

The Parliament of the Commonwealth of Australia

Civil Aviation Legislation Amendment Bill 1995

Air Services Bill 1995

**Advisory Report from the House of
Representatives Standing Committee
on Transport, Communications
and Infrastructure**

May 1995

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**HOUSE OF REPRESENTATIVES STANDING COMMITTEE
ON TRANSPORT, COMMUNICATIONS
AND INFRASTRUCTURE**

(37TH PARLIAMENT)

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1. Replaced Mr Paul Neville MP, 20 September 1994.

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RECOMMENDATIONS

The committee recommends that:

Civil Aviation Legislation Amendment Bill 1995

1. to assist industry to understand the new legislation the Government prepare and distribute, soon after the Bills receive the Royal Assent, copies of a consolidated version of the *Civil Aviation Act 1988*
[paragraph 2.17]
2. the object clause (3A) be amended along the lines proposed in paragraph 3.12 of this report.
[paragraph 3.24]
3. paragraph 3A(g) be either deleted or redrafted taking into consideration the concerns expressed by the committee at paragraphs 3.17 to 3.23.
[paragraph 3.25]
4. clause 9(1) be amended to include that the Civil Aviation Safety Authority has 'primary functions' as set out in paragraph 3.30 of this report.
[paragraph 3.35]
5. these primary functions be expanded to include separately to (4) above, the functions in paragraphs 3A(a)(i) to (v), paragraphs 9(2)(b)(i) and (ii) of the Civil Aviation Legislation Amendment Bill and paragraphs 10(a) to (g) of the CA Act, with the removal of any duplication.
[paragraph 3.35]
6. the primary functions should be followed by 'functions related to the primary functions, namely paragraphs 3A.(b)(i) to (iii), 3A.(d), 3A.(e) and paragraphs 9(2)(a)(i) and (ii) of the Civil Aviation Legislation Amendment Bill, with the removal of any duplication.'
[paragraph 3.35]

7. this should be followed by the listing under 'other functions' of paragraphs 3A(c),(f) and if relevant a redrafted (g), paragraphs 9(2)(c) to (h), 9(4) and paragraphs 10A.(1) and (2).
[paragraph 3.35]
8. the word 'voluntary' be deleted from paragraph 9(2)(a) and from any amalgamation of 3A.(b)(i) to (iii) with 9(2).
[paragraph 3.40]
9. pending the passage of the Legislative Instruments Bill, subsection 10(2) of the CA Act be retained.
[paragraph 3.48]
10. the final version of any corporate plan of the Civil Aviation Safety Authority be tabled in both Houses within 15 sitting days of the Minister receiving the final version.
[paragraph 3.54]
11. the second reading speech of the Minister elaborates on the purpose of clause 28(2) and the processes that can be utilised
[paragraph 3.65]

Air Services Bill 1995

12. the final version of any corporate plan of Airservices Australia be tabled in both Houses within 15 sitting days of the Minister receiving the final version.
[paragraph 4.6]

CHAPTER 1

INTRODUCTION

Referral of bills

1.1 On 28 March 1995 the Minister for Transport, the Hon L Brereton MP, wrote to the chairman of the committee and referred two bills, the *Civil Aviation Legislation Amendment Bill 1995* and the *Air Services Bill 1995* together with the associated explanatory memorandum.

1.2 The minister referred the bills to the chairman in his capacity as chairman of the Aviation Safety inquiry of the committee and asked for comments by 1 May 1995.

1.3 The bills and the explanatory memoranda were presented to the House of Representatives on Thursday 30 March 1995, each bill was read a first time and their second readings were made an order of the day for the next sitting.

Conduct of the inquiry, witnesses and evidence

1.4 On 30 March 1995 the committee accepted the ministerial reference under Standing Order 28B.(b) and appointed a subcommittee comprising Mr P Morris (Chair), Mr Sharp and Mr O'Connor to inquire and report to the committee.

1.5 The secretary to the committee wrote to 15 organisations on 29 March informing them of the inquiry and the tight deadline. He said the bills would be sent to them the next day, asked for comments by 20 April and advised that the committee would take evidence at a public hearing during the week commencing 24 April. The secretary wrote to two other organisations in similar terms on 31 March.

1.6 Evidence was taken at a public hearing on 26 April 1995 in Canberra. The following organisations appeared before the subcommittee:

Australian Air Transport Association

Ms G L V Wallinga
Secretary

Captain R J Heiniger

Australian Licenced Aircraft Engineers Association

Mr R Leeds
Secretary

Australian Sport Aviation Confederation Inc

Mr H R Ritchie
Executive Director

Civil Aviation Authority

Mr P Ilyk
Manager
Legislation and Legal Services Branch

Mr S Kavanagh
Manager
Special Projects
Planning and Development

Department of Transport

Mr P Core
Secretary

Ms A Buttsworth
Principal Adviser
Aviation Division

Mr H Lis
Director
Aviation Legal Section
Legal and Co-ordination Branch

Dr D H Stephens
Acting Assistant Secretary
GBE Policy and Coordination/Trade Coordination

Helicopter Association of Australia

Mr T Wesley-Smith

Transport Quality Services

Mr L Foley

Mr A Fleming

National Institute of Airworthiness Surveyors of Australia

Mr A Jeeves
Acting President

Mr P F Shepherd
Committee Member

Mr A Snook
Committee Member

1.7 The following submissions were received and authorised for publication:

SUBMISSION NUMBER	ORGANISATION/PERSON
1	Transport Quality Services
2	Flight Test Society of Australia
3	The Royal Aeronautical Society Australia Division
4	Australian Sport Aviation Confederation Inc
5	The National Institute of Airworthiness Surveyors of Australia
6	Australian Air Transport Association
7	The Australian Ultralight Federation Ltd
8	Australian Licenced Aircraft Engineers Association
9	The National Institute of Airworthiness Surveyors of Australia
10	The Department of Transport
11	Transport Quality Services
12	Australian Licenced Aircraft Engineers Association

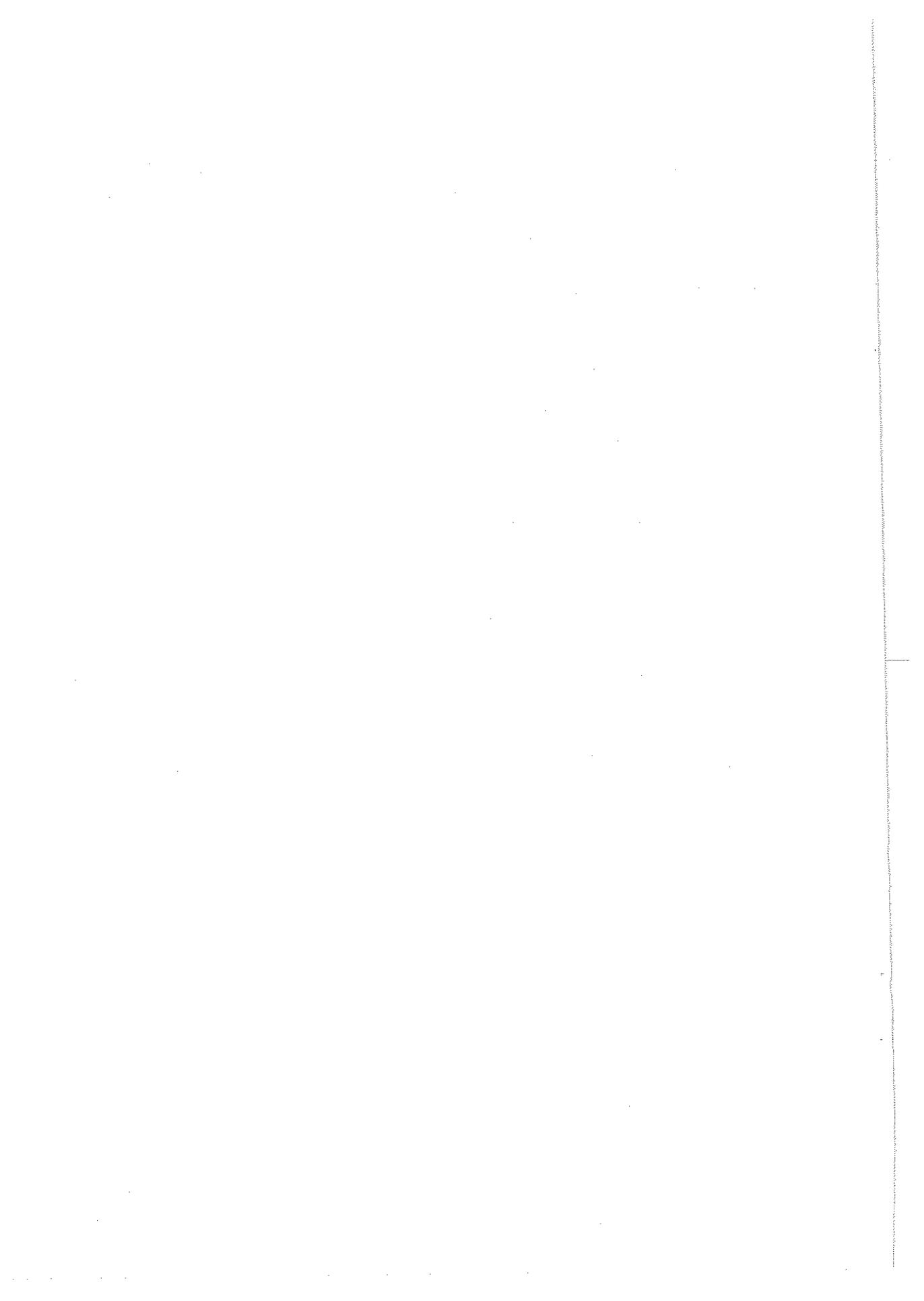
1.8 Submissions 1 to 8 were made before the public hearing of 26 April. The other submissions were in response to requests for information made at the hearing. The submissions and the transcript of 26 April 1995 will be bound in a single volume and copies sent to the National Library and the Parliamentary Library. A bound volume will also be retained in the committee office.

Structure of the report

1.9 Committee examination of the *Civil Legislation Amendment Bill 1995* and the *Air Services Bill 1995* has three objectives. These are:

- (a) to comment on whether the bills are necessary;
- (b) given (a) above, to examine whether the bills meet their basic purposes; and
- (c) to advise the House on the need for amendments that would improve the quality of the bills including advice on (b) above.

1.10 Chapter 2 of this report will comment on the need for the two bills. Chapter 3 will examine the *Civil Aviation Legislation Amendment Bill 1995* and chapter 4 the *Air Services Bill 1995*.



CHAPTER 2

THE NEED FOR THE CIVIL AVIATION LEGISLATION AMENDMENT BILL AND THE AIR SERVICES BILL

Background

2.1 The catalyst for the train of events that resulted in the decision to establish a separate aviation safety authority was the report from the Bureau of Air Safety Investigation (BASI) into the Monarch Airlines crash at Young in June 1993 - Investigation Report 9301743, Piper PA31-350 Chieftain, Young, NSW, 11 June 1993.

2.2 In his news release of 20 July 1994, following publication of the final BASI report on Monarch Airlines the Minister for Transport, the Hon L Brereton MP, 'announced a broad strategy to improve air safety regulation in Australia'.

2.3 One of the major features of the ministerial announcement was the decision to create an Aviation Safety Agency as a separate entity within the Civil Aviation Authority (the CAA). The agency was to have discrete financial and accounting arrangements, and its head, although reporting to the Chief Executive Officer, was to be an executive member.

2.4 Another feature of the ministerial announcement was an inquiry by the House of Representatives Standing Committee on Transport, Communications and Infrastructure on the adequacy of air safety standards and the compliance with and supervision of air safety standards in the commuter and general aviation sectors in Australia.

2.5 To date the Aviation Safety inquiry has received 174 submissions, accepted as evidence 99 exhibits and examined 91 witnesses at 15 days of public hearings at Bankstown, Moorabbin, Brisbane, and Canberra. In total over 7900 pages of evidence have been collected.

2.6 Other features of the 20 July news release included funding of safety regulation, indemnification of the safety regulatory responsibilities of the CAA, the establishment of a formal system which

would trigger an automatic increase in safety surveillance of any operator recorded to be in financial default with the CAA and passenger carrier's liability and insurance.

2.7 The news release added that such insurance could not be voided as a result of carrier negligence. Another proposal was for mandatory insurance to be part of the process for issuing Air Operator's Certificates.

2.8 Following the fatal accident of an Aero Commander of Seaview Air on a flight to Lord Howe island on October 2 1994, the Minister for Transport announced in a news release of 12 October 1994 a cabinet decision to establish a new aviation safety agency as a separate and entirely independent statutory authority.

2.9 The news release also covered funding and insurance. The Government decided to fund from the Budget that part of aviation safety regulation which is identified as 'the public benefit component'. The release also said that it would be mandatory for all carriers of fare-paying passengers to be insured against their liabilities in the event of an aircraft accident.

2.10 The minister concluded that in his view 'the new arrangements are the most appropriate way of addressing the inherent conflict between the CAA's commercial and policing functions'.

2.11 On 28 March 1995 the Minister for Transport said that the CAA would cease to exist and that two new aviation bodies would come into being as a result of legislation that would be introduced into the Parliament that week. With the passage of the legislation aviation in Australia would be controlled by a new tripartite structure: Airservices Australia as the service provider, the Civil Aviation Safety Authority as the aviation safety regulator and a strengthened BASI as the safety investigator. Copies of the news releases of 20 July and 12 October 1994 and 28 March 1995 are at Appendix 1.

2.12 Several submissions to the Aviation Safety inquiry referred to the incompatibility of the commercial function of the CAA with its role as the safety regulator.

The structure of the legislation

2.13 The two bills introduced into the House of Representatives on Thursday 30 March 1995 have four main features. First, the Air Services Bill is self-contained. It establishes Airservices Australia (AA) based largely on the existing provisions relating to the Civil Aviation Authority but with changes where government policy has changed or where legislation is in train.

2.14 Second, the abolition of the CAA and the establishment of the Civil Aviation Safety Authority (CASA) are to be achieved by a series of amendments to the existing *Civil Aviation Act 1988* (the CA Act). Many of the provisions which are considered adequate to the regulatory functions will remain unchanged. This is better than creating a brand new act.

2.15 If the CA Act were repealed then everything that depended on the act for legal support, for example the Civil Aviation Regulations and Orders, would also have no legal support. They would then have to be remade or complex transitional provisions would have to be included. This would also include the important offence provisions in the act. This type of change could have been involved and time consuming.

2.16 The third feature of the bills is that the transitional provisions which apply to both AA and CASA are included in a separate part of the Civil Aviation Legislation Amendment Bill. A fourth feature is references to the Commonwealth Authorities and Companies (CAC) Bill which is designed to replace Part XI of the Audit Act. The CAC Act provides for a standard report and accountability framework for commonwealth statutory authorities and obviates the need for enabling legislation to deal with those matters. Consequently, there are a number of references to the CAC Act coming into force and many of the changes in both bills relate to this act.

2.17 The Civil Aviation Safety Authority will be established by a series of amendments to the existing CA Act. This means that the amending legislation will be more difficult to read because it is a series of amendments rather than continuous text. The committee recommends that:

1. to assist industry to understand the new legislation the Government prepare and distribute, soon after the Bills receive the Royal Assent, copies of a consolidated version of the *Civil Aviation Act 1988*

Conclusions

(a) the need for the two bills

2.18 There is broad based support for the establishment of an independent aviation safety authority. The committee endorses this approach. The creation of a new authority with a new and more specialised board and a new director is a far better solution for the troubled and turbulent world of aviation safety regulation in Australia than any reorganisation within the existing Civil Aviation Authority.

2.19 The Department of Transport explains that the Government decided before Christmas of 1994 that it needed a circuit breaker as a first step to solving the problems on the aviation safety agenda. The circuit breaker was the establishment of two organisations, one focused on service delivery and the other appropriately resourced, to develop and secure compliance with aviation safety standards.

2.20 The department adds that one of the gains from the legislative initiative of establishing the CASA is a central and unambiguous focus on safety. 'There will be much greater clarity in the delivery of functions, much greater accountability and much greater separate reporting through to government and other parties' (Transcript pp.27,28).

2.21 Given the importance of the matter, the Department of Transport says that the Government considers that it is very necessary for the two bills to be passed by the Parliament during the current period of sittings so that the two new authorities could commence business on 1 July 1995 (Transcript p.28).

2.22 The committee accepts the explanations of the need for the two bills to be passed during the current period of sittings and sees no hidden agenda or other devices that are intended to mislead the Parliament or anyone else as to the true purpose(s) of the bills.

(b) the limits of legislation

2.23 One should not expect the establishment of CASA to be the only cure for the problems that have beset the administration of aviation safety in Australia. The Department of Transport recognises this. It says the Government may amend the legislation following consideration of recommendations in the Aviation Safety report from the committee and the outcomes of the Commission of Inquiry into Relations Between the Civil Aviation Authority and Seaview Air (Transcript p.6).

2.24 The department also says that the legislation does not address the organisational structure of CASA. This and other management issues such as the skill mix of staff and the relationship between head office and regional and district offices are matters to be addressed by the CASA board and by the director of aviation safety (Transcript pp.6,7).

2.25 This is as it should be. The key issue then is that CASA should be accountable to the Minister, the Parliament and the courts and to no one else.

2.26 Reservations have been expressed in some submissions about the transfer of staff to CASA, that the attitude of staff is the root cause of the problems of aviation safety regulation and that management systems are inadequate. One submission implied that the changes were cosmetic - a change of name together with a transfer of assets, staff and problems to the new authority (Submission 1 - Transport Quality Services; 4 - Australian Sport Aviation Confederation Inc; and 8 - Australian Licenced Engineers Association).

2.27 The committee has taken considerable evidence on these matters but is not in a position as yet to draw firm conclusions. We can only reiterate that the establishment of CASA is a step in the right direction. But more needs to be done. Our report on Aviation Safety should make a contribution to solving the problems that beset the regulation of aviation safety in Australia. But at the end of the day it is the board of CASA and its director that must be responsible for the administration of aviation safety.

(c) funding

2.28 There is a considerable concern and criticism about the way the administration of safety regulation should be funded (Submission 1 - Transport Quality Services; 5 - National Institute of Airworthiness Surveyors; 6 - Australian Air Transport Association; and 8 - Australian Licenced Engineers Association). Funding is not included in either or the two bills although there is reference to funding under the heading, Financial Impact Statement, in the Explanatory Memorandum (EM) to the Civil Aviation Legislation Amendment Bill.

2.29 The funding of aviation will be examined by the committee in the context of the Aviation Safety inquiry. That examination will include use of the terms 'the public good' and 'unplanned surveillance'. The EM states at page 3 that the 'Government proposes to fund that part of aviation safety regulation that can be identified as being for "the public good": for example, standard setting and unplanned surveillance activities'.

CHAPTER 3
THE CIVIL AVIATION LEGISLATION
AMENDMENT BILL

Main features of the Bill

3.1 The purpose of this Bill is to amend the Civil Aviation Act to establish a Civil Aviation Safety Authority as a Commonwealth statutory authority. The Explanatory Memorandum to the Bill says that the separation of the regulatory and service provider functions will ensure that aviation safety regulation is not compromised.

3.2 Apart from this, the Bill has three major characteristics. The CASA bill:

- (a) attempts to describe the purpose of aviation safety regulation and the functions of CASA;
- (b) increases the powers of the minister; and
- (c) transfers Civil Aviation Regulations into the legislation.

3.3 Some of the submissions are critical of these characteristics of the Bill, particularly of (a) and (c). The committee will examine each of these three major characteristics. The chapter will also contain discussions of other matters in the legislation which the committee considers to be relevant.

Main object of this Act(3A)

3.4 The main object of this Act(3A) and the functions of CASA (9(1)) are at Appendix 2. They are innovative and more detailed than the current act. Justice Moshanky, Court of Queens Bench, Alberta,

Canada, says that 'the proposed legislation with its pioneering main objects clause, is probably the most advanced aviation safety-orientated legislation to be found anywhere in the world' (Submission 10, p.51).

3.5 Justice Moshansky headed the commission of inquiry established by the Canadian government following the air crash at Dryden, Canada in 1989. The Department of Transport consulted with him in the preparation of the object clause (Submission 10, p.44).

3.6 The views of the Justice are encouraging. However, they do not remove from the committee the responsibility to ensure that the bill is of the highest quality possible, particularly in respect of clarity of object and functions.

3.7 The Bill should set out clearly, precisely and comprehensively the functions of the aviation safety regulator, CASA. Then the regulator, the aviation industry and others would know what is the job of CASA. Clearly prescribed functions would also enable the Parliament to gauge the effectiveness of CASA.

3.8 The committee supports the concept of an object clause. However, to avoid confusion and promote clarity the words 'object' and 'functions' should not be interchangeable. It should not be left to the personal choice of parliamentary counsel or any one else to put some functions in an object clause (3A) and other functions in 9(1) as CASA's functions.

3.9 Unfortunately the object clause has functions as does 9(1). The words 'object' and 'functions' were also used interchangeably at the public hearing. One witness said that 3A(c) of the object clause would 'enable the authority to actually carry out that function'. Another official mentioned that CASA has a number of functions but included part of the object clause 3A, establishing a safety regulatory framework, in functions (Transcript pp.13,18,19).

3.10 The response from the Department of Transport to matters raised at the 26 April hearing does not clarify matters. The response said that the object clause sets out Parliament's expectations as to how aviation safety should be regulated in Australia. The response also said that '(a)lthough the functions clause, of necessity, mirrors the object clause to some extent, the object clause is broader' (Submission 10, p.44).

3.11 The committee is pleased to learn that the expectations of the Parliament on aviation safety regulation are set out in the object clause. However, the committee is of the view that clarity would be promoted and confusion reduced if the object clause is a broad in-principle statement of purpose and the more detailed functions of the object clause are transferred to the section on functions. The functions would then be the means to achieve what is contained in the object clause.

3.12 There are two ways to amend the object clause. The first is as follows:

3A. The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation *in an effective and economical way*, with particular emphasis on preventing aviation accidents *and incidents whilst recognising the need for more people to benefit from civil aviation*.

3.13 The words in italics are those proposed by the committee. They take into consideration the concerns of the Australian Air Transport Association that the Bill could be used as a vehicle to promote a policy of safety regardless of costs.

3.14 The second option provides for greater detail in the object clause and is as follows:

3A. The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing accidents *and incidents whilst recognising the need for more people to benefit from civil aviation* by means that include the following:

- (a) *the development and maintenance of effective safety regulations;*
- (b) *the encouragement of greater responsibility for aviation safety by industry;*

- (c) *the promotion of effective consultation, effective decision-making and the efficient and effective use of resources; and*
- (d) *the promotion of Australia's civil aviation safety capabilities.*

3.15 Once again the words in italics are those proposed by the committee. The additional detail, compared with the first option, is a summary of paragraphs 3A(a) to (f) of the Bill.

3.16 The committee will recommend that one of these two options be used in preference to the existing clause 3A in the Bill. What is omitted, other than 3A(g), can be transferred to the functions section.

3.17 The committee has serious concerns about paragraph 3A(g) and will recommend that it be revised or deleted. That clause reads as follows: **'promoting the highest possible levels of accountability within CASA and for CASA's dealings with other bodies'**.

3.18 If this clause is to be retained it should be rewritten in plain English. The Department of Transport says that paragraph 3A(g) underlines the importance of CASA's linkages with elements of the aviation sector but does not reduce in any way the accountability of CASA to the minister and through the minister to the Parliament. However, the department did not see it necessary, probably because it was self-evident, for the Bill to specify this accountability to Parliament (Transcript pp.15,16,17).

3.19 The department explains that it was very important for the staff of CASA to recognise that many of them are operating under delegations and that they are accountable not simply to the authority and to the Parliament but also to bodies such as the Administrative Appeals Tribunal and the Federal Court (Transcript pp.16,17).

3.20 One must ask whether this 'accountability', like that to the Parliament, is also self evident and question whether the wording of paragraph 3A(g), particularly 'promoting accountability ... within CASA' reflects the purpose as explained by the Department of Transport.

3.21 The more serious concern the committee has with paragraph 3A(g) is the part which refers to accountability of CASA in its dealings with other bodies. The committee reads this as meaning that CASA will be accountable to other bodies, including 'industry organisations' (Transcript p.17). The Department of Transport says that CASA is required under its legislation to consult with outside bodies including consumer groups in the aviation industry. 'In that sense, it is accountable for dealings that it had with bodies in the Australian community' (Transcript p.16).

3.22 The use of the word 'accountability' raises questions of accountable to whom, for what and by what means. CASA should be accountable to the minister, the Parliament and the courts and to no one else. If CASA is accountable because it consults, then there is no need for this part of 3A(g).

3.23 The very real danger is one of regulatory capture. This could happen if CASA (the regulator) is or is seen to be 'accountable' to industry (the regulated).

3.24 The committee recommends that:

2. **the object clause (3A) be amended along the lines proposed in paragraph 3.12.**

3.25 The committee recommends that:

3. **paragraph 3A(g) be either deleted or redrafted taking into consideration the concerns expressed by the committee at paragraphs 3.17 to 3.23.**

The functions of CASA

3.26 Paragraph 1.9 sets out the objectives or purposes of examining the two bills. That paragraph states that given the need for the bills, an objective of the report would be to examine their basic purposes.

3.27 For the bill that establishes CASA to achieve its basic purpose it is vital, as the committee has stated at paragraph 3.7, that the functions of CASA should be set out clearly, concisely, comprehensively and preferably in one place. A description of functions is basic to the job of CASA. To assist in this process the committee circulated to those present at the public hearing and incorporated in the transcript (at pages 9 and 10) a note on CASA's functions.

3.28 There is a better alternative to a simple listing of functions. That is to classify the functions by their importance. The committee considers that the functions of CASA should be classified according to whether they are:

- (a) primary or core functions
 - CASA's logical reason for existence
- (b) functions related to the primary or core functions; and
- (c) other functions.

3.29 Such a classification of functions provides much needed clarity and can be more easily understood by industry.

3.30 The committee considers that CASA's primary or core functions should be:

- (a) to establish aviation safety standards;
- (b) to issue licences, certificates or permits to those who satisfy CASA that they can meet the standards established under (a) above or in the Act; and
- (c) to supervise compliance with standards and take appropriate action for non-compliance.

3.31 Using the approach of paragraph 3.30, the functions of CASA as they appear or are considered to appear in the Bill and CA Act are shown as in Table 1.

**TABLE 1
DISTRIBUTION OF CASA FUNCTIONS**

Primary functions	Functions related to primary	Other functions
3A.(a)(i) to (v)	3A.(b)(i) to (iii)	3A.(c)
	3A.(d)	3A.(f)
	3A.(e)	3A.(g)
9(1) (a) and (b)	9(2)(a)(i) and (ii)	9(2)(c) to (h)
9(2) (b)(I) and (ii)		9(4)
10(a) to (g)		10A.(1) and (2)

Note: Derived from information at Appendix 2.

3.32 This requirement for a primary functions clause or clauses has support in some submissions and opposition from none. One submission, made after the public hearing, referred to the committee note on functions at pages 9 and 10 of the 26 April transcript and concluded that 'setting out all the primary functions of CASA in this document would give the absolute clarity as to the functions which are basic requirements for the establishment of the new organisation' (Transport Quality Services, submission11).

3.33 The committee is convinced of the need for a primary functions clause or clauses. There are two options. The first is to amend subclause 9(1) of the Bill to include the words 'primary functions' and to insert the descriptions at paragraph 3.30 of this report. The additional detail as it relates to these functions can then be brought in from Table 1.

3.34 The second option is to arrange the primary and other functions using the distribution in Table 1 without using the committee descriptions at paragraph 3.30. This approach may have a deficiency in

that the Bill and act do not cover explicitly the issue of licences, certificates and permits. The committee notes that this may be covered in the regulations as specified in paragraph 98.(3) (c).

3.35 The committee favours the first option because of the clarity and focus it brings to setting out functions. The committee recommends that:

4. **clause 9(1) be amended to include that CASA has 'primary functions' as set out in paragraph 3.30 of this report.**
5. **these primary functions be expanded to include separately to (4) above, the functions in paragraphs 3A(a)(i) to (v), paragraphs 9(2)(b)(i) and (ii) of the Civil Aviation Legislation Amendment Bill and paragraphs 10(a) to (g) of the CA Act, with the removal of any duplication.**
6. **the primary functions should be followed by 'functions related to the primary functions', namely paragraphs 3A.(b)(i) to (iii), 3A.(d), 3A.(e) and paragraphs 9(2)(a) (i) and (ii) of the Civil Aviation Legislation Amendment Bill with the removal of any duplication.**
7. **this should be followed by the listing under 'other functions' of paragraphs 3A(c), (f) and if relevant a redrafted (g), paragraphs 9(2)(c) to (h), 9(4) and paragraphs 10A.(1) and (2).**

3.36 The word 'voluntary' is used in paragraph 9(2)(a) - '**encouraging voluntary aviation industry adherence to safety standards**'. The National Institute of Airworthiness Surveyors of Australia (NIASA) considers the word to be misleading and confusing because industry adherence to standards is mandatory. (Submission 5, page 14).

3.37 However, the Department of Transport emphasises that voluntary means raising the awareness of industry through aviation safety campaigns. It does not mean that compliance is optional. (Transcript pp. 19, 20). The department considers the word 'desirable but not essential in this clause'. (Submission 10, page 45).

3.38 The committee can see merit in education campaigns but can also foresee potential problems with the use of the word voluntary. The question that remains is whether deletion of the word removes doubt because others could argue that doubt remains with the retention of the word 'encouraging'!

3.39 Nevertheless, the committee will recommend that the word 'voluntary' be deleted. The committee wants duplication to be avoided in transferring the contents in the object clause to the functions clauses. There is clearly duplication between 3A.(b) (i) to (iii) and 9 (2) (i) and (ii) - refer to Appendix 2.

3.40 The committee recommends that:

8. **the word 'voluntary' be deleted from paragraph 9(2)(a) and from any amalgamation of 3A.(b) (i) to (iii) with 9 (2).**

3.41 Item 28 of the Civil Aviation Legislation Amendment Bill omits subsection 10(2) of the CA Act. That subsection asks the authority to **'have regard to any costs that would arise from complying with the standards'**.

3.42 The Explanatory Memorandum says that subsection 10(2) is no longer necessary because the Bill amends the CA Act to require CASA to consult with bodies representing the aviation industry to develop aviation safety standards.

3.43 The Department of Transport explanation for the deletion of 10 (2) is different to that in the EM. The department says that under the Legislative Instruments Bill, CASA is required to go through a mandatory consultation process which would summarise the proposals, analyse alternatives, indicate the relative costs and benefits to

government, outline the effects on the public and then set out the reasons for the preferred approach. Because CASA would have to follow this process when legislated, subsection 10(2) is no longer necessary (Transcript page 37).

3.44 The AATA was concerned about the deletion. It says the Legislative Instruments Bill may never be enacted and that it is not clear that the ultimate issue of cost would be addressed. The organisation considers that a focus on enabling more people to participate in aviation would recognise that regulation has its costs without explicit reference to costs. (Transcript page 37).

3.45 If the major reason for the deletion of subsection 10(2) is that these matters will be covered in the Legislative Instruments Bill, then it is misleading for this explanation not to be in the EM.

3.46 The EM explanation that consultation will lead CASA to take costs into consideration is unconvincing. It does not necessarily follow that this will happen.

3.47 The committee is also not convinced that corporate plans, attention to risk factors or effective and efficient use of resources will, by themselves, result in essential regulation incurred at least compliance cost. This can only come about from adequate processes and is a matter that the committee will address in the Aviation Safety inquiry.

3.48 The committee recommends that:

9. **pending the passage of the Legislative Instruments Bill, subsection 10(2) of the CA Act be retained.**

Increase in the powers of the Minister

3.49 The Bill increases the powers of the Minister in three areas. First, under subclause 12B.(1) the Minister may direct CASA to give documents and information to a nominee. Second, the Minister may give CASA notices covering the strategic directions for CASA and the manner in which it should perform its functions - paragraphs 12A.(1)(a) and (b). Third, the Bill requires CASA to prepare a corporate plan at

least once a year and give it to the Minister. The Minister has to respond to the corporate plan within 60 days of receipt and under subclause 45(2) that response may include a direction to the board of CASA to vary the plan.

3.50 The EM states that the purpose of clause 12B is to facilitate, for example, the provision of information to consultants employed by the Minister to review CASA's operations. The section also is intended to provide protection for CASA board members whose fiduciary duty might otherwise prevent the provision of information.

3.51 In respect of the corporate plan the EM says that the new section 44 is modelled on clause 17 of the proposed Commonwealth Authorities and Companies Act. The EM also says that the 'corporate plan is a key mechanism in CASA's accountability to the Minister and thus to the Parliament'.

3.52 The Department of Transport explains that the ex-post accountability document for CASA is its annual report. Presumably, the annual report will contain some of the matters referred to in clause 44, for example (c) and (d) which cover performance measures and review of performance against previous corporate plans (Transcript p.55).

3.53 Although the EM refers to CASA's accountability to the Parliament, the committee finds the process to be unsatisfactory. There could be a 15 month time lag between the minister getting the final version of the corporate plan (say June 1995) and the Parliament being told something about it in the annual report for the relevant year (say October 1996). This does not constitute timely and adequate accountability to the Parliament.

3.54 The committee recommends that:

- 10. the final version of any corporate plan of the Civil Aviation Safety Authority be tabled in both Houses within 15 sitting days of the Minister receiving the final version.**

Transfer of regulations into the legislation

3.55 A major feature of the Bill is the transfer from regulations into legislation of matters dealing with Air Operator's Certificates (AOCs). The EM states that provisions relating to AOCs appear in a number of regulatory documents at present. The EM adds that given the importance of AOCs in regulating commercial operations it was 'essential that these requirements should appear in a single integrated set of provisions where they will be more accessible to the industry and the regulator'.

3.56 NIASA wants subdivision B- Application for AOC to be removed from the Bill and returned to the regulations 'which is where they properly belong, with all the other maintenance and other regulatory requirements' (Submission 5, p.19). The organisation advances two reasons for its conclusion. First, that it is anomalous to have the statutory airworthiness criteria in the regulations and other provisions relating to AOCs in the bill. The second reason is that the redrafting of the act, regulations and orders will necessitate the transfer of items from the Act back into the regulations in order to enable the advisory material to be appended to them (Submission 5, pp.19,20).

3.57 The committee considers these to be insufficient reasons for deleting the subdivision. The purposes for putting these provisions in the Bill are set out clearly in the EM.

3.58 NIASA also expresses concerns over section 27 and paragraph 28 BC(2)(a) believing that they introduce 'an open skies policy for foreign competition' and would lead to the 'extermination' of the Australian industry (Submission 5, p.18). This concern is not shared by the industry association, AATA, which says that the provisions for imposition and variation of AOC conditions for foreign registered aircraft have been strengthened (Submission 6, p.34).

3.59 Officials said that clause 28 was put in to give CASA greater control over foreign registered aircraft, a point reinforced in the departmental response (Transcript pp.45,46 and submission 10, p.46).

3.60 There was also concern that clause 28(2) was not strong enough - **(t)he financial position of the applicant is one of the matters that CASA may take into account in forming a view for the purposes of paragraph (1)(a).** NIASA says that 28(2) does nothing of substance and proposes that the word 'may' be substituted by 'must' (Submission 5, p.18).

3.61 The Department of Transport explains that clause 28(2) is a trigger for extra surveillance. The provisions 'empower CASA to have regard to local intelligence about the financial viability of a particular operator in deciding whether or not to conduct a detailed safety audit of the operator'. The department also 'considers that it is inappropriate for CASA to have power which could amount to economic regulation of industry', and that 28(2) is consistent with the direction the minister gave the CAA on 19 July 1994 and the system the CAA was to establish which links increased surveillance to the financial standing of the operator (Transcript pp.50-52, submission 10, p.47).

3.62 The committee was also told that use of the word 'must' instead of 'may' would interfere with the responsibilities of CASA as a safety regulator. CASA would be obliged to undertake a financial viability test before it could suspend or cancel an AOC (Transcript p.52, submission 10, p.47).

3.63 The need for strengthening any financial viability assessment as a condition for granting or revoking an AOC is a major issue in the Aviation Safety inquiry.

3.64 There is at the moment no explanation of what clause 28(2) does or what information it allows CASA to collect that could not be collected without 28(2). At the 15 December 1994 public hearing on aviation safety the CAA described the debtors list and credit rating systems and said that they are used as triggers for extra surveillance (Aviation Safety inquiry, transcript pp.157, 158). If this is correct then the departmental 'trigger' explanation at paragraph 3.61 makes 28(2) unnecessary.

3.65 The committee recommends that:

11. **the second reading speech of the Minister elaborates on the purpose of clause 28(2) and the processes that can be utilised.**

3.66 Subclause 28BE introduces a duty of care for the holder of an AOC and, if the holder is a body having legal personality, each of its directors. The AATA was concerned that the Bill inadvertently creates a new cause of action, enforceable by third parties, against individual holders and officers of AOC holders (Submission 6, p.35).

3.67 The Department of Transport undertook to obtain legal advice on this matter. The advice from the Attorney-General's Department was that subclause 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 subclause 28BE(1) on each AOC holder and the director of any corporate AOC holder. The Department of Transport said that as that outcome was not intended 'the Department will recommend to the Minister that the Bill be amended accordingly' (Submission 10, p.47).

Other matters

3.68 The Department of Transport responded to a number of other matters raised in submissions and at the 26 April hearing. These included the need for the Bill to have definitions of 'commercial' and the 'aviation industry'. Matters raised in submissions and at the public hearing included the need for the object clause (3A(c)) on the promotion of civil aviation capabilities for the benefit of the Australian community and for export.

3.69 Material not being part of an act can be used by the courts in interpreting a provision of an act. Such material includes any explanatory memorandum relating to a bill. It follows then that the explanatory memorandum should be accurate. The committee has drawn the attention of the Department of Transport to errors in the EM on the *Civil Aviation Legislation Amendment Bill 1995* and has received its response (Transcript pp.7,8 and submission 10, p.50).

3.70 Several submissions oppose the establishment of a board for CASA. One said the time is not right because it would be difficult to find people who are not 'tainted'. Based on perceived CAA experience another submission said the board interfered in safety issues and was susceptible to external influences (Transport Quality Services, submission 1, p.3 and submission7, p.36, and submissions 5 and 8). The Department of Transport considers it important for CASA to have its own identity and that on balance there were net advantages in having a small board (Transcript p.53).

3.71 The committee supports the concept of a board for CASA. The question is not whether a board is or is not the best option but rather the processes which make the CASA board accountable for its actions. The committee notes that the corporate plan and annual report provide the means for such accountability.

CHAPTER 4

THE AIR SERVICES BILL

Main features of the Bill

4.1 The purpose of this Bill is to establish Airservices Australia as a government business enterprise to provide Australia's national airways system. AA's functions include:

- (a) provision of facilities to permit safe navigation of aircraft;
- (b) provision of air traffic services, an aeronautical information service, an aviation rescue and fire-fighting service, an aviation search and rescue service, and aeronautical communications; and
- (c) specified aviation environmental activities and regulation.

4.2 Airservices Australia will complement the aviation safety regulation role of the Civil Aviation Safety Authority (CASA) which is to be established as a statutory authority under separate legislation by providing a range of safety-related-air-services.

4.3 In the performance of its functions, AA must regard the safety of air navigation as its most important consideration. Subject to this requirement, AA must perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from the effects of aircraft operations.

4.4 The Bill provides that AA will be subject to the full range of Commonwealth taxes. The Bill provides for the Board to set charges for services and facilities. These charges will be subject to the *Prices Surveillance Act 1983*.

Common elements in the two bills

4.5 There are some common elements in the two bills particularly those that increase the powers of the minister. These include the supply of information to a nominee of the minister and the power to direct the authority on the preparation of the corporate plan. The comments made by the committee on the CASA bill apply to this Bill as well.

4.6 The committee recommends that:

- 12. the final version of any corporate plan of Airservices Australia be tabled in both Houses within 15 sitting days of the Minister receiving the final version.**

The aeronautical information service

4.7 There were differences of opinion on whether the Aeronautical Information Service (AIS) should be provided by CASA or Airservices Australia. NIASA said that the repeal of sections 17 and 18, despite the explanation of the transfer to AA, abolishes the requirement for CASA to maintain a service which is an ICAO requirement and logically should remain under CASA jurisdiction (Submission p.13).

4.8 The AATA says that AIS 'certainly constitutes the dissemination of safety critical rather than mere commercial information and is a vital aspect of aviation safety' (Submission 6, p.31).

4.9 The Department of Transport states that after detailed consideration the view taken was that AIS was more a service to industry than a regulatory function (Transcript p.22). The department later added that AIS facilitates day to day activities within the national airways system and is therefore more closely associated with the pre-flight and in-flight information services (Submission 10, p.45).

4.10 There are conflicting views on whether AIS should be located in Airservices Australia. Time did not permit the committee to examine this matter adequately. Accordingly, the committee proposes to give further consideration to the location of AIS in the Aviation Safety inquiry.

PETER MORRIS MHR
Chairman

11 May 1995

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APPENDIX 1

NEWS RELEASES BY THE MINISTER FOR TRANSPORT

The following news releases by the Minister for Transport, the Hon L Brereton MP are included in this appendix:

(a) 20 July 1994

- Federal government response to BASI report

(b) 12 October

- New aviation safety arrangements

(c) 28 March 1995

- New aviation authorities to replace CAA

News Release

Hon. Laurie Brereton MP

Minister for Transport

Minister for Industrial Relations

T44/94

20 July, 1994

FEDERAL GOVERNMENT RESPONSE TO BASI REPORT

Federal Transport Minister, Laurie Brereton, today announced a broad strategy to improve air safety regulation in Australia.

Mr Brereton said there were a number of important safety issues arising from the final Bureau of Air Safety Investigation report on the Monarch Airlines crash in New South Wales in June, 1993, in which seven people lost their lives.

"I have discussed the strategy with Civil Aviation Authority Chairman, General Peter Gratton, who has assured me of the Board's co-operation in its implementation," Mr Brereton said.

"The public interest demands firm action in this area."

The main elements of the Government's strategy are set out below.

Safety Regulation

The Federal Government has decided to establish an Aviation Safety Agency as a separate entity within the CAA.

The agency will have discrete financial and accounting arrangements and its head, while still reporting to the Chief Executive Officer, will be an executive member of the CAA Board.

The Government is committed to ensuring that the resources necessary to fulfil its safety regulatory responsibilities are employed by the CAA to achieve safety surveillance of the industry.

The Minister for Transport has directed the CAA under section 12 of its Act to report within six weeks on the adequacy of resourcing of all safety and regulatory functions in terms of both staff numbers and requisite skills. The Authority has been further directed to pursue its program of secondments and exchanges particularly in relation to aviation industry personnel.

The CAA must proceed with the full implementation of all Terrell Report recommendations.

CAA Safety Regulatory Funding

The Minister for Transport has recommended that the Government assume financial responsibility for the public interest regulation of aviation safety.

This will eliminate any possibility of safety regulation being compromised by the 50 per cent industry cost recovery of CAA functions under the present arrangements.

Indemnity of CAA's Safety Regulatory Responsibilities

The Minister for Transport has recommended that the Commonwealth accept responsibility for insurance indemnification of the CAA in carrying out its safety regulatory functions. This will prevent any possibility of its safety regulatory functions being compromised as a result of the CAA's present indemnification by private insurers.

Financial Viability of Operators - Impact on Safety

The Minister for Transport has directed the CAA under section 12 of its Act to establish a formal system which will trigger an automatic increase in safety surveillance of any operator recorded to be in financial default with the CAA.

CAA Board

The Government will be making additional Board appointments shortly to further strengthen CAA Board function.

Passenger Carriers' Liability and Insurance

The Minister for Transport has recommended that there be a substantial increase in insurance cover from the present \$180,000 to a new level of \$500,000 per passenger. A condition of the new arrangement will be a mandatory requirement that all Australian passenger carriers be insured in accordance with the new limit.

Such insurance could not be voided as a result of carrier negligence. It is proposed that mandatory insurance be a part of the process for issuing Air Operators Certificates.

The States, which license intrastate services, will be asked to adopt complementary legislation to match the Commonwealth's proposals.

House of Representatives Inquiry

The Minister for Transport has agreed to an inquiry by the House of Representatives Standing Committee on Transport, Communications and Infrastructure which will examine and report on the adequacy of air safety standards, and the compliance with, and supervision of, air safety standards in the commuter and general aviation sectors in Australia.

Conclusion

Mr Brereton said the response to the very serious findings and recommendations contained in the BASI report must ensure that future air safety standards are improved.

"With its implementation of the Terrell Report findings, the CAA has begun to address these concerns," the Minister said.

"It is my intention to ensure that the Air Safety Agency is a safety regulatory body without peer.

"The CAA, under the leadership of General Peter Graton, must ensure that air safety in Australia cannot be compromised.

"The aviation industry must also accept its responsibilities in regard to air safety regulation."

The Minister has written seeking advice from Qantas and Ansett on measures they can take to monitor the standards of their affiliated regional operators.

He said the CAA would co-operate fully with the forthcoming NSW Coroner's inquest into the Monarch crash and he would be instructing the CAA to make available to the Coroner all papers and records pertinent to the inquiry.

Mr Brereton said the strategy outlined today should help to prevent a repetition of the tragic accident near Young in June last year.

Copies of the BASI report are available from BASI on 008 020616

Media contact: Kate Hannon (06) 277 7320

News Release

Hon. Laurie Brereton MP

Minister for Transport

Minister for Industrial Relations

T57/94

12 October, 1994

NEW AVIATION SAFETY ARRANGEMENTS

Cabinet tonight agreed that the new Aviation Safety Agency will now be established as a separate and entirely independent statutory authority, Federal Transport Minister, Laurie Brereton, announced.

Mr Brereton said that the Federal Government also decided to fund from the Budget that part of aviation safety regulation which has been identified as the public benefit component. This is in accordance with the study conducted by Andersen Consulting and Swedavia.

The Government will lift its contribution for aviation safety regulation from the former indexed cap of \$22.8 million a year bringing the total Government contribution to more than \$29 million a year.

"This will eliminate any possibility of safety regulation being compromised by industry cost recovery of Civil Aviation Authority (CAA) functions under the present arrangements," Mr Brereton said.

Mr Brereton said approval was also given to increase the maximum compensation available to fare-paying passengers in the event of an aircraft accident from \$180,000 per passenger to \$500,000 per passenger for Australia's domestic and international airlines.

"This insurance cover will be mandatory for all carriers of fare-paying passengers to be insured against their liabilities in the event of an aircraft accident," Mr Brereton said.

"The Government will now carry the insurance indemnification of the CAA in carrying out its safety regulatory functions. This will prevent any possibility of its safety regulatory functions being compromised as a result of the CAA's indemnification by private insurers."

Mr Brereton said the Government would appoint a head of the ASA later this year after a international search for an appropriately experienced person.

"It is my view that the new arrangements are the most appropriate way of addressing the inherent conflict between the CAA's commercial and policing functions."

Media contact: Kate Hannon (06) 277 7320 or 018 481158

News Release

Hon. Laurie Brereton MP

Minister for Transport

Minister for Industrial Relations

T15/95

28 March, 1995

NEW AVIATION AUTHORITIES TO REPLACE CAA

The Civil Aviation Authority (CAA) will cease to exist and two new aviation bodies will come into being from 1 July, 1995 as part of important aviation safety legislation to be introduced into the Federal Parliament this week by the Minister for Transport, Laurie Brereton.

Aviation in Australia will now be controlled by a new tripartite structure: Airservices Australia (AA) as the service provider; the Civil Aviation Safety Authority (CASA) as the aviation safety regulator; and a strengthened Bureau of Air Safety Investigation (BASI) as the safety investigator.

AA will have responsibility for air traffic services, air navigation facilities, the provision of an aeronautical information service, rescue and fire-fighting service and search and rescue services.

"AA will operate as a government business enterprise with a nine-member board, on a cost-recovered basis except search and rescue which will continue to be funded from the Budget," Mr Brereton said.

CASA will be responsible for setting aviation safety standards, registration of aircraft, licensing, compliance with safety regulations, safety promotion and education, and the regulatory oversight of AA's services.

CASA will also administer new mandatory insurance arrangements which provide for all airlines to be insured against liability for death or injury to passengers. This complements the increase in passenger carrier liability limits introduced last October.

"The separation of these important functions is appropriate as CASA will be responsible for the non-commercial area of aviation safety regulation. It will operate as a statutory authority with a three-to-five member board," Mr Brereton said.

"Under the legislation CASA must give primacy to aviation safety."

Following passage of the legislation, Mr Leroy Keith will be Director of CASA from 1 July, 1995. Mr Keith began his duties this week as head of the CAA's Aviation Safety Directorate.

Mr Brereton said that BASI would continue under the Department of Transport as an independent body which investigates aviation accidents and incidents and which identifies deficiencies in the aviation system.

The Government will fully fund from the Budget the public benefit aspects of aviation safety regulation. The other aspects of aviation safety regulation will continue to be met by a combination of charges and levies on the aviation industry.

"Increases in the duty on aviation fuels will be necessary to fund the industry's and travelling public's portion of the additional CASA budgetary requirements. The size of the increase will be announced in the 1995 Budget," Mr Brereton said.

Mr Brereton has sought comment on the Civil Aviation Legislation Amendment Bill and the Air Services Bill from the Morris House of Representatives Committee inquiry on aviation safety.

Media contact: Kate Hannon (06) 277 7320

**OBJECT AND FUNCTIONS IN THE
CIVIL AVIATION LEGISLATION
AMENDMENT BILL AND THE CA ACT**

This appendix contains amendments proposed by the *Civil Aviation Legislation Amendment Bill 1995* to the *Civil Aviation Act 1988* in respect of the following:

- . **Main object of this Act**
 - 3A
- . **CASA's functions**
 - 9(1) to (4)
- . **Performance of functions**
 - 9A
- . **Standards**
 - 10
- . **Additional functions - consultancy services for foreign countries or agencies**
 - 10A

The proposed amendments are indicated in italics. This information is taken from a consolidated copy of the CA Act prepared by the Legislation and Legal Services Branch of the Directorate of Aviation Safety Regulation, Civil Aviation Authority. CAA prepared the document for information purposes only.

Main object of this Act

3A. The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents by means that include the following:

- (a) effective safety regulation through:*
 - (i) the development and promulgation of appropriate, clear and concise standards; and*
 - (ii) comprehensive aviation industry surveillance, including assessment of safety-related decisions taken by industry management at all levels for their impact on aviation safety; and*
 - (iii) effective enforcement strategies; and*
 - (iv) regular reviews of the system of civil aviation safety in order to monitor the safety performance of the aviation industry, to identify risk factors and to promote improvement of the system; and*
 - (v) regular and timely assessment of international safety developments;*
- (b) encouraging a greater acceptance by the aviation industry of its obligation to maintain high aviation safety standards, through:*
 - (i) comprehensive safety education programs; and*
 - (ii) accurate and timely aviation safety advice; and*
 - (iii) fostering an awareness in industry management, and within the community generally, of the importance of aviation safety and compliance with relevant legislation;*
- (c) promoting the development of Australia's civil aviation safety capabilities, skills and services, for the benefit of the Australian community and for export overseas:*
- (d) promoting full and effective consultation and communication with all interested parties on aviation safety issues;*
- (e) promoting fair and open decision-making processes;*
- (f) promoting efficient and effective use of resources;*
- (g) promoting the highest possible levels of accountability within CASA and for CASA's dealings with other bodies.*

CASA's functions

9. (1) *CASA has the function of conducting the safety regulation of the following, in accordance with this Act and the regulations:*

- (a) *civil air operations in Australian territory;*
- (b) *the operation of Australian aircraft outside Australian territory.*
- (2) *In addition to its regulatory function, CASA has the following functions:*
 - (a) *encouraging voluntary aviation industry adherence to safety standards:*
 - (i) *by raising awareness of safety standards; and*
 - (ii) *by training, education and counselling;*
 - (b) *conducting regular reviews of the system of civil aviation safety:*
 - (i) *to identify safety-related trends; and*
 - (ii) *to promote the development and improvement of the system's safety;*
 - (c) *co-operating with the Bureau of Air Safety Investigation in relation to the investigation of aircraft accidents and incidents;*
 - (d) *any functions conferred on CASA under the Civil Aviation (Carriers' Liability) Act 1959 or under a corresponding law of a State or Territory;*
 - (e) *any functions conferred on CASA under the Air Navigation Act 1920;*
 - (f) *any other functions prescribed by the regulations, being functions relating to any of the matters referred to in this section;*
 - (g) *providing consultancy and management services relating to any of the matters referred to in this section;*
 - (h) *any functions incidental to any of the functions specified in this section.*
- (3) *The functions do not include responsibility for aviation security.*
- (4) *CASA may provide its consultancy services both within and outside Australian*

territory.

Performance of functions

9A. (1) *In exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.*

(2) *Subject to subsection (1), CASA must perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from:*

- (a) *the effects of the operation and use of aircraft; and*
- (b) *the effects associated with the operation and use of aircraft.*

Standards

10. Without limiting the generality of *CASA's* function under subsection 9(1), that function includes developing, promulgating, and securing compliance with, standards relating to the following:

- (a) the flight crews engaged in operations of aircraft;
- (b) the design, construction, maintenance, operation and use of aircraft and related equipment;
- (c) the personnel engaged in the maintenance of aircraft and related equipment;
- (d) the planning, construction, establishment, operation and use of aerodromes;
- (e) the personnel engaged in anything referred to in paragraph (d);
- (f) the planning, establishment, maintenance, operation and use of air route and airway facilities, rescue and fire fighting services and search and rescue services, and any construction associated with those facilities and services;
- (fa) the planning, construction, establishment, maintenance, operation and use of:
 - (i) facilities of the kind referred to in paragraph 8 (1) (a) of the *Air Services Act 1995*, and any construction associated with those facilities; and
 - (ii) the services of the kind referred to in paragraph 8 (1) (b) of the *Air Services Act 1995*, and any construction associated with those services;
- (g) the personnel engaged in anything referred to in paragraph (fa).

Additional functions—consultancy services for foreign countries or agencies

10A. (1) *CASA* may, under a contract with a foreign country or with an agency of a foreign country, provide consultancy services for that country or agency in relation to the regulation of safety of air navigation or any other matter in which *CASA* has expertise.

(2) Those services may include the performance of its regulatory function in relation to foreign aircraft under the law of a foreign country.