

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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Presented and read a first time

*(Transport and Communications)*

## A BILL

FOR

### **An Act to amend the law relating to transport and communications, and for related purposes**

The Parliament of Australia enacts:

#### **Short title**

1. This Act may be cited as the *Transport and Communications Legislation Amendment Act (No. 3) 1993*.

#### **5 Commencement**

2.(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

*Transport and Communications Legislation  
Amendment (No. 3) No. , 1993*

(2) The amendment of the *Occupational Health and Safety (Maritime Industry) Act 1993* commences:

- (a) if section 120 of the *Occupational Health and Safety (Maritime Industry) Act 1993* commences before this Act receives the Royal Assent—on the day on which this Act receives the Royal Assent; or 5
- (b) otherwise—immediately after the commencement of section 120 of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(3) The amendments of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* commence:

- (a) if this Act receives the Royal Assent before the day on which the *Maritime Legislation Amendment Act 1993* comes into operation 10  
—on the day on which that Act comes into operation; or
- (b) otherwise—on the day on which this Act receives the Royal Assent.

**Amendment of Acts**

3 (1) The Acts specified in Schedule 1 are amended as set out in 15  
Schedule 1.

(2) The *Australian and Overseas Telecommunications Corporation Act 1991* is further amended as set out in Schedule 2.

(3) The Acts specified in Schedule 3 are amended as set out in 20  
Schedule 3.

**Transitional**

4 If an instrument, Proclamation or order under section 421, 422, 422A, 423, 423A or 423B of the *Navigation Act 1912* was in force immediately before those sections were repealed by this Act, the instrument, Proclamation or order: 25

- (a) continues in force after that repeal as if those sections had not been repealed; and
  - (b) may be revoked in the same way that it could have been revoked before those sections were repealed.
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**SCHEDULE 1**

Subsection 3(1)

*Air Navigation Act 1920*

**After section 11:**

Insert:

**Foreign shareholdings in Australian international airlines**

“11A.(1) The Minister may, by written notice, require an Australian international airline:

- (a) to give to the Minister such information as is specified in the notice concerning the extent (if any) to which foreign airlines have relevant interests in shares in the Australian international airline; or
- (b) if foreign airlines have relevant interests in shares in the Australian international airline that represent, in total, more than 35% of the total value of the issued share capital of the Australian international airline—to take all necessary action to ensure that its articles of association comply with subsection (2); or
- (c) if an individual foreign airline has relevant interests in shares in the Australian international airline that represent more than 25% of the total value of the issued share capital of the Australian international airline—to take all necessary action to ensure that its articles of association comply with subsection (2).

“(2) The articles of association of an Australian international airline comply with this subsection if they:

- (a) impose restrictions on the issue, transfer and ownership (including joint ownership) of shares in the Australian international airline so as to prevent foreign airlines having relevant interests in shares in the Australian international airline that represent, in total, more than 35% of the total value of the issued share capital of the Australian international airline; and
- (b) impose restrictions on the issue, transfer and ownership (including joint ownership) of shares in the Australian international airline so as to prevent an individual foreign airline having relevant interests in shares in the Australian international airline that represent more than 25% of the total value of the issued share capital of the Australian international airline; and
- (c) confer the following powers on the directors of the Australian international airline to enable the directors to enforce the restrictions referred to in paragraphs (a) and (b):
  - (i) the power to do anything necessary to effect the transfer of shares held by a person;

**SCHEDULE 1—continued**

- (ii) the power to remove or limit the right of a person to exercise voting rights attached to voting shares;
- (iii) the power to end the appointment of a person to the office of director of the Australian international airline;
- (iv) the power to refuse to register a transfer of shares to a person.

“(3) For the purposes of this section, a person has a relevant interest in a share if, and only if, the person would be taken because of Division 5 of Part 1.2 of the Corporations Law to have a relevant interest in the share if section 33 of that Law were disregarded.

“(4) In this section:

‘**Australian international airline**’ means an international airline that may be permitted to carry passengers and freight, or both passengers and freight, under a bilateral arrangement as an airline designated by Australia to operate a scheduled international air service;

‘**bilateral arrangement**’ means an agreement or arrangement between Australia and another country, or between Australia and a body acting on behalf of another country, under which the carriage by air of passengers or freight, or both passengers and freight, between the 2 countries is permitted;

‘**country**’ includes any region:

- (a) which is part of a foreign country; or
- (b) which is under the protection of a foreign country; or
- (c) for whose international relations a foreign country is responsible;

‘**foreign airline**’ means an air transport enterprise other than:

- (a) an Australian international airline; or
- (b) Qantas; or
- (c) an air transport enterprise offering or operating an air service solely within Australian territory;

‘**Qantas**’ means Qantas Airways Limited, as the company exists from time to time (even if its name is later changed);

‘**share**’, in relation to a body corporate, means a share in the body’s share capital;

‘**voting share**’ has the same meaning as in the Corporations Law.

**Injunctions relating to section 11A**

“11B.(1) If an Australian international airline or any other person has engaged, is engaging or is proposing to engage in conduct that constitutes or would constitute:

- (a) a contravention of the mandatory articles or a requirement under subsection 11A(1); or

**SCHEDULE 1—continued**

- (b) attempting to contravene the mandatory articles or a requirement under subsection 11A(1); or
- (c) aiding, abetting, counselling or procuring a person to contravene the mandatory articles or a requirement under subsection 11A(1); or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the mandatory articles or a requirement under subsection 11A(1); or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the mandatory articles or a requirement under subsection 11A(1); or
- (f) conspiring with others to contravene the mandatory articles or a requirement under subsection 11A(1);

the Federal Court may, on the application of the Minister, grant an injunction restraining the airline or the person from engaging in the conduct. If in the court's opinion it is desirable to do so, the injunction may also require the airline or person to do any act or thing.

“(2) If an Australian international airline or any other person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the airline or person is required by the mandatory articles or under subsection 11A(1) to do, the Federal Court may, on the application of the Minister, grant an injunction requiring the airline or person to do that act or thing.

“(3) An injunction under this section is to be granted on such terms as the Federal Court thinks appropriate.

“(4) On an application under subsection (1) or (2), the Federal Court may, if the court determines it to be appropriate, grant an injunction by the consent of all the parties to the proceeding, whether or not the court is satisfied that that subsection applies.

“(5) If in the Federal Court's opinion it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

“(6) The Federal Court may discharge or vary an injunction granted under this section.

“(7) The Federal Court's power to grant an injunction restraining an Australian international airline or any other person from engaging in conduct may be exercised:

- (a) whether or not it appears to the court that the airline or person intends to engage again, or to continue to engage, in conduct of that kind; and

**SCHEDULE 1—continued**

- (b) whether or not the airline or person has previously engaged in conduct of that kind; and
- (c) whether or not there is imminent danger of substantial damage to any person if the airline or the first-mentioned person engages in conduct of that kind.

“(8) The Federal Court’s power to grant an injunction requiring an Australian international airline or any other person to do an act or thing may be exercised:

- (a) whether or not it appears to the court that the airline or person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the airline or person has previously refused or failed to do that act or thing; and
- (c) whether or not there is imminent danger of substantial damage to any person if the airline or the first-mentioned person refuses or fails to do that act or thing.

“(9) If the Minister applies to the Federal Court for an injunction under this section, the court must not require the Minister, as a condition of granting an interim injunction, to give an undertaking as to damages.

“(10) If the Federal Court has power under this section to grant an injunction:

- (a) restraining an Australian international airline or a person from engaging in particular conduct; or
- (b) requiring an Australian international airline or a person to do a particular act or thing;

the court may, either in addition to or in substitution for the grant of the injunction, make such other order or orders as it thinks appropriate against the airline, or the person who engaged in the conduct or a person who was involved in the contravention.

“(11) In this section:

‘**Australian international airline**’ has the same meaning as in section 11A;

‘**Federal Court**’ means the Federal Court of Australia;

‘**mandatory articles**’ means those articles of association of an Australian international airline that would be required in order for the airline’s articles of association to comply with subsection 11A(2).”

**SCHEDULE 1—continued**

***Australian and Overseas Telecommunications Corporation Act 1991***

**Title:**

Omit “**Australian and Overseas Telecommunications Corporation Limited**”, substitute “**Telstra Corporation Limited**”.

**Section 1:**

Omit “*Australian and Overseas Telecommunications Corporation*”, substitute “*Telstra Corporation*”.

**Section 3 (definition of “AOTC”):**

Omit the definition.

**Section 3:**

Insert:

“**‘Telstra’** means the company that:

- (a) was incorporated under the Corporations Law of the Australian Capital Territory by the name Australian and Overseas Telecommunications Corporation Limited; and
- (b) changed its name under the Corporations Law of the Australian Capital Territory to Telstra Corporation Limited on 13 April 1993;”.

**Subsection 12(1):**

Omit “AOTC’s”, substitute “Telstra’s”.

***Navigation Act 1912***

**Subparagraph 132(2)(a)(i):**

Omit the subparagraph, substitute:

“(i) on the day of his or her recovery; or”

**Paragraph 377L(c):**

Omit “423B(1)”, substitute “421”.

**Sections 421, 422, 422A, 423, 423A and 423B:**

Repeal the sections, substitute:

**Power of exemption**

“421.(1) The Minister or the Authority may, in writing, direct that this Act does not apply, or specified provisions of this Act do not apply, to:

**SCHEDULE 1—continued**

- (a) a ship or class of ships; or
- (b) a person or class of persons.

“(2) An exemption under subsection (1) may be confined to one or both of the following:

- (a) one or more specified periods;
- (b) one or more specified voyages or operations.

“(3) An exemption under subsection (1) is subject to such conditions (if any) as are specified in the direction.

“(4) If a condition that is applicable to an exemption of a ship is contravened, the master and the owner of the ship are guilty of an offence.  
Penalty: Imprisonment for 4 years.

“(5) A person must not intentionally or recklessly contravene a condition that is applicable to a person.  
Penalty: Imprisonment for 4 years.

“(6) The Minister or the Authority must not make a direction if the proposed exemption would be inconsistent with an obligation of Australia under an international agreement.

“(7) The Minister or the Authority must not make a direction unless satisfied that the proposed exemption will not jeopardise the safety of a ship or persons on board a ship.”.

***Occupational Health and Safety (Maritime Industry) Act 1993***

**After section 120:**

Insert:

**Regulations—power to make**

“121. The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.”.

***Protection of the Sea (Civil Liability) Act 1981***

**After Part IV:**

Insert:



**SCHEDULE 1—continued**

**“PART IVA—RECOVERY OF LOSS ETC. INCURRED BY THE AUSTRALIAN MARITIME SAFETY AUTHORITY BECAUSE OF DISCHARGES FROM SHIPS**

**Recovery of loss etc. by the Authority**

“22A.(1) This section applies if the Authority suffers loss or damage, or incurs costs or expenses, in preventing or mitigating or in attempting to prevent or mitigate any pollution damage, because of:

- (a) a discharge or disposal in contravention of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
- (b) action taken by the Authority in performance of its function, under paragraph 6(1)(a) of the *Australian Maritime Safety Authority Act 1990*, to combat pollution in the marine environment caused by a discharge or disposal from a ship.

“(2) The Authority may recover from:

- (a) the owner or the master of the ship from which the discharge or disposal occurred; or
  - (b) any person whose act caused the discharge or disposal;
- the amount of the loss, damage, costs and expenses.

“(3) The amount is recoverable as a debt in a court of competent jurisdiction.

“(4) In this section:

‘**Authority**’ means the Australian Maritime Safety Authority.”.

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

**After section 27:**

Insert:

**Detention of foreign ships in connection with pollution breaches**

“27A.(1) The Authority may detain a foreign ship if:

- (a) the ship is voluntarily at a port and there are clear grounds for believing that a pollution breach has occurred as a result of acts or omissions in relation to the ship in the territorial sea or the exclusive economic zone; or
  - (b) the ship is in the territorial sea and there are clear grounds for believing that a pollution breach has occurred as a result of acts or omissions in relation to the ship while navigating in the territorial sea;
- or

**SCHEDULE 1—continued**

(c) the ship is in the territorial sea or the exclusive economic zone and there is clear objective evidence that:

- (i) a pollution breach has occurred as a result of acts or omissions in relation to the ship in the exclusive economic zone; and
- (ii) the actions resulted in a discharge from the ship that has caused or threatens to cause major damage to the coastline of Australia, to related interests of Australia or to any resources of the territorial sea or exclusive economic zone.

“(2) The ship must be immediately released if:

- (a) security is provided in accordance with subsection (3); or
- (b) all proceedings that have been instituted in respect of the pollution breach have been discontinued; or
- (c) all such proceedings have been concluded (whether or not any appeal is pending) without any person being convicted of an offence or being found liable to pay an amount of money; or
- (d) all such proceedings have been concluded, and all penalties and/or other amounts of money, and all costs and expenses ordered to be paid, in respect of the pollution breach have been paid; or
- (e) the Authority forms the belief that the pollution breach did not occur, or did not occur as a result of actions in relation to the ship; or
- (f) the Authority determines for any other reason that the ship should be released.

“(3) Security referred to in paragraph (2)(a) must:

- (a) be provided in a form acceptable to the Authority; and
- (b) be an amount that, in the Authority’s opinion, is equivalent to the maximum amount of all penalties, other amounts of money, costs and expenses that could be payable by the master and owner of the ship in respect of the pollution breach.

“(4) The master and owner of the ship are guilty of an offence if:

- (a) the ship was detained at a port and leaves the port; or
- (b) the ship was detained in the territorial sea and leaves the outer limits of the territorial sea; or
- (c) the ship was detained in the exclusive economic zone and leaves the outer limits of the exclusive economic zone;

before it is released from detention.

Penalty: 2,000 penalty units.

“(5) In this section:

**SCHEDULE 1—continued**

**‘Australia’** includes all the external Territories;

**‘exclusive economic zone’** means the exclusive economic zone, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia or the coast of an external Territory;

**‘pollution breach’** means a discharge or disposal from a ship:

(a) in contravention of this Act; or

(b) that gives rise to a right of recovery by the Authority under Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*;

**‘port’** means a port in Australia, and is taken to include an off-shore installation over which Australia has jurisdiction;

**‘territorial sea’** means the territorial sea of Australia.

**Notification of measures taken in relation to foreign ships**

“27B.(1) The Authority must comply with the requirements of article 231 of the Law of the Sea Convention in relation to any measures taken, under this Act or Part IVA of the *Protection of the Sea (Civil Liability) Act 1981*, in relation to a foreign ship.

“(2) In this section:

**‘Law of the Sea Convention’** means the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.”.

**Section 29:**

Omit the section, substitute:

**Time limits for prosecution**

“29.(1) Subject to subsection (2), a prosecution for an offence against this Act may be brought at any time.

“(2) If the prosecution relates to an act or omission that involves a foreign ship, the prosecution must not be brought more than 3 years after the act or omission.”.

***Telecommunications Act 1991***

**Subsection 288(6):**

After “include the” insert “prescribed”.

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**SCHEDULE 2**

Subsection 3(2)

**AMENDMENTS OF THE AUSTRALIAN AND OVERSEAS  
TELECOMMUNICATIONS ACT 1991 TO REPLACE REFERENCES  
TO "AOTC" WITH "TELSTRA"**

Each of the following provisions of the *Australian and Overseas Telecommunications Corporation Act 1991* is amended by omitting "AOTC" (wherever occurring) and substituting "Telstra":

section 3 (definitions of "Board", "exempt matter", "group company" and "transferred employee")

paragraphs 3A(1)(b) and (3)(b)

subsections 8(1), (2) and (3)

subsections 9(1), (2), (6), (7) and (8)

section 11

section 13

subsection 15(1)

subsection 19(1) (definition of "carrier")

section 26

section 29

section 30

section 31

section 32

section 33

subsections 34(1) and (3)

section 35

subsections 36(1), (3), (4) and (5)

section 37

paragraph 38(a)

subparagraph 38(b)(iii)

paragraphs 39(1)(a) and (c)

subsections 39(2) and (4)

subsection 41(1).

The heading of each of the following parts of the *Australian and Overseas Telecommunications Corporation Act 1991* is amended by omitting "AOTC" (wherever occurring) and substituting "TELSTRA":

Part 2

Part 3

**SCHEDULE 2—continued**

Part 4

Part 7.



**SCHEDULE 3**

Subsection 3(3)

**AMENDMENTS OF OTHER ACTS RELATING TO TELSTRA  
CORPORATION LIMITED*****Australian Security Intelligence Organization Act 1979*****Subsection 26(8):**

Omit "the Australian Telecommunications Corporation", substitute "Telstra Corporation Limited".

**Subsection 27A(5):**

Omit "the Australian Telecommunications Corporation", substitute "Telstra Corporation Limited".

***Commonwealth Borrowing Levy Act 1987*****Item 10 of Schedule:**

Omit the item.

**Item 17 of Schedule:**

Omit the item.

**Schedule:**

Add at the end:

"22. Telstra Corporation Limited".

***Freedom of Information Act 1982*****Part II of Schedule 2:**

(a) Omit the item relating to the Australian and Overseas Telecommunications Corporation Limited.

(b) Add at the end:

"Telstra Corporation Limited in relation to documents in respect of its commercial activities".

***Occupational Health and Safety (Commonwealth Employment) Act  
1991*****Schedule:**

(a) Omit "Australian Telecommunications Corporation".

(b) Omit "OTC Limited".

**SCHEDULE 3**—continued

(c) Add at the end “Telstra Corporation Limited”.

***Safety Rehabilitation and Compensation Act 1988***

**Paragraph 128A(4)(zh):**

Omit the paragraph, substitute:

“(zh) Telstra Corporation Limited;”.

**Paragraph 128A(4)(zk):**

Omit the paragraph.

***Sea Installations Act 1987***

**Schedule:**

- (a) Omit “*Australian and Overseas Telecommunications Corporation Act 1991*”.
- (b) After “*Telecommunications Act 1991*”, insert “*Telstra Corporation Act 1991*”.

***Telecommunications Act 1991***

**Section 5 (definition of “Telecom”):**

Omit the definition, substitute:

“‘**Telecom**’ means:

- (a) the Australian Telecommunications Corporation; and
  - (b) any successor in law to the Australian Telecommunications Corporation under paragraph 11(c) of the *Telstra Corporation Act 1991*;”.
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**NOTE ABOUT SECTION HEADINGS**

1. On the day on which the *Australian and Overseas Telecommunications Act 1991* is amended by this Act:
  - (a) the headings to the following sections of that Act are altered by omitting "AOTC" (wherever occurring) and substituting "Telstra":
    - section 8
    - section 9
    - section 26
    - section 39;
  - (b) the heading to section 12 of that Act is altered by omitting "AOTC's" and substituting "Telstra's".

