

37. Section 85X of the Principal Act is repealed and the following section is substituted:

Causing dangerous things etc. to be carried by post

“85X.(1) For the purposes of this section there are 3 categories of dangerous or deleterious substances or things. They are:

(a) ‘**totally prohibited substances or things**’—this category consists of:

(i) explosives; and

(ii) dangerous or deleterious substances or things that the regulations say must not, without exception, be carried by post; and

(b) ‘**standard regulated substances or things**’—this category consists of dangerous or deleterious substances or things that the regulations say may only be carried by post in accordance with terms and conditions agreed or determined by Australia Post under section 32 of the *Australian Postal Corporation Act 1989* that relate to the carriage by post of dangerous or deleterious substances or things; and

(c) ‘**specially regulated substances or things**’—this category consists of other dangerous or deleterious substances or things.

“(2) A person must not knowingly or recklessly cause to be carried by post an article that consists of, encloses or contains a totally prohibited substance or thing.

Penalty: Imprisonment for 10 years.

“(3) A person must not knowingly or recklessly cause to be carried by post, otherwise than in accordance with the terms and conditions mentioned in paragraph (1)(b), an article that consists of, encloses or contains a standard regulated substance or thing.

Penalty: Imprisonment for 5 years.

“(4) A person must not knowingly or recklessly cause to be carried by post, otherwise than in accordance with the requirements mentioned in subsection (5), an article that consists of, encloses or contains a specially regulated substance or thing.

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Penalty: Imprisonment for 2 years.

“(5) For the purposes of subsection (4), the requirements are:

- (a) Australia Post must have given permission for the substance or thing to be carried by post; and
- (b) any conditions subject to which the permission was given must have been complied with in relation to the substance or thing.”

NOTES

Australian Postal Corporation Act 1989

1. No. 64, 1989, as amended. For previous amendments, see No. 23, 1990; No. 99, 1991; Nos. 71 and 167, 1992; and No. 4, 1994.

Crimes Act 1914

2. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915 (as amended by No. 54, 1920); No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981 (as amended by No. 193, 1985); Nos. 67 (as amended by No. 193, 1985), 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; Nos. 28, 59, 99 (as amended by No. 145, 1991), 120, 123, 140 and 145, 1991; No. 164, 1992; No. 98, 1993; and Nos. 65 and 105, 1994.

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

Senate on 30 June 1994

House of Representatives on 9 November 1994]