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AIR NAVIGATION AMENDMENT BILL 1986

Date introduced: 12 March 1986
House: House of Representatives
Presented by: Hon. Peter Morris, M.P., Minister
for Aviation

DIGEST OF BILL

Purpose

To regulate certain activities of Australian aircraft flying over a foreign country.

Background

The International Civil Aviation Organisation (ICAO) came into existence in 1947 when 26 States ratified the Convention on International Civil Aviation in Chicago in November 1944 (the Chicago Convention).

The aims and objectives of ICAO, as set out in Article 44 of the Chicago Convention, are to develop the principles and techniques of international air navigation, to foster the planning and development of international air transport, and to promote a safe, regular and efficient international air transport industry. Australia has been represented on the permanent executive body of the Council of ICAO since the organisation came into existence.

The ICAO Council met in Extraordinary Session on 15 September 1983 to consider the interception and subsequent destruction of Korean Airlines flight KE007 by Soviet military aircraft. On 16 September the Council decided to urgently examine the question of an amendment to the Chicago Convention involving an undertaking to abstain from the use of force against civil aircraft.

On 10 May 1984 at the 25th Session (Extraordinary) of the Assembly held in Montreal it was unanimously decided to amend the Chicago Convention. The amendment is known as Article 3 bis and provides that every State must refrain

from the use of weapons against civil aircraft. Article 3 bis also provides that an aircraft flying without authorisation over a foreign country, or appearing to disregard the aims of the Chicago Convention, must obey an instruction to land. The present Bill attempts to implement Article 3 bis by amending the Air Navigation Act 1920 (the Principal Act).

Main Provisions

The Protocol which adds Article 3 bis to the Chicago Convention will be included in the list of agreements relating to air navigation that have been ratified by Australia (clause 3 which amends sub-section 3A(2) of the Principal Act).

Clause 5 will insert a new section 21A into the Principal Act. Proposed sub-section 21A(2) will prohibit the operation of an Australian aircraft over a foreign country 'for a purpose that is prejudicial to the security or public order of, or to the safety of air navigation'. The penalty for an offence against this sub-section will be a \$5000 fine or imprisonment for two years or both.

It will also be an offence for an Australian aircraft to disobey a direction, including a direction to land, if the aircraft is flying over a foreign country without the required authorisation or if the flight of the aircraft has given rise to the belief that it is being operated 'for a purpose prejudicial to the security or public order of, or to the safety of air navigation' (proposed sub-section 21A(3)). It will not be an offence against sub-section 21A(3) if pilots can prove that they believed, on reasonable grounds, that compliance with the direction would be more likely to endanger the aircraft and passengers than would failure to comply with the direction (proposed sub-section 21A(4)).

Where a person has already been dealt with by the law of the foreign country, they will not be liable under proposed sub-sections 21A(2) or 21A(3) (proposed sub-section 21A(7)).

Clause 8 will add a Schedule 10 to the Principal Act. Proposed Schedule 10 is the Protocol which added Article 3 bis to the Chicago Convention and Article 3 bis is set out in the Schedule.

Remarks

The present Bill was examined by the Senate Standing Committee for the Scrutiny of Bills and the Committee's conclusions are contained in its 4th Report for 1986 dated 9 April 1986.

Article 3 bis includes the prohibition that weapons must not be used against civil aircraft, however, this prohibition does not appear in this Bill as an amendment to the Principal Act.

For further information, if required, contact the Law and Government Group.

22 April 1986

Bills Digest Service
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Reference

Department of Aviation, Annual Report 1983-84, Parliamentary Paper No. 13 of 1985, pp.65, 66.

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