

The Senate

Legal and Constitutional Affairs
Legislation Committee

Aviation Crimes and Policing Legislation
Amendment Bill 2010

November 2010

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ABBREVIATIONS

ACC	Australian Crime Commission
AFP	Australian Federal Police
Beale Audit	<i>New Realities: National Policing in the 21st Century—Federal Audit of Police Capabilities</i>
CASA	Civil Aviation Safety Authority
CCL	New South Wales Council for Civil Liberties
Copal Act	<i>Commonwealth Places (Application of Laws) Act 1970</i>
DPC	New South Wales Department of Premier and Cabinet
EM	Explanatory Memorandum
MOU	Memorandum of Understanding
NSW Police	New South Wales Police Force
PFA	Police Federation of Australia
The Act	<i>Crimes (Aviation) Act 1991</i>

RECOMMENDATIONS

Recommendation 1

2.68 The committee recommends that the Explanatory Memorandum to the Bill be amended, so as to include examples of behaviour that would, and would not, be considered intimidation, to provide guidance on the appropriate limit of the application of the offence established by item 7.

Recommendation 2

2.70 The committee recommends that, subject to the preceding recommendation, the Senate pass the Bill.

Chapter 1

Introduction and overview

1.1 On 30 September 2010, the Senate referred the Aviation Crimes and Policing Legislation Amendment Bill 2010 (the Bill) to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 16 November 2010.

1.2 The Explanatory Memorandum (EM) explains that the Bill seeks to strengthen the existing legislative framework surrounding Australia's international and domestic aviation security through increasing penalties for aviation-related crimes and through creating new aviation-related offences.¹

1.3 The Bill also contains amendments relating to the policing capabilities of the Australian Federal Police (AFP) which support the move to an 'All-in' policing and security model at airports, as recommended by the 2009 Federal Audit of Police Capabilities.

Summary of key amendments

1.4 The Bill seeks to amend various subsections of the *Crimes (Aviation) Act 1991* (the Act), relating to crimes on aircraft and policing at airports.

1.5 Schedule 1 deals with aviation-related crimes and identifies four tiers of new penalties:

- Tier one—maximum penalty of life imprisonment;
- Tier two—maximum penalty of 20 years imprisonment;
- Tier three—maximum penalty of 14 years imprisonment;
- Tier four—maximum penalty of ten years imprisonment.²

1.6 The offences specific to each tier are explored in Chapter 2.

1.7 Schedule 1 amendments also propose three new offences to be inserted into the Act:

- assaulting a crew member (section 20A);
- reckless endangerment of the safety of an aircraft likely to endanger life or cause serious harm (section 22A); and
- direct or indirect possession or placing dangerous goods onboard an aircraft likely to endanger life or cause serious harm (section 23A).³

1 *Explanatory Memorandum*, p. 1.

2 *Explanatory Memorandum*, pp 1–2.

1.8 Schedule 2 relates to airport policing and contains a number of amendments to the *Commonwealth Places (Application of Laws) Act 1970* (Copal Act) and the *Australian Federal Police Act 1979*. The amendments in Schedule 2 seek to provide members of the AFP with powers to search, arrest and investigate offences when committed at certain airports, and to remove doubt as to the legal basis for AFP members or special members to be sworn in to other police forces.⁴ These amendments are explored in more detail in Chapter 2.

Conduct of inquiry

1.9 The committee advertised the inquiry in *The Australian* newspaper on 14 October 2010. Details of the inquiry, the bill and associated documents were placed on the committee's website. The committee also wrote to 64 organisations and individuals inviting submissions.

1.10 The committee received nine submissions which are listed at Appendix 1. These submissions were placed on the committee's website.

1.11 The committee regrets it has to note its disappointment that the submission from the Attorney-General's Department was not lodged on time. This significantly frustrated the committee's consideration of the bill. While the committee is pleased to exhibit some flexibility in these matters, repeated delays in lodgement are unacceptable. The legislative process is not improved by tardiness on behalf of those departments that have a stake in the legislation themselves.

Acknowledgement

1.12 The committee thanks those organisations and individuals who made submissions.

3 *Explanatory Memorandum*, p. 2.

4 *Explanatory Memorandum*, p. 4.

Chapter 2

Provisions and issues

2.1 This chapter sets out the key provisions of the Aviation Crimes and Policing Legislation Amendment Bill 2010 (the Bill). The Bill contains two schedules.

Revised definitions

2.2 The proposed legislation seeks to update the definition of a Commonwealth aerodrome, which is currently:

...an area of land or water in Australia that is owned by the Commonwealth and used, or intended for use, either wholly or partly, for, or in connection with, the arrival, departure or other movement of aircraft; or a Federal airport; and includes any building, structure, installation or equipment in that area, or on the land that forms the Federal airport, that is provided for use in connection with the operation of that area or land as an aerodrome or Federal airport, as the case may be.¹

2.3 Schedule 1 proposes to replace the term 'Federal airport' in the definition of 'Commonwealth aerodrome'. 'Federal airport', a term originally derived from the repealed *Federal Airports Corporation Act 1986*, would be replaced with 'a core regulated airport' within the meaning of the *Airports Act 1996*.²

2.4 Airports that fall within the definition are: Sydney (Kingsford-Smith), Sydney West (Badgery's Creek); Melbourne (Tullamarine); Brisbane; Perth; Adelaide; Gold Coast; Hobart; Launceston; Alice Springs; Canberra; Darwin; Townsville; and any airport specified in the regulations, where the site of the airport is a Commonwealth place.

2.5 The definition has been framed to apply the relevant sections of the Bill to significant airports for which there is clear constitutional power for the offences contained in the Bill to apply, principally because the airports are Commonwealth places or are in a territory.

2.6 A definition of 'serious harm' is also included to give effect to new offences proposed by the Bill.

Increased penalties

2.7 The Bill proposes various changes to the *Crimes (Aviation) Act 1991* (the Act) to increase penalties for a number of offences. Under the proposal, maximum

1 *Explanatory Memorandum*, p. 6.

2 *Explanatory Memorandum*, p. 6.

penalties for some aviation-related crimes would increase. Determination of the proposed penalty for each offence has been undertaken in line with considerations spelt out in the Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers.³ The government argues that these proposed changes would allow these offences to carry appropriate penalties. They fall into three general categories of penalties which have been increased to 20 years, 14 years and 10 years respectively.

2.8 According to the Explanatory Memorandum (EM), these increased maximum penalties would improve consistency between the Act and other similar Commonwealth legislation. The changes would also ensure the consistency of penalties relating to offences within the same tier⁴, and hence similar levels of potential seriousness.⁵

Penalties increased to 20 years

2.9 The offences listed in this section fall within tier two of the categorisation system outlined in the EM. Tier two offences are described as follows:

The offences in this tier all carry a serious aggravating element of interference with the operation or safety of an aircraft or airport. These offences typically involve the creation of significant danger to whole groups of people.⁶

2.10 The maximum penalties of five offences are increased to 20 years imprisonment.

2.11 Item 6 amends the maximum penalty for the offence of intentionally prejudicing the safe operation of an aircraft. The maximum penalty would be increased from 14 years to 20 years imprisonment.

2.12 Item 8 amends the maximum penalty for the offence of assaulting, threatening or intimidating a crew member onboard an aircraft interfering with his or her ability to perform function or duties. The maximum penalty would be increased from 14 years to 20 years imprisonment.

2.13 Item 16 amends the maximum penalty for the offence of endangering an aircraft in flight in Australian territory or by an Australian citizen. The maximum penalty would be increased from 14 years to 20 years imprisonment.

3 This guide can be found at:
http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_GuidetoFramingCommonwealthOffences,CivilPenaltiesandEnforcementPowers (accessed 8 November 2010).

4 See Chapter One for an explanation of the use of tiers in the legislation.

5 *Explanatory Memorandum*, pp 7–11.

6 *Explanatory Memorandum*, pp 1–2.

2.14 Item 17 amends the maximum penalty for the offence of endangering the safety of an aircraft in flight, or an air navigation facility so as to affect the safety of an aircraft in flight. The maximum penalty would be increased from 7 years to 20 years imprisonment.

2.15 Item 18 amends the maximum penalty for the offence of using a substance or thing to commit an act of violence at a prescribed airport, where the act causes or is likely to cause injury or death and endanger the safe operation of the airport. The maximum penalty would be increased from 15 years to 20 years imprisonment.

Penalties increased to 14 years

2.16 Tier three offences would attract a maximum penalty of 14 years of imprisonment. Tier three offences are described as follows:

Offences contained within this tier deal with actions involving or actions against aircraft and aviation environments. Many offences have the aggravating element of danger or harm to an individual but unlike the more serious tier one and two offences, none require proof of recklessness as to the safety of human life or proof of danger to whole groups of people.⁷

2.17 Item 19 amends the maximum penalty for the offence of destroying or disrupting facilities or services of a prescribed airport, or destroying or seriously damaging any aircraft at a prescribed airport so as to endanger life or the safe operation of the airport. The maximum penalty would be increased from 10 years to 14 years imprisonment.

2.18 Item 20 amends the maximum penalty for the offence of endangering the safety of a Commonwealth aerodrome or air navigation facility or those within its limits. The maximum penalty would be increased from 7 to 14 years imprisonment.

Penalties increased to 10 years

2.19 Tier four offences would attract a maximum penalty of 10 years imprisonment. The EM described this tier as including 'catch-all' offences which do not have the more serious, aggravating elements of the higher penalty offences.⁸ Six offences within this category are affected by the Bill.

7 *Explanatory Memorandum*, p. 2.

8 *Explanatory Memorandum*, p. 2.

2.20 Item 5 amends the maximum penalty for the offence of taking or exercising control of a Division 3 aircraft. The maximum penalty would be increased from 7 years to 10 years imprisonment.⁹

2.21 Item 10 amends the maximum penalty for the offence of recklessly endangering the safety of an aircraft. The maximum penalty would be increased from 7 years to 10 years imprisonment.

2.22 Item 12 would amend the maximum penalty for the offence of carrying or placing dangerous goods onboard an aircraft. The maximum penalty for this offence would be increased from 7 years to 10 years imprisonment. The default maximum fine that would apply to this offence under the Crimes Act would be 600 penalty units (\$66,000).

2.23 Items 14 and 15 would amend the maximum penalties for hoax and threat offences. The maximum penalties for these offences would be increased from 2 years to 10 years imprisonment. The default maximum fine that would apply to this offence under the Crimes Act would be 600 penalty units (\$66,000). Currently, the maximum penalty of 2 years is significantly lower than the penalty for other hoax offences contained in Commonwealth legislation.

2.24 Item 21 amends the maximum penalty for the offence of threatening to damage a Commonwealth aerodrome or air navigation facility or harm those within. Item 22 amends the maximum penalty for the offence of making a false statement about taking control or endangering the safety of a Commonwealth aerodrome or air navigation facility or harming persons within. The maximum penalties for both offences have been increased from 2 years to 10 years imprisonment.

New offences

2.25 Schedule 1 of the Bill also proposes three new aviation-related offences. They are intended to ensure that an appropriate range of offences are applicable in the airport environment and the aviation sector.¹⁰

2.26 The new offences are based on existing offences in the Act. In one case, a lower-level version of the offence is established, while in the other two cases, an aggravated version of the offence (i.e. likely to endanger life or cause serious harm) is created.

9 A Division 3 Aircraft is an Australian aircraft, a Commonwealth aircraft; a defence aircraft; a foreign aircraft that is in Australia; or a foreign aircraft that is outside Australia while engaged in a flight that started in Australia or that was, when the flight was started, intended to end in Australia.

10 *Explanatory Memorandum*, p. 1.

Assault of an aircraft crew member

2.27 Item 7 inserts a new section 20A into the Act to create a new general offence of assaulting, threatening with violence or intimidating an aircraft crew member. The maximum penalty for this offence would be 10 years imprisonment. In essence, this is a lower level version of the existing offence of assaulting, threatening with violence or otherwise intimidating a member of the aircrew, which requires that the offence results in the interference with the member's performance of functions or duties connected with the operation of the aircraft. This is not a requirement for the new, more general offence.

2.28 Item 9 provides for alternative verdicts for offences against the existing higher level section. If a person is not found guilty of the existing higher level assault offence, he or she may still be found guilty of the more general offence of assaulting crew proposed by the Bill.

2.29 Under the current legislation it is necessary to prove that an act of assault has interfered with the capacity of a crew member to perform their function or duty. Through the creation of this new offence, it would no longer be necessary to find a person guilty of such an offence which requires proof that the defendant's conduct impeded a crew member's ability to perform their function or duties. The EM argues that the 'liability for such an assault should not depend on the crew member's ability to perform his or her duties.'¹¹

Endangering safety of an aircraft

2.30 Item 11 inserts a new section 22A into the Act. The section creates a new offence of recklessly endangering the safety of an aircraft likely to endanger life or cause harm to an individual. The maximum penalty for this offence would be 14 years imprisonment.

2.31 The offence detailed in section 22A is an aggravated offence provision following on from the existing lower penalty offence of endangering the safety of an aircraft (section 22). The proposed offence deals with more serious actions, where the act in question carries the potential or risk of causing serious harm or endangering life. The higher penalty level takes this into account.

2.32 As with the assault offence described above, a clause has been added that provides for alternative verdicts for offences against this subsection. A person may be found not guilty under subsection 22A(1) (an offence likely to endanger a person's life or cause serious harm), but may still be found guilty under section 22 (endangering the safety of an aircraft).

11 *Explanatory Memorandum*, p. 7.

Having dangerous goods onboard an aircraft

2.33 Item 13 inserts a new section 23A into the Act. The section creates a new offence of direct or indirect possession or placing of dangerous goods onboard an aircraft giving rise to death or serious harm to an individual. The maximum penalty that would apply for this offence is 14 years imprisonment.

2.34 The offence in section 23A is an aggravated offence provision following on from the lower penalty offence of carrying or placing of dangerous goods onboard an aircraft.

2.35 This item also provides for alternative verdicts for offences against this subsection. A person may be found not guilty under subsection 23A(1) (engaging in an act likely to endanger a person's life or cause serious harm), but may still be found guilty under section 23(1) (carrying, placing or delivering dangerous goods).

Policing at airports

2.36 In January 2009, the Australian Government commissioned Mr Roger Beale AO to conduct an audit of policing in Australia. The audit was established to examine and report on Commonwealth law enforcement arrangements including Australian Federal Police (AFP) capabilities.

2.37 On 18 December 2009, the Minister for Home Affairs, The Hon Brendan O'Connor MP, released *New Realities: National Policing in the 21st Century—Federal Audit of Police Capabilities* (Beale Audit) and outlined the government's response to the recommendations contained within.¹² This included reforms to strengthen major airport policing in Australia. Central to these reforms was the announcement of a new model for the policing of Australia's 11 major airports—Adelaide, Alice Springs, Brisbane, Cairns, Canberra, Darwin, Gold Coast, Hobart, Melbourne, Perth and Sydney.

2.38 With respect to the AFP's aviation function, the Beale Audit recommended replacing the current 'hybrid' or 'unified policing model' with an 'All-In' policing model. It argued that given the Commonwealth's international obligations, its broader responsibilities for the regulation of aviation and airports and its legal capacity in relation to Australia's principal airports, the 'All-In' model provides the most effective integrated airport policing capability.¹³ The audit recommended the Commonwealth:

...vigorously pursue the replacement of the existing Unified Policing Model with an 'All In' model under which the Commonwealth accepts the responsibility of funding and staffing nationally coordinated airport security and policing services, noting that this will likely take several years before

12 The audit was provided to government on 30 June 2009. It can be found at: http://www.ema.gov.au/www/agd/agd.nsf/Page/Publications_FederalAuditofPoliceCapabilities (accessed 8 July 2010).

13 *Federal Audit of Police Capabilities*, June 2009, pp 11–12.

being fully operational. It should take any legislative action, or pursue the renegotiation of arrangements in a number of states and territories, to ensure that the powers of AFP members policing airports are clear and adequate to the task.¹⁴

2.39 Certain aspects of this Bill provide amendments that support the move towards an 'All-In' policing model. As described in Chapter 1, it amends two acts: the *Commonwealth Places (Application of Laws) Act 1970* (Copal Act) and the *Australian Federal Police Act 1979* to provide AFP members with the powers to investigate offences committed at certain airports.

2.40 Amendments to the Copal Act overcome a technical anomaly that renders standard AFP arrest and search powers unavailable to the AFP when dealing with state offences that are applied as Commonwealth law in airports that are Commonwealth places. The EM argues that under the current arrangements the AFP lack the appropriate range of powers to conduct investigations in these situations.¹⁵

2.41 The standard powers that will be enabled by the Bill include the powers to search, gather information and arrest, seize and condemn forfeitable goods, institute proceedings in respect of offences, remand and discharge defendants and engage in 'forensic procedures'.¹⁶

2.42 In his Second Reading Speech, Minister Brendan O'Connor provided an example of how these changes would provide an officer with a 'fully-sworn' presence:

For example, if a murder, assault or theft occurs at Sydney or Melbourne airport, this is a state offence that applies as Commonwealth law because these are Commonwealth places. These amendments will ensure standard AFP powers—such as arrest and search—are available in response. Handling of these cases is also governed by protocols between the Australian Federal Police and state and territory police.

The amendment to the AFP Act removes doubt as to the legal basis for AFP members to be appointed as members or special constables of state and territory police forces. The bill also makes clear the legal basis for AFP members to be appointed as members of police forces or other law enforcement agencies of foreign countries.

Conferral of special constable status is an important tool for cooperation between police forces, and gives a member of a force the powers of another police force, subject to appropriate controls and accountabilities. The

14 *Federal Audit of Police Capabilities*, June 2009, p. 12.

15 *Explanatory Memorandum*, p. 4.

16 *Explanatory Memorandum*, p. 14.

amendments make clear that AFP members can participate in these arrangements.¹⁷

2.43 Item 1 of Schedule 2 explicitly allows AFP members and special members to be appointed (sworn in) as members or special constables to state and territory police forces and other law enforcement agencies of foreign countries. While this is an existing practice, the amendment will clarify the legal basis for this to occur.¹⁸

Issues raised in submissions

2.44 The committee received a total of nine submissions to the inquiry, and the issues they raise are summarised in this section.

2.45 The Bill was given general support by the Police Federation of Australia (PFA), Qantas, the Civil Aviation Safety Authority (CASA), South Australia Police, the Attorney-General's Department and the Australian Crime Commission. The New South Wales Council for Civil Liberties, the New South Wales Department of Premier and Cabinet and Victoria Police raised several issues with the Bill.

Changes to policing arrangements

2.46 As noted above, the Bill includes provisions that amend legislation in line with the Australian Government's stated intention to move to an 'All-In' airport policing model, as recommended by the Beale Audit. These provisions were supported by PFA, Qantas, South Australia Police and the Australian Crime Commission.

2.47 Both PFA and Qantas were of the view that the current policing arrangements were not effective and that the proposed changes would be an improvement.

2.48 PFA informed the committee that they had previously examined police resources at the eleven major airports and concluded that the Unified Policing Model was failing. PFA's conclusion was that airport policing should be reformed to give the AFP sole responsibility at major airports.¹⁹ PFA therefore supported the Bill.

17 Hon. Brendan O'Connor, Second Reading Speech, House of Representatives, *Hansard*, 29 September 2010, p. 261. The Minister also notes that special arrangements will need to be made for Cairns Airport which is not a Commonwealth place. While these amendments allow for AFP members to be sworn as special constables of the Queensland Police, the Minister also indicates that the government has written to the Queensland Government suggesting that they legislate for AFP members to be able to access relevant powers.

18 *Explanatory Memorandum*, p. 13.

19 Police Federation of Australia, *submission 1*, pp 1–2.

2.49 Qantas noted statements it had made previously to the effect that the current resource deployment arrangements contributed to sub-optimal security outcomes. Qantas therefore welcomed the proposed changes.²⁰

2.50 The Australian Crime Commission (ACC) supported the proposed changes to policing contained in the Bill, on the grounds that it would improve ACC operations, stating:

In particular, [Schedule 2] Item 1, which deals with the appointment of members to other police forces, will pave the way in Commonwealth law for ACC staff who are AFP Special Members and AFP members on secondment to the ACC to acquire additional powers as needed to effectively participate in ACC operations and investigations that concern offences against both State and Commonwealth laws.²¹

2.51 The New South Wales Department of Premier and Cabinet (DPC) informed the committee that the New South Wales Police Force (NSW Police) had advised them that the proposed changes in the Bill were uncontentious.²² However, DPC raised some concerns with the committee regarding the proposed transition to an 'All-In' policing model, which is facilitated by the Bill.

2.52 Firstly, DPC drew the committee's attention to existing mixed model cooperative arrangements for the policing of Sydney Airport between the NSW Police and the AFP, which are contained in a Memorandum of Understanding (MOU) and Letter of Exchange, with provision for a number of NSW Police operational interests at Sydney Airport.²³

2.53 DPC was of the view that these documents would require careful review to ensure that NSW Police's interests were protected during and after the transition to the 'All-In' model. These interests include emergency and incident management, security, information exchange and responding to serious and mandatory reportable crimes at the airport.²⁴

2.54 Victoria Police raised a similar issue, highlighting the need to consider the investigation of serious crimes using state offences. Victoria Police's submission specifically noted the need to develop investigation protocols as part of the transition to the new policing model.²⁵

20 Qantas, *submission 2*, p. 1.

21 Australian Crime Commission, *submission 6*, p. 3.

22 NSW Department of Premier and Cabinet, *submission 7*, p. 1.

23 NSW Department of Premier and Cabinet, *submission 7*, p. 1.

24 NSW Department of Premier and Cabinet, *submission 7*, p. 1.

25 Victoria Police, *submission 9*, p. 1.

2.55 A second issue related to the transition to the 'All-In' model raised by DPC was the management of large scale emergencies at Sydney Airport. Currently, this responsibility falls to NSW Police. DPC noted that if the AFP assumed responsibility for all policing at Sydney Airport, this could include responsibility for emergency management. As this issue is not addressed in the current Bill, DPC recommended further discussion on the issue by the agencies involved.²⁶

2.56 In its submission to the committee, the Attorney-General's Department submitted that:

As part of the implementation of the 'All-In' model, it is expected that [the MOU and Letters of Exchange] will be reviewed and renegotiated to ensure that the responsibility for future responses and investigations remain[s] effective...[i]t is expected that the AFP and State and territory police will continue to work closely together to maintain public safety and efficiently use resources in response to serious crimes. In the case of serious state offences and critical incidents, it is anticipated that the current arrangements in operation would continue to apply.²⁷

2.57 The Department also submitted that:

Effective transition to the 'All-In' model is heavily reliant on the relationships that are already in place between the AFP and State and Territory police. The 'All-In' model will be implemented in close consultation with the States and Territories over the next two to four years. As the transition progresses, all jurisdictions will be consulted in relation to timing and transitional arrangements.²⁸

2.58 The committee notes that the successful introduction of the 'All-In' policing model will naturally require the kind of ongoing discussion and cooperation between government agencies that has been promised by the Attorney-General's Department. The committee is satisfied that the particular measures included in the proposed legislation are sound, and that transition challenges appear manageable.

Increased penalties

2.59 The increased penalties for aviation crimes that would be established by the Bill were specifically referred to in submissions by Qantas, CASA, and the NSW Council for Civil Liberties.

2.60 Qantas and CASA supported the increased penalties. CASA informed the committee that it would shortly be reviewing civil aviation legislation, including the

26 NSW Department of Premier and Cabinet, *submission 7*, p. 2.

27 Attorney-General's Department, *submission 8*, p. 3.

28 Attorney-General's Department, *submission 8*, p. 3.

Civil Aviation Act 1988. This review would include ensuring that the offence provisions in that legislation also carried appropriate penalties.²⁹

2.61 The NSW Council for Civil Liberties (CCL) was of the view that the increased penalties were unlikely to result in a commensurately increased deterrent effect.³⁰ CCL questioned whether the proposed penalties reflected the seriousness of the offences, noting that the Explanatory Memorandum did not make any arguments justifying the increases on that ground.³¹

2.62 The Attorney-General's Department submitted that, at least in respect of offences involving intimidation:

Intimidation in some cases could be highly disruptive, a threat to safety and warrant a higher penalty given that an aircraft is a confined space, often includes children and aged passengers and the crew has other duties which are also relevant to safety. These circumstances mean that the consequences of the commission of the offence are particularly dangerous and damaging.³²

2.63 The Department also pointed out that incidents would be investigated by the AFP for assessment as to their seriousness, and that the AFP may choose not to send a matter on to prosecution. In the event a matter is prosecuted and a conviction recorded, the Court retains the discretion to impose a penalty appropriate in the circumstances of the individual case.³³

2.64 The committee is of the opinion that given the seriousness of the crimes involved the increased penalties are warranted.

Creation of new offences

2.65 In addition to the point raised above, CCL was also concerned by the new general offence of assaulting, threatening with violence or intimidating a crew member, with a maximum penalty of 10 years. CCL questioned the unqualified nature of 'intimidation' and noted that a person may therefore be subject to conviction for behaving with justified annoyance, such as by shouting or threatening to inform the crew member's employer.

2.66 The Attorney-General's Department's response to this observation was that:

Aggressive behaviour directed against aircraft crew members, particularly in instances where the behaviour is intimidating or escalates into an assault,

29 Civil Aviation Safety Authority, *submission 3*, p. 1.

30 New South Wales Council for Civil Liberties, *submission 4*, p. 2.

31 New South Wales Council for Civil Liberties, *submission 4*, p. 2.

32 Attorney-General's Department, *submission 8*, p. 2.

33 Attorney-General's Department, *submission 8*, p. 2.

may well be captured by this offence. However, this kind of behaviour would only be subject to this offence if in fact it did intimidate an aircraft crew member. General annoyance and frustration could be expressed about a problem in a range of ways without it necessarily being intimidating and falling within the provision.³⁴

2.67 The committee is inclined to agree with the CCL that the unqualified nature of intimidation may capture behaviour of a kind that should not fall within an offence carrying a maximum penalty of 10 years imprisonment. The committee is therefore of the opinion that further guidance as to the appropriate application of the intimidation provision be given in the EM.

Recommendation 1

2.68 The committee recommends that the Explanatory Memorandum to the Bill be amended, so as to include examples of behaviour that would, and would not, be considered intimidation, to provide guidance on the appropriate limit of the application of the offence established by item 7.

2.69 On the basis of the submissions provided over the course of the inquiry, the committee is satisfied, with the exception of the issue raised in paragraph 2.65, that the Bill will improve aviation security through the proposed changes to policing, offences and penalty structure.

Recommendation 2

2.70 The committee recommends that, subject to the preceding recommendation, the Senate pass the Bill.

Senator Trish Crossin

Chair

34 Attorney-General's Department, *submission 8*, p. 2.

APPENDIX 1

SUBMISSIONS RECEIVED

**Submission
Number**

Submitter

1	Police Federation of Australia
2	Qantas Airways Limited
3	Civil Aviation Safety Authority
4	NSW Council for Civil Liberties
5	South Australia Police
6	Australian Crime Commission
7	Law Enforcement Policy Branch, NSW Department of Premier and Cabinet
8	Attorney-General's Department
9	Victoria Police