



Transport and Communications Legislation Amendment Act 1992

No. 82 of 1992

An Act to amend certain laws relating to transport and communications, and for related purposes

[Assented to 30 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Transport and Communications
Legislation Amendment Act 1992*.

Commencement

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

10 (2) Subsection 5(2) and sections 6 and 7 commence on a day to be
fixed by Proclamation.

(3) If the provisions mentioned in subsection (2) do not commence
under that subsection within the period of 6 months beginning on the

day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

(4) Sections 16, 18 and 19, subsection 20(1) and section 21 are taken to have commenced immediately after the commencement of the *Broadcasting Amendment Act (No. 2) 1991* (other than sections 19, 20 and 21 of that Act). 5

(5) Sections 22, 23, 24 and 25 are taken to have commenced on 1 January 1992.

PART 2—AMENDMENTS OF THE AIR NAVIGATION ACT 1920

Principal Act 10

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

International aircraft to land at and take off from designated airports

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

“(2) If an aircraft is flown in contravention of this section: 15

(a) the owner, the operator and the hirer of the aircraft; and

(b) the pilot in command and any other pilot of the aircraft;

are guilty of an offence.

Penalty:

(a) in the case of an individual—imprisonment for 2 years; or 20

(b) in the case of a body corporate—\$100,000.”.

International airline licences

5.(1) Section 12 of the Principal Act is amended by inserting after subsection (1), the following subsection:

“(1A) If an aircraft is flown in contravention of this section: 25

(a) the owner, the operator and the hirer of the aircraft; and

(b) the pilot in command and any other pilot of the aircraft;

are guilty of an offence.

Penalty:

(a) in the case of an individual—imprisonment for 7 years; or 30

(b) in the case of a body corporate—\$500,000.”.

(2) Section 12 of the Principal Act is amended:

(a) by omitting from subsection (1) “An international airline of a country other than Australia” and substituting “Subject to subsection (1B), an international airline”; 35

(b) by omitting from subsection (1) “or into” and substituting “, into or out of”;

(c) by adding after subsection (1A) the following subsection:

“(1B) Subsection (1) does not apply to the operation of a scheduled international air service by an international airline if it is operated in accordance with:

- 5 (a) an agreement, between the international airline and the holder of an international airline licence, that:
- (i) has been approved in writing by the Secretary; and
 - (ii) provides for the airline to operate the service for which the licence was issued; and
- 10 (b) the conditions (if any) imposed by the Secretary in giving the approval referred to in subparagraph (a)(i).”.

Suspension or cancellation of international airline licences

6. Section 13 of the Principal Act is amended:

- (a) by omitting “of a country other than Australia”;
- 15 (b) by omitting from subparagraph (c)(ii) “of the country”.

Insertion of new section

7. After section 13 of the Principal Act the following section is inserted:

Non-scheduled international flights by Australian aircraft

20 “13A.(1) Subject to subsection (4), an Australian aircraft, other than an aircraft engaged in a private operation or an aircraft operating a scheduled international service, must not be flown:

- (a) between a place in Australian territory and a place outside Australian territory; or
- 25 (b) between places outside Australian territory;

except with the Secretary’s permission and in accordance with that permission.

“(2) If an aircraft is flown in contravention of this section:

- (a) the owner, the operator and the hirer of the aircraft; and
- 30 (b) the pilot in command and any other pilot of the aircraft;
- are guilty of an offence.

Penalty:

- (a) in the case of an individual—imprisonment for 2 years; or
- (b) in the case of a body corporate—\$100,000.

35 “(3) The Secretary may, by instrument in writing, determine that permission is not required under this section in relation to a category of commercial non-scheduled flights.

“(4) Permission under this section is not required for a flight of an aircraft if the flight is included in a category of flights in relation to which such a determination is in force.”.

Non-scheduled flights by aircraft possessing nationality of a Contracting State

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8. Section 14 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Where” and substituting “Subject to subsection (3B), where”;
- (b) by inserting after subsection (2) the following subsections:

“(3) If passengers, cargo or mail are taken onto or discharged from an aircraft in contravention of subsection (2):

- (a) the owner, the operator and the hirer of the aircraft; and
 - (b) the pilot in command and any other pilot of the aircraft;
- are guilty of an offence.

Penalty:

- (a) in the case of an individual—imprisonment for 2 years; or
- (b) in the case of a body corporate—\$100,000.

“(3A) The Secretary may, by instrument in writing, determine that permission is not required under this section in relation to a category of commercial non-scheduled flights.

“(3B) Permission under this section is not required for taking on or discharging of passengers, cargo or mail in relation to a flight of an aircraft if the flight is included in a category of flights in relation to which such a determination is in force.”;

- (c) by omitting from subsections (4) and (5) “sub-section (2)” and substituting “subsection (2) or (3A)”.

Non-scheduled flight by foreign aircraft not possessing nationality of a Contracting State

9. Section 15 of the Principal Act is amended:

- (a) by omitting from subsection (1) “A” and substituting “Subject to subsection (2D), a”;
- (b) by inserting after subsection (2) the following subsections:

“(2A) In giving an approval under subsection (1) the Minister may direct that the charges to be made in respect of passengers or cargo taken on or discharged in Australian territory must be not less than such amounts as he or she directs.

“(2B) If an aircraft is flown in contravention of this section:

- (a) the owner, the operator and the hirer of the aircraft; and
- (b) the pilot in command and any other pilot of the aircraft;

are guilty of an offence.

Penalty:

(a) in the case of an individual—imprisonment for 2 years;
or

5 (b) in the case of a body corporate—\$100,000.

“(2C) The Minister may, by instrument in writing, determine that approval is not required under this section in relation to a category of commercial non-scheduled flights.

10 “(2D) Permission under this section is not required for a flight of an aircraft if the flight is included in a category of flights in relation to which such a determination is in force.”.

Repeal of section and substitution of new section

10. Section 16 of the Principal Act is repealed and the following section is substituted:

15 Aircraft on international flights to comply with laws

“16.(1) It is a condition of any licence, permission or approval granted under this Act or the regulations that, if, under the licence, permission or approval, an aircraft:

20 (a) arrives in Australian territory from a place outside Australian territory; or

(b) departs from Australian territory for a place outside Australian territory;

the owner, the operator, the hirer, the pilot in command and any other pilot of the aircraft must comply with the provisions of all applicable laws of the Commonwealth or of a State or Territory.

25 “(2) The reference in subsection (1) to applicable laws includes, in particular, laws relating to:

(a) the entry or clearance of passengers; and

(b) crew or cargo; and

30 (c) immigration; and

(d) passports; and

(e) customs; and

(f) quarantine.”.

Aircraft on international flights to have permission

35 11. Section 17 of the Principal Act is amended:

(a) by omitting from subsection (1) “Except” and substituting “Subject to subsection (1C) and except”;

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

“(1A) If an aircraft is flown in contravention of this section:

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- (a) the owner, the operator and the hirer of the aircraft; and
 - (b) the pilot in command and any other pilot of the aircraft;
- are guilty of an offence.

Penalty:

- (a) in the case of an individual—imprisonment for 2 years; 5
or
- (b) in the case of a body corporate—\$100,000.

“(1B) The Secretary may, by instrument in writing, determine that permission is not required under this section in relation to a category of commercial non-scheduled flights. 10

“(1C) Permission under this section is not required for a flight of an aircraft if the flight is included in a category of flights in relation to which such a determination is in force.”.

Insertion of new section

12. After section 17 of the Principal Act the following section is inserted: 15

Publication of determinations

“18. The Secretary must cause any determinations made under subsections 13A(3), 14(3A), 15(2C) and 17(1B) to be included in the Aeronautical Information Publications published under section 18 of the *Civil Aviation Act 1988*.”. 20

Carriage of munitions

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

- “(3) If an aircraft is flown in contravention of this section: 25
- (a) the owner, the operator and the hirer of the aircraft; and
- (b) the pilot in command and any other pilot of the aircraft;

are guilty of an offence.

Penalty:

- (a) in the case of an individual—imprisonment for 7 years; or 30
- (b) in the case of a body corporate—\$100,000.”.

Repeal of section 22

14. Section 22 of the Principal Act is repealed.

Regulations

15. Section 26 of the Principal Act is amended: 35

- (a) by omitting from paragraph (2)(k) “or imprisonment for a term of 2 years, or both,”;

(b) by adding at the end of subsection (2) the following word and paragraph:

“; and (l) enabling a person who is alleged to have contravened a specified provision of the regulations to pay to the Commonwealth, as an alternative to prosecution, a specified penalty, not exceeding an amount equal to one-fifth of the maximum penalty prescribed for contravening that provision.”.

PART 3—AMENDMENTS OF THE BROADCASTING ACT 1942

10 Principal Act

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

Interpretation

17. Section 4 of the Principal Act is amended by adding at the end of the definition of “election” in subsection (1) “(other than a by-election for a local government authority of a State or a Territory)”.

Interpretation

18. Section 4 of the Principal Act is amended by omitting paragraph (14)(b) and substituting the following paragraph:

“(b) the licence warrant in respect of the licence authorises:

- (i) medium frequency transmission only; or
- (ii) both medium frequency transmission and very high frequency transmission.”.

Interpretation

19. Section 80 of the Principal Act is amended by inserting in paragraph (a) of the definition of “non-metropolitan FM commercial radio licence” in subsection (1) “only” after “transmission”.

Whether service provided under a licence is commercially viable

20.(1) Section 80B of the Principal Act is amended by adding at the end of paragraph (2)(b) the following:

“to:

- (i) comply with the conditions of the licence that are not referred to in paragraph (a); or
- (ii) act as described in paragraph 83(1)(b), (c) or (d)”.

(2) Section 80B of the Principal Act is amended:

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

“(1) If, in considering whether to make a decision to which this subsection applies, the Tribunal is required to have regard

to the commercial viability of a service provided under any licence, the service is commercially viable if, and only if, the Tribunal is satisfied on the balance of probabilities that, were the Tribunal to make the decision, the service would continue to be provided under that licence (including that licence as renewed or further renewed) for at least 5 years after the day on which the Tribunal made the decision. 5

“(1A) Subsection (1) applies to a decision of the Tribunal under this Part:

(a) to grant a licence; or 10

(b) relating to the conditions upon which or the form in accordance with which a licence is to be granted or renewed; or

(c) to vary or revoke any of the conditions of a licence or to impose further conditions in respect of a licence. 15

“(1B) For the purposes of the Tribunal’s consideration of the renewal of a licence under this Part, the service provided under the licence is commercially viable if, and only if, the Tribunal is satisfied on the balance of probabilities that, were the licence to be renewed, the service would continue to be provided for the term of the licence.”; 20

(b) by inserting in subsection (2) “under this section” after “satisfied”;

(c) by omitting from subsection (3) “subsection (1)” and substituting “this section”. 25

Licence warrants

21. Subsection 89D(5A) of the Principal Act is amended by inserting “only” after “transmission”.

PART 4—AMENDMENTS OF THE RADIO LICENCE FEES ACT 1964 30

Principal Act

22. In this Part, unless the contrary intention appears, “Principal Act” means the *Radio Licence Fees Act 1964*³.

Amount of fees

23. Section 6 of the Principal Act is amended by omitting from paragraph (2A)(e) “6.5%” and substituting “3.25%”. 35

Change of accounting period—effect on fees payable

24. Section 6A of the Principal Act is amended by omitting from the substituted paragraph 6(2A)(e) in paragraph (e) “6.5%” and substituting “3.25%”. 40

Transitional provision for old system licences

25. Without prejudice to the effect that sections 3, 6 and 8 of the *Radio Licence Fees Amendment Act 1991* and sections 23 and 24 of this Act have apart from this section, those sections also have effect, for the purposes of the continued application, by virtue of section 11 of the *Broadcasting Stations Licence Fees Amendment Act 1985*, of the *Broadcasting Stations Licence Fees Act 1964* as in force immediately before 1 January 1986, as if references in those sections to the Principal Act were references to the *Broadcasting Stations Licence Fees Act 1964* as in force immediately before that day.

Refunds of overpayments

26. If, on or after 1 January 1992 and before the commencement of this section, a licensee pays a fee in respect of a licence and:

- (a) because of the amendments of the Principal Act made by this Act, the amount paid exceeds the amount that would have been payable under the Principal Act as so amended; or
- (b) because of section 25 of this Act, the amount paid exceeds the amount that would have been payable under the *Broadcasting Stations Licence Fees Act 1964* as in force immediately before 1 January 1986;

the Tribunal must pay to the licensee the amount of the excess.

NOTES

1. No. 50, 1920, as amended. For previous amendments, see No. 93, 1936; Nos. 6 and 89, 1947; No. 80, 1950; No. 39, 1960; No. 72, 1961; No. 8, 1963; No. 93, 1966; No. 79, 1971; Nos. 130 and 216, 1973; No. 124, 1974; No. 91, 1977; No. 19, 1979; No. 27, 1980; No. 80, 1982; No. 39, 1983; Nos. 69 and 108, 1984; No. 69, 1986; No. 63, 1988; Nos. 6 and 45, 1989; No. 23, 1990; and No. 11, 1991.
2. No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; Nos. 68, 79, 80, 134 and 184, 1987; Nos. 56, 146 and 147, 1988; Nos. 29 and 31, 1989; Nos. 23, 102 and 103, 1990; and Nos. 7, 11, 99, 145 and 158, 1991.
3. No. 119, 1964, as amended. For previous amendments, see No. 93, 1966; No. 148, 1973; No. 188, 1976; No. 94, 1977; No. 50, 1978; Nos. 114 and 168, 1981; No. 155, 1982; No. 58, 1983; No. 68, 1985; Nos. 66 and 116, 1987; Nos. 144 and 146, 1988; and No. 184, 1991.

[*Minister's second reading speech made in—
House of Representatives on 26 February 1992
Senate on 25 March 1992*]