

The Senate

---

Legal and Constitutional Legislation  
Committee

---

Provisions of the Civil Aviation Amendment  
(Relationship with Anti-discrimination  
Legislation) Bill 2004

June 2004

© Commonwealth of Australia 2004

ISBN 0 642 71423 1

This document was printed by the Senate Printing Unit, Department of the Senate,  
Parliament House, Canberra

# MEMBERS OF THE LEGISLATION COMMITTEE

## Members

Senator Marise Payne, **Chair**, LP, NSW  
Senator the Hon. Nick Bolkus, **Deputy Chair**, ALP, SA  
Senator Brian Greig, AD, WA\*  
Senator Joseph Ludwig, ALP, QLD+  
Senator Brett Mason, LP, QLD  
Senator Nigel Scullion, CLP, NT

## Substitute Member

- \* Senator Aden Ridgeway, AD, NSW to replace Senator Brian Greig for matters relating to the Indigenous Affairs portfolio
- + Senator Kerry O'Brien, ALP, TAS to replace Senator Joseph Ludwig for matters relating to the Indigenous Affairs portfolio

## Participating Members

Senator the Hon. Eric Abetz, LP, TAS	Senator Gary Humphries, LP, ACT
Senator G. Barnett, LP, TAS	Senator Linda Kirk, ALP, SA
Senator Mark Bishop, ALP, WA	Senator Susan Knowles, LP, WA
Senator George Brandis, LP, QLD	Senator Meg Lees, APA, SA
Senator Bob Brown, AG, TAS	Senator Ross Lightfoot, LP, WA
Senator Kim Carr, ALP, VIC	Senator Sue Mackay, ALP, TAS
Senator Grant Chapman, LP, SA	Senator Julian McGauran, NPA, VIC
Senator Alan Eggleston, LP, WA	Senator Jan McLucas, ALP, QLD
Senator Christopher Evans, ALP, WA	Senator Shayne Murphy, IND, TAS
Senator the Hon. John Faulkner, ALP, NSW	Senator Kerry Nettle, AG, NSW
Senator Alan Ferguson, LP, SA	Senator Robert Ray, ALP, VIC
Senator Jeannie Ferris, LP, SA	Senator the Hon. Nick Sherry, ALP, TAS
Senator Brian Harradine, IND, TAS	Senator Ursula Stephens, ALP, NSW
Senator Leonard Harris, PHON, QLD	Senator A. Ridgeway, AD, NSW
	Senator Natasha Stott Despoja, AD, SA
Senator Andrew Bartlett, AD, QLD for matters relating to the Immigration and Multicultural Affairs portfolio.	Senator Tsebin Tchen, LP, VIC
	Senator John Tierney, LP, NSW
	Senator John Watson, LP, TAS

## Secretariat

Mr Phillip Bailey	Acting Secretary
Ms Alison Kelly	Senior Research Officer
Ms Marina Seminara	Executive Assistant

Suite S1.61	Telephone: (02) 6277 3560	Fax: (02) 62775794
Parliament House	E-mail: <a href="mailto:legcon.sen@aph.gov.au">legcon.sen@aph.gov.au</a>	



# TABLE OF CONTENTS

<b>TABLE OF CONTENTS .....</b>	<b>v</b>
<b>MEMBERS OF THE LEGISLATION COMMITTEE .....</b>	<b>iii</b>
<b>ABBREVIATIONS .....</b>	<b>vii</b>
<b>CHAPTER 1 .....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>1</b>
Key provisions of the Bill.....	1
Conduct of the inquiry .....	1
Acknowledgment.....	1
Notes on references .....	2
<b>CHAPTER 2 .....</b>	<b>3</b>
<b>BACKGROUND TO THE BILL.....</b>	<b>3</b>
Background.....	3
Impact on passengers.....	4
Impact on airlines and flight crew .....	4
Mechanisms in existing legislation .....	6
Provisions of the <i>Disability Discrimination Act 1992</i> .....	6
Section 11: Unjustifiable hardship .....	6
Section 15: Discrimination in employment.....	6
Section 47: Acts done under a statutory authority .....	7
Section 48: Infectious Diseases .....	7
Section 55: Commission may grant exemptions .....	7
Provisions of the Sex Discrimination Act 1984 .....	8
Section 7B: Indirect discrimination - reasonableness test.....	8
Section 40: Acts done under statutory authority .....	8
Section 44: Commission may grant exemptions .....	8

<b>CHAPTER 3 .....</b>	<b>9</b>
<b>Key Issues .....</b>	<b>9</b>
Key issues.....	9
Terminology .....	9
Committee View.....	11
Retrospectivity.....	12
Committee View.....	13
Appropriateness of Bill.....	13
Committee View.....	20
Removal of the right to make a complaint .....	20
Committee View.....	22
Opinions regarding the 'clearance' process.....	23
Committee View.....	25
<b>DISSENTING REPORT BY THE AUSTRALIAN DEMOCRATS .....</b>	<b>27</b>
<b>APPENDIX 1 .....</b>	<b>29</b>
<b>ORGANISATIONS AND INDIVIDUALS THAT PROVIDED THE     COMMITTEE WITH SUBMISSIONS.....</b>	<b>29</b>
<b>APPENDIX 2 .....</b>	<b>31</b>
<b>WITNESSES WHO APPEARED BEFORE THE COMMITTEE .....</b>	<b>31</b>
Canberra, Wednesday 16 June 2004 .....	31