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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CIVIL AVIATION LEGISLATION AMENDMENT BILL 1995

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

(Circulated by authority of the Minister for Transport, the
Honourable Laurie Brereton MP)

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OUTLINE OF AMENDMENTS

The amendments proposed by the Government will amend the Civil Aviation Legislation Amendment Bill 1995 (the Bill) which, in turn, will amend the *Civil Aviation Act 1988* (the principal Act). The principal purpose of the amendments is to give effect to a number of recommendations contained in the advisory report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure. In addition, the Government will propose a number of minor technical amendments.

FINANCIAL IMPACT STATEMENT

The amendments will not result in any additional Commonwealth outlays.

NOTES ON AMENDMENTS

Amendment (1)

This amendment to subclause 19(2) of the Bill clarifies that the surrender by Airservices Australia (AA) of an equitable interest in respect of an eligible building is not a disposal of an asset for the purposes of applying Part IIIA of the *Income Tax Assessment Act 1936* to AA. The form of this amendment was suggested by the Australian Taxation Office.

Amendment (2)

This amendment to subclause 19(3) of the Bill provides that the granting of a lease by the Federal Airports Corporation to the Civil Aviation Safety Authority (CASA) in respect of an eligible building is not a disposal of an asset for the purposes of applying Part IIIA of the *Income Tax Assessment Act 1936* to the Federal Airports Corporation.

Amendment (3)

This amendment inserts a new definition of "aviation safety standards" into item 12 of Schedule 1 of the Bill. This definition is consequential upon the restructure of the object and functions clauses (see amendments 5 and 7 below).

Amendment (4)

This amendment omits the proposed definition of "consultancy services" from item 12 of Schedule 1 of the Bill. This amendment is consequential upon the restructure of the functions clause and, in particular, proposed new subsection 9(4) (see amendment 7 below).

Amendment (5)

This amendment substitutes a new item 14 of Schedule 1. Item 14 of the Bill inserts a new section 3A into the principal Act which sets out the main object of the Act in some detail. New item 14 substitutes a simpler object clause.

This amendment addresses a recommendation contained in the advisory report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure. The committee considered that clarity would be promoted and confusion reduced if the object clause was to be a broad in-principal statement of purpose with the more detailed provisions transferred to the section dealing with CASA's functions. The functions would then be the means to achieve what is contained in the object clause.

Amendment (6)

This amendment inserts a new item 16A of Schedule 1 into the Bill. New item 16A amends paragraph 7(ab) of the principal Act. This amendment is consequential upon the restructure of the functions clause (see amendment 7 below).

Amendment (7)

This amendment substitutes a new item 21 of Schedule 1 into the Bill which, in turn, substitutes a new section 9 into the principal Act. Proposed new section 9 classifies CASA's functions by their importance as follows:

- primary or core functions, that is, safety regulation of civil air operations in Australian territory and the operation of Australian aircraft outside Australian territory
- safety-related functions, that is, safety education and promotion
- other functions.

This amendment addresses a recommendation contained in the advisory report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure. The committee considered that the functions of CASA should be set out clearly, concisely, comprehensively and preferably in one place.

Amendment (8)

This amendment to item 23 of Schedule 1 of the Bill amends proposed subsection 9A(2) to provide that, subject to it regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from the effects of, and the effects associated with, the operation and use of aircraft.

Amendment (9)

This amendment inserts new items 23A and 23B into Schedule 1 of the Bill which repeal sections 10 and 10A respectively. The substance of these sections is now included in the new section 9. These amendments are consequential upon the restructure of the functions clause (see amendment 7 above).

Amendment (10)

This amendment omits items 24 to 31 inclusive from Schedule 1 of the Bill. These amendments are consequential upon the restructure of the functions clause (see amendment 7 above).

Amendment (11)

This amendment substitutes a new item 43 of Schedule 1 of the Act. This is a minor technical amendment to subsection 13(4) of the principal Act which is consequential upon proposed new subsection 9(4) (see amendment 7 above).

Amendment (12)

This amendment omits items 57 and 58 from Schedule 1 of the Bill. Items 57 and 58 proposed amendments to section 20A of the principal Act which contains offences in relation to dangerous flying.

Subsection 20A(1) of the principal Act provides that an aircraft must not be flown or operated in a reckless or negligent manner so as to be likely to endanger life. The proposed amendment would have provided that an aircraft must not be flown or operated in a reckless or negligent so as to be an actual or potential danger to the life of any person.

Similarly, subsection 20A(2) of the principal Act provides that an aircraft must not be flown or operated in such a manner or in such circumstances as is or are likely to cause danger to any person or property. The proposed amendment would have provided that an aircraft must not be flown or operated in such a manner or in such circumstances, so as to be an actual or potential danger to any person or property.

In each case, the proposed amendments, give effect to advice from the Director of Public Prosecutions that, in some circumstances, the existing provision is not readily capable of enforcement and may require evidence of actual damage. By substituting a test based on actual or potential danger, the proposed amendments would have attracted a lower threshold than the test for likely danger. This has been criticised by certain sectors of the aviation industry.

Although the Government remains concerned about the enforceability of existing section 20A it has decided to withdraw the proposed amendments from the Bill. The matter will be referred to the House of Representatives Standing Committee on Transport, Communications and Infrastructure's inquiry into air safety standards in the commuter and general aviation sectors in Australia with the aim of striking an appropriate balance between the public interest in preventing dangerous flying and the legitimate needs of the aviation industry.

Amendment (13)

This amendment to item 82 of Schedule 1 of the Bill amends proposed subparagraph 28(1)(b)(i) to clarify in what sense the applicant's organisation needs to be suitable for CASA to issue an AOC. Under the amended provision CASA must issue an AOC if it is satisfied that the applicant's organisation is suitable to ensure that the AOC operations can be conducted or carried out safely, having regard to the nature of the AOC operations.

Amendment (14)

This amendment to item 89 of Schedule 1 of the Bill amends proposed section 28BE by inserting a new subsection 28BE(3A) which clarifies that no action lies, for damages or compensation, in respect of a contravention of section 28BE.

Proposed new section 28BE requires the holder of an AOC, or its directors if it is a body corporate, to take all reasonable steps to ensure that the activities authorised by the AOC are done with a reasonable degree of care and diligence. Some sectors of the aviation industry expressed concerns to the House of Representatives Standing Committee on Transport, Communications and Infrastructure that this provision inadvertently creates a new cause of action, enforceable by third parties, against individual holders and officers of AOC holders.

Advice from the Attorney-General's Department suggests that the possibility cannot be discounted that a court may find that, at least in some circumstances, section 28BE confers a right of action in tort on a person who suffers damage as a result of a breach of the duty imposed by subsection 28BE(1) on each AOC holder and the director of any corporate AOC holder. As that outcome was not intended, section 28BE is to be amended accordingly.

Breach of the duty imposed by section 28BE will, however, enable CASA to suspend or cancel the AOC.

Amendment (15)

This amendment inserts a new item 122A into Schedule 1 of the Bill. New item 122A inserts a new subsection 42(4A) into the principal Act which empowers the Minister to terminate the appointment of any or all members of the CASA Board (other than the Director) for a failure to:

- comply with a Ministerial direction under section 12B of the principal Act to provide information to a Ministerial nominee; or
- keep the Minister informed about significant changes to the corporate plan and matters that might significantly affect the achievement of the objectives of the corporate plan as required by subsection 44(3) of the principal Act.

This amendment remedies a drafting omission.

Amendment (16)

This amendment to item 123 of Schedule 1 of the Bill inserts a new subsection 45(6) into the principal Act which requires the Minister to table CASA's corporate plan in both Houses of Parliament. This amendment gives effect to a recommendation of the advisory report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure.

Amendment (17)

This amendment substitutes a new item 149 into Schedule 1 of the Bill which amends subsection 98(3) of the principal Act by enabling regulations to be made with respect to the personnel engaged in the planning, construction, establishment, maintenance, operation and use of facilities and services provided by the Airservices Australia.

Amendment (18)

This amendment inserts new items 3A and 3B into Schedule 2 of the Bill. The amendments will, after the commencement of the *Commonwealth Authorities and Companies Act 1995* (the CAC Act) empower the Minister to terminate the appointment of any or all members of the CASA Board (other than the Director) for a failure to:

- provide the Minister with interim financial statements in accordance with subsection 13(2) of the CAC Act
- keep the Minister informed of the operations of CASA in accordance with paragraph 16(1)(a) of the CAC Act
- give the Minister such reports, documents and information in relation to CASA's operations as the Minister requires in accordance with paragraph 16(1)(b) of the CAC Act.



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