

EXPLANATORY STATEMENT

Issued by the authority of
the Parliamentary Secretary to the Minister for Transport and Regional Services

Trade Practices Act 1974

DECLARATIONS PURSUANT TO SUBSECTION 10.03(2) OF PART X

Part X (International liner cargo shipping) of the *Trade Practices Act 1974* regulates the market conduct of international cargo shipping companies that collaborate as 'conferences' in order to provide joint liner cargo shipping services, often at agreed freight rates. Liner shipping operators have traditionally been permitted by governments around the world to act in concert as 'conferences' in order to limit competition and stabilise freight rates. They allow members to: allocate routes; fix prices; manage capacity; offer loyalty agreements; and pool revenue/ losses. The traditional justification for allowing collusive behaviour of this kind is that it prevents destructive competition, which could lead to unsustainable prices below cost, and so market instability, which would impact on the capability of ocean carriers to provide the frequent, reliable services valued by shippers.

As well as permitting ocean carriers to work together in conferences, Part X provides exporters and importers with countervailing powers to strengthen their negotiating ability with conferences, through shipper bodies designated by the Minister for that purpose. Part X obligates shipping lines who are members of a conference to negotiate with designated shipper bodies in relation to liner cargo shipping services they intend to provide.

Designated peak shipper bodies deal with matters affecting liner trades as a whole whereas designated secondary shipper bodies may be nominated to negotiate with ocean carriers in relation to, for example, matters affecting shippers of a particular commodity, or shippers in a particular state/ territory.

Pursuant to subsection 10.03(2) of Part X, the Minister may declare an association to be a designated outwards secondary shipper body, provided the Minister is of the opinion that, in relation to outwards liner cargo shipping, the association represents the interests of Australian shippers in a particular trade, or of Australian shippers of particular kinds of goods, or of shippers in a particular part of Australia, or of producers of goods of a kind exported from Australia, and that such a declaration is desirable.

Part X falls within the portfolio responsibility of the Minister for Transport and Regional Services; this responsibility has been delegated to the Parliamentary Secretary to the Minister for Transport and Regional Services.

By force of the *Legislative Instruments Act 2003*, legislative instruments made before 1 January 2000 will be automatically repealed on 31 December 2007 unless they are registered with the Federal Register of Legislative Instruments on or before that date. In the light of this, the Department of Transport and Regional Services (DOTARS) conducted a review of all affected shipper bodies currently designated pursuant to

section 10.03 of Part X. As a result of that review, it was discovered that the designations of six outwards secondary shipper bodies should be repealed because the associations are either defunct or no longer wish to retain their designation. These associations are outlined below.

Although there is no direct provision in Part X for the repeal of a shipper body's designation, subsection 33(3) of the *Acts Interpretation Act 1901* provides that:

“Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.”

Instruments of repeal have therefore been executed for the following designated outwards secondary shipper bodies:

1. the Australian Dried Fruits Shippers' Association, designated on 9 May 1990, which inquiries indicate to be defunct;
2. the Australian Malt Exporters Committee, designated on 9 October 1990, which inquiries indicate to be defunct for Part X purposes;
3. the Australian Prawn Promotion Association Ltd, designated on 11 April 1997, which inquiries indicate to be defunct;
4. the Dairy Industry Shipping Association, designated on 2 May 1990, which inquiries indicate to be defunct;
5. the Australian Onion Association, designated on 3 September 1990: a representative of the Association has advised that it no longer requires designation as an outwards secondary shipper body; and
6. the Wool Industry Shipping Group, designated on 17 May 1990: a representative of the Wool Commodity Group Pty Limited advised that the Group no longer requires designation as an outwards secondary shipper body.

It is open to any of the above associations to reapply for designation as outwards secondary shipper bodies pursuant to Part X should they re-establish and/ or wish to be eligible to negotiate with liner conferences in relation to international liner cargo shipping services in the future.