

## Civil Aviation Amendment Bill 1989

**Date Introduced:** 29 November 1989  
**House:** House of Representatives  
**Portfolio:** Transport and Communications

### Digest of Bill

#### Purpose

The Bill aims to improve the efficiency of the Civil Aviation Authority (CAA) through the removal of certain day-to-day controls, provide for scrutiny by the Prices Surveillance Authority of proposed charges, and create a number of offences relating to the carriage of dangerous goods on aircraft.

#### Background

The CAA was established in July 1988 and has responsibility for air traffic control, flight advisory services, communications, navigation and surveillance systems, and rescue and fire fighting services at airports. The CAA is also responsible for organising aviation search and rescue services. The CAA also provides an aeronautical information service and consultancy/management services in its fields of expertise.

CAA income is derived from a number of sources, including from excise on aviation gasoline fuel; en route charges paid by domestic and international airlines; and terminal navigation charges payable at major airports and fees for specific regulatory services (e.g. flight crew examinations and licensing, aerodrome licensing, and registration and certification of aircraft). The costs of certain functions related to aviation safety, including the development of safety standards, the monitoring of compliance with safety standards, and the maintenance of the capability to undertake search and rescue, are met by the Commonwealth. In 1988-89, the CAA returned an operating profit of \$30.877 million, with revenues of \$560.973 million and operating expenditure of \$516.287 million.<sup>1</sup>

The disturbance effecting domestic airlines in late 1989 is expected to reduce 1989-90 CAA revenues. The probable reduction in revenues stems, in part, from the Government decision on 13 September 1989 to waive CAA charges normally payable by the airlines equal to the cost of retaining staff on their payrolls. The extent to which revenue may be reduced is difficult to quantify, although some commentators have estimated a loss of \$25 million a month for the duration of the disturbance.<sup>2</sup> However, the potential loss in revenues will be offset, to a degree, by the fact that the CAA will not pay a dividend to the Commonwealth for 1988-89.<sup>3</sup>

In October 1987, the Government announced a review of the legislative framework for safety regulation. The Air Safety Regulation Review Task Force submitted its first report, titled, *The Legal Framework of Air Safety Regulation*, in December 1988. The Task Force's recommendations included that changes be made to the Principal Act to emphasise significant offences relating to the crucial areas of air safety, the role of the CAA in assisting industry and pilots as well as policing standards, and the need for the cost of air safety regulations to be taken into account.

In December 1989, the Senate Standing Committee on Transport, Communications and Infrastructure presented a report on 'The Organisation and Operations of the Federal Airports Corporation and the Civil Aviation Authority'. In relation to the CAA, the Committee's recommendations included that the CAA, if contemplating new charges or reviewing existing charges, involve its clients in prior consultations and that the consultations be conducted on the basis of the clients being provided with comprehensive explanations and full justification for the need and level of the charges. In addition, the Committee recommended that doubt concerning whether the *Prices Surveillance Act 1983* applies to the CAA should be resolved and, if the Act does apply, that it should be publicised within the industry and, if it does not apply, the Act be amended to ensure that it does apply.

### **Main Provisions**

Clause 4 provides that in developing standards, the CAA is, so far as it is reasonably practicable and within Australia's international treaty obligations and the CAA's, to take account of any costs that would arise from complying with the standards.

Clause 5 provides that the CAA when performing its main functions, will not be subject to State or Territory laws which relate to CAA use, or proposed use, of land or premises, or the environmental consequences of CAA use of land or premises.

Clause 6 will remove the current requirement that the CAA obtain Ministerial approval to enter contracts which involve it paying more than \$6 million.

New sections 14 and 15 will be substituted into the Principal Act by clause 7 and deal with limitations on the CAA's power to form companies and partnerships. Proposed sections 14 and 15 will require the CAA to inform the Minister of its intention to join in the formation of a subsidiary to the CAA, subscribe for, or purchase shares in, a company which would become a subsidiary of the CAA, or enter into a partnership. Currently, Ministerial approval is required before the CAA engages in such activity. In addition, where the CAA holds a controlling interest in a company, or can control the things done by a partnership of which it is a member, it is to ensure that the company or partnership does not do anything that the FAC does not have the power to do.

Clause 8 provides that an aircraft is not to be flown or operated in a way that is likely to endanger life or property.

New subsections 23(1) – 23(2A) will be substituted into the Principal Act by clause 9 and deal with offences relating to the carriage of dangerous goods on aircraft. Proposed subsection 23(1) provides that an aircraft is not to carry dangerous goods except in accordance with the regulations or with the CAA's permission. It will be an offence for a person to carry or consign dangerous goods on board an aircraft except in accordance with the regulations or with the CAA's permission. The maximum penalty for a breach of this provision will be imprisonment for 7 years where the person acted knowingly or recklessly (proposed subsection 23(2)) and two years imprisonment in other cases (proposed subsection 23(2A)).

Clause 10 provides that it will be an offence for a person to carry or consign any cargo on board an aircraft unless it is accompanied by a declaration of its contents. The maximum penalty for a breach of this provision will be a fine of \$3000. In addition, the regulations may prescribe that persons handling, or involved in handling cargo, in the course of it being carried or cosigned on an aircraft, are to undertake training relating to dangerous goods. It will be an offence for a person to carry or consign any cargo on board an aircraft unless each person who handles, or is involved in the handling of the cargo, and who have been required by the regulation to undertake training relating to dangerous goods, has undertaken such training. The maximum penalty for a breach of this provision will be a fine of \$3000.

Clause 12 provides that it will be an offence to operate an aircraft in breach of proposed section 20A (1) (i.e. to recklessly or negligently fly or operate an aircraft in a way that is likely to endanger life). The maximum penalty for a breach of this provision will be imprisonment for 5 years. It will also be an offence to operate an aircraft in breach of proposed subsection 23(1) (i.e. to knowingly or recklessly carry or consign any dangerous goods on board an aircraft). The maximum penalty for a breach of this provision will be imprisonment for 7 years.

Clause 13 provides that decisions of the CAA in relation to the suspension of a certificate or licence on safety grounds will not be subject to review by the Administrative Appeals Tribunal.

Clause 16 establishes the Board of the CAA. The purposes of the Board will be to decide the objectives, strategies and policies of the CAA, and to ensure that the CAA performs its functions in a proper, efficient and economical manner. The Board will consist of the members of the current CAA.

Clause 24 provides that if the Board forms the opinion that matters have arisen that may significantly affect achievement of the objectives of the CAA and its subsidiaries under the corporate plan, or achievement of the CAA's financial targets under the financial plan, it is, as soon as practicable, to notify the Minister of its opinion and the reasons for its opinion.

Clause 26 provides that the CAA will be liable to pay income tax. Clause 26 will operate from 1 July 1991 (clause 2).

Clause 27 will allow the CAA to borrow and raise money without the approval of the Treasurer.

Clause 32 deals with CAA charges. Basically, CAA decisions in relation to proposed charges for CAA services or facilities will be subject to scrutiny by the Prices Surveillance Authority and the CAA will only be able to set charges where they have been approved by the Minister, or the Minister has not within 30 days approved, disapproved, or substituted a new charge.

Clause 33 will provide the CAA with immunity from suit for economic loss in relation an aircraft the CAA has seized because a due debt has not been paid.

Clause 43 provides that the staff of the CAA are to be appointed or employed on terms and conditions set by the CAA and for the preservation of existing conditions and entitlements of employment of current staff.

## References

1. Civil Aviation Authority Australia, *Annual Report 1988 - 89*, p. 8.
2. *The Canberra Times*, 15 September 1989.
3. *Finacial Review*, 7 December 1989.

For further information, if required, contact the Economics and Commerce Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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