

**Transport Legislation Amendment Act 1989**

**No. 6 of 1989**

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**Transport Legislation Amendment Act 1989**

**No. 6 of 1989**

**An Act to amend the *Navigation Act 1912*,the *Ships (Capital Grants) Act 1987* and various other Acts relating to transport, and for related purposes**

[*Assented to 16 March 1989*]

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

**PART I—PRELIMINARY**

**Short title**

**1.** This Act may be cited as the *Transport Legislation Amendment Act 1989.*

**Commencement**

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

**(2)** Part III shall be taken to have commenced on 1 September 1988.

**(3)** The amendments of the *Civil Aviation Act 1988* made by this Act shall be taken to have commenced on 15 June 1988.

**(4)** The amendment of the *Navigation Act 1912* set out in Schedule 2 commences at the commencement of section 11 of the *Protection of the Sea Legislation Amendment Act 1986.*

**(5)** The amendments of sections 5 and 26f of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of section 28 of the *Protection of the Sea Legislation Amendment Act 1986.*

**(6)** The amendments of section 26ab of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of section 26 of the *Protection of the Sea Legislation Amendment Act 1986.*

**(7)** The amendments of section 26d of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act commence immediately after the commencement of Part IIIb of that Act.

**(8)** The amendment of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* made by this Act that inserts proposed section 26da commences at the commencement of section 28 of the *Protection of the Sea Legislation Amendment Act 1986.*

**PART II—AMENDMENTS OF THE NAVIGATION ACT 1912**

**Principal Act**

**3.** In this Part, “Principal Act” means the *Navigation Act 1912*1.

**4.** After Part IX of the Principal Act the following Part is inserted:

**“PART IXa—REVIEW OF DECISIONS**

**Decisions under Part I**

“377b. Application may be made to the Administrative Appeals Tribunal for review of a decision under subsection 8b (2) refusing to give a direction, or a particular kind of direction, in relation to a ship or in relation to ships included in a class of ships, or the giving of a direction under that subsection subject to conditions or limitations.

**Decisions under Part II**

“377c. Application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision under subsection 14 (6) refusing to exempt a ship or to exempt ships included in a class of ships, or the granting of an exemption under that subsection subject to conditions or limitations;

(b) a decision under paragraph 14 (9) (a) to cause a ship to be detained;

(c) the imposing of a requirement under paragraph 14 (9) (b);

(d) a decision under subsection 46 (2a) refusing to approve an agreement;

(e) the making of a determination under subsection 47 (1), or a decision refusing to revoke a determination made under that subsection;

(f) a decision under subsection 76 (4) disallowing or refusing to disallow a deduction;

(g) a decision refusing to give a direction under subsection 76 (5) in relation to the master of a specified ship or the master of a ship included in a specified class of ships, or the giving of a direction under that subsection subject to conditions;

(h) the imposing of a requirement under subsection 116 (2), or a decision refusing to impose a requirement under that subsection;

(j) a decision under subsection 116 (4) certifying that there was no reasonable ground for a complaint;

(k) a finding under subsection 120 (2) that provisions or water are not of good quality;

(m) the imposing of a requirement under subsection 126 (2);

(n) the imposing of a requirement under subsection 132a (1);

(o) the imposing of a requirement under section 137;

(p) a decision under subsection 156 (1) or (3);

(q) a decision under subsection 158 (5) or (6);

(r) a decision under section 158a;

(s) a decision under section 159 refusing a claim to the property of a deceased seaman; or

(t) the giving of a notice under subsection 162 (1).

**Principal decisions under Part IV in relation to certificates and exemptions**

“377d. Application may be made to the Administrative Appeals Tribunal for review of a decision under Part IV:

(a) refusing to issue a certificate;

(b) refusing to grant an exemption from a requirement in relation to a certificate or from any other requirement or any provision of this Act;

(c) granting an exemption subject to conditions;

(d) restricting an exemption;

(e) determining the duration of a certificate or exemption;

(f) refusing to extend a certificate or exemption;

(g) cancelling or suspending a certificate;

(h) refusing to permit a certificate to be amended; or

(j) cancelling or suspending an exemption.

**Other decisions under Division 1 of Part IV**

“377e. Application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision refusing to give a direction under subsection 187a (4), or the giving of a direction under that subsection subject to conditions;

(b) a decision under section 187ba refusing to approve a standard of classification certificate;

(c) the imposing of a requirement under subsection 190aa (3);

(d) the imposing of a requirement under subsection 190a (4), or the detaining of a ship under that subsection;

(e) a decision under subsection 191a (2) refusing to allow a particular fitting, material, appliance or apparatus, or type of fitting, material, appliance or apparatus, to be fitted or carried in a ship; or

(f) a decision refusing to inform the owner or master of a ship as to satisfaction with the matter referred to in subsection 192c (3).

**Other decisions under Division 3 of Part IV**

“377f. Application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision under subsection 210 (1) provisionally to detain a ship;

(b) a decision under subsection 210 (6) finally to detain a ship or to order its release on conditions;

(c) a decision under subsection 210 (7) refusing to order the release of a ship; or

(d) a decision under subsection 213 (1) requiring a complainant to give security for costs and compensation.

**Other decisions under Divisions 4, 5, 6a and 10 of Part IV**

“377g. Application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision refusing to issue a memorandum under subsection 216a (1);

(b) the modifications specified in a memorandum issued under subsection 216a (1);

(c) a decision not to make a request under subsection 227 (1);

(d) the detaining of a ship under section 227c;

(e) the making of a declaration under subsection 227e (2);

(f) the detaining of a ship under section 231d; or

(g) the giving of a notice under subsection 254 (1).

**Other decisions under Divisions 12, 12a and 12c of Part IV**

“377h. Application may be made to the Administrative Appeals Tribunal for review of the giving of a direction under subsection 267k (1), 267y (1) or 267zq (1).

**Decisions under Part Vb**

“377j. Application may be made to the Administrative Appeals Tribunal for review of the giving of a direction under subsection 283f (1).

**Decisions under Part Xa**

“377k. Application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision as to the terms of a tonnage measurement certificate under section 405f or 405h;

(b) a decision refusing to issue a tonnage measurement certificate under section 405f or 405h; or

(c) a decision not to make a request under section 405j.

**Decisions under Part XI**

“377l. Application may be made to the Administrative Appeals Tribunal for review of:

(a) the imposing of a requirement under paragraph 413 (1) (g);

(b) a decision refusing to approve a security under subsection 418a (1); or

(c) a decision under subsection 423b (1) refusing to exempt a ship or person, or the granting of an exemption under that subsection subject to conditions.

**Statements to accompany notices**

“377m. (1) This section applies where:

(a) the person making a decision under this Act gives to a person whose interests are affected by the decision notice in writing of the making of the decision; and

(b) application may be made to the Administrative Appeals Tribunal for review of the decision.

“(2) The notice shall:

(a) include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*,be made to the Administrative Appeals Tribunal for review of the decision; and

(b) except where subsection 28 (4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

“(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

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

**Other amendments in relation to review of decisions**

**5.** The Principal Act is amended as set out in Schedule 1.

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

**Principal Act**

**6.** In this Part, “Principal Act” means the *Ships (Capital Grants) Act 1987*2.

**Interpretation**

**7.** **(1)** Section 3 of the Principal Act is amended:

(a) by omitting “12” from the definition of “eligible ship” and substituting “60”;

(b) by omitting “, or passengers,” from the definition of “trading ship”;

(c) by inserting before paragraph (a) of the definition of “trading ship” the following paragraph:

“(aa) a ship that is used wholly for the carriage of passengers, whether for reward or otherwise;”.

**(2)** In spite of the amendments of the Principal Act made by subsection(1), the Principal Act continues to apply in relation to a ship in relation to which an application was lodged under section 12 of that Act before thecommencement of this Part.

**PART IV—MINOR AMENDMENTS OF ACTS**

**Amendments**

8. The Acts specified in Schedule 2 are amended as set out in that Schedule.

**—————**

**SCHEDULE 1** Section 5

OTHER AMENDMENTS OF NAVIGATION ACT 1912 IN RELATION TO REVIEW OF DECISIONS

**Subsection 47 (4):**

Omit “paragraph 424aa (1) (a)”, substitute “paragraph 377c (e)”.

**Section 192:**

Repeal the section.

**Section 210:**

Repeal the section, substitute the following section:

**Detention of unseaworthy and substandard ships**

“210. (1) If it appears to the Minister that a ship is unseaworthy or substandard, the Minister may order the ship to be provisionally detained.

“(2) The Minister shall immediately give the master of the ship notice of the provisional detention, together with a statement of the grounds of the detention.

“(3) The Minister shall direct a person to prepare a report as to whether the ship is unseaworthy or substandard.

“(4) The ship shall be surveyed by a surveyor if a survey is necessary for the preparation of the report.

“(5) Unless the Minister decides to order the ship to be unconditionally released, the Minister shall provide the master of the ship with a copy of the report.

“(6) On receipt of the report, the Minister may:

(a) order the ship to be finally detained; or

(b) order its release unconditionally or on such conditions as the Minister considers appropriate.

“(7) If an order for the final detention of the ship is made, the ship shall not be released until the Minister is satisfied that its further detention is no longer necessary, and orders its release.”.

**Subsection 211 (3):**

Omit the subsection.

**Subsection 356 (2):**

Omit the subsection.

**Section 377:**

Repeal the section.

**SCHEDULE 1—**continued

**Section 405l:**

Repeal the section.

**Sections 424aa, 424a and 424b:**

Repeal the sections.

**After section 426:**

Insert the following section:

**Power to provide in orders for review of decisions**

“426a. An order made under the regulations shall be taken, for the purposes of the *Administrative Appeals Tribunal Act 1975*,to be an enactment.”.

—————

**SCHEDULE 2** Section 8

MINOR AMENDMENTS

***Airlines Equipment Act 1958***

**Subsection 11 (1):**

Insert the following definition:

“ ‘high capacity aircraft’ means an aircraft:

(a) the maximum seating capacity of which exceeds 38 passenger seats; or

(b) the maximum payload of which exceeds 4,200 kilograms;”.

**Subsection 11 (1) (definition of “regional operator”):**

Omit “authorising”, substitute “permitting”.

***Civil Aviation Act 1988***

**Subsection 3 (1) (definition of “Air Operators’ Certificate”):**

Omit “Operators’”, substitute “Operator’s”.

**Schedule (item relating to paragraph 26 (2) (ca) of the *Air Navigation Act 1920*):**

Omit the item, substitute the following item:

**“Paragraph 26 (2) (ca):**

(a) Omit ‘Australia’ (wherever occurring), substitute ‘the Commonwealth’.

(b) Omit ‘(including, but without limiting the generality of the foregoing, fees and other charges in respect of, or for applications or

**SCHEDULE 2—**continued

examinations for, the grant, issue, renewal or variation of licences, certificates, approvals, permits, registrations or exemptions under the regulations)’.”.

***Federal Airports Corporation Act 1986***

**Subsection 55 (5):**

Omit “receipt of payment”, substitute “receipt or payment”.

**Subsection 56 (10):**

Omit “Authority”, substitute “Corporation”.

**Subsection 70 (3):**

Omit “licencing”, substitute “licensing”.

***Independent Air Fares Committee Act 1981***

**Subsection 3 (1) (definition of “commuter operator”):**

Omit the definition.

***Navigation Act 1912***

**After section 267zr:**

Insert the following section in Division 12c:

**Operation of Division**

“267zs. In spite of anything in the *Protection of the Sea Legislation Amendment Act 1986,* this Division does not commence until a day fixed by Proclamation for the purposes of this section.”.

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

**Subsection 5 (2):**

Omit “and 22”, substitute “, 22, 26ab, 26d and 26f”.

**Paragraph 9 (4) (b):**

Omit “has a gross tonnage of 400 or more and”.

**Paragraph 9 (4) (h):**

Add at the end “or”.

**Paragraph 9 (4) (j):**

Omit the paragraph.

**Subsection 26ab (1):**

Omit “(2),”.

**SCHEDULE 2**—continued

**Subsection 26ab (2):**

Omit the subsection.

**Subsection 26ab (3):**

(a) After “the sea near” insert “a State,”.

(b) After “law of the” insert “State or”.

**Subsection 26ab (4):**

After “the sea near” insert “a State,”.

**Subsection 26ab (7):**

Omit “(2),”.

**Subsection 26d (1):**

Omit “(2)”, substitute “(3)”.

**Subsection 26d (2):**

Omit the subsection.

**Subsection 26d (3):**

(a) After “the sea near” insert “a State,”.

(b) After “law of the” insert “State or”.

**Subsection 26d (4):**

After “the sea near” insert “a State,”.

**Subsection 26d (10):**

Omit “(2),”.

**After section 26d:**

Insert the following section in Part IIIb:

**Operation of Part**

“26da. In spite of anything in the *Protection of the Sea Legislation Amendment Act 1986*,this Part does not commence until a day fixed by Proclamation for the purposes of this section.”.

**Subsection 26f (1):**

Omit “(2)”, substitute “(3)”.

**Subsection 26f (2):**

Omit the subsection.

**Subsection 26f (3):**

(a) After “the sea near” insert “a State,”.

**SCHEDULE 2—**continued

(b) After “law of the” insert “State or”.

**Subsection 26f (4):**

After “the sea near” insert “a State,”.

**NOTES**

1. No. 4, 1913, as amended. For previous amendments, see No. 32, 1919; No. 1, 1921; No. 8, 1925; No. 8, 1926; No. 49, 1934; No. 30, 1935; No. 1, 1943; No. 80, 1950; No. 109, 1952; No. 96, 1953; No. 46, 1956; No. 36, 1958; No. 96, 1961; No. 1, 1965; No. 93, 1966; No. 60, 1967; No. 62, 1968; Nos. 1 and 117, 1970; No. 28, 1972; No. 216, 1973; Nos. 91 and 157, 1976; Nos. 98 and 155, 1979; Nos. 70 and 87, 1980; Nos. 10, 36, 61 and 74, 1981; No. 80, 1982; Nos. 39, 40, 84 and 136, 1983; Nos. 72 and 165, 1984; Nos. 65 and 193, 1985; Nos. 76, 132, 163 and 167, 1986; No. 141, 1987; and No. 57, 1988.

2. No. 74, 1987.

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

*Senate on 1 September 1988*

*House of Representatives on 1 March 1989*]