



Civil Aviation Amendment Bill 2009

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Civil Aviation Amendment Bill 2009

Date introduced: 12 February 2009

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Commencement: Sections 1 to 3 and various other parts of the Act commence either on Royal Assent, or the day after Royal Assent. Schedule 1, which deals with the proposed Civil Aviation Safety Authority Board, commences on 1 July 2009, as do the sections on Air Operator's Certificates for foreign registered aircraft.

Links: The *relevant links* to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Civil Aviation Amendment Bill 2009 (the Bill) mainly amends the *Civil Aviation Act 1988* (the Act) to:

- re-introduce a Board into the governing structure of the Civil Aviation Safety Authority (CASA), and
- make improvements to the aviation safety regulatory regime under the Act.

Background

The National Aviation Policy green paper and the Senate Committee inquiry into CASA

In December 2008, the Commonwealth released a green paper on National Aviation Policy, *Flight Path to the Future*.¹ The green paper was the result of an industry

1. See http://www.infrastructure.gov.au/aviation/nap/files/Aviation_Green_Paper.pdf, accessed 20 February 2009.

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consultation process and will serve as the foundation of a white paper due in late 2009. The matters covered in *Flight Path to the Future* were wide-ranging in scope, and included aviation safety issues. In it, the Commonwealth stated that it would, amongst other safety-related matters:

- strengthen the Civil Aviation Safety Authority (CASA) by:
 - retaining CASA as an independent statutory agency with responsibility for aviation safety regulation;
 - reinforcing CASA’s governance arrangements, including:
 - establishing a small expert CASA Board to guide the organisation and to recommend enhancements to CASA’s approach to regulation and surveillance of airlines;
 - strengthening CASA’s regulatory powers to inspect and regulate the operation of international carriers operating to Australia to ensure safety standards are being met;
 - updating the regulatory powers and enforcement provisions in the *Civil Aviation Act 1988* to ensure they support effective management of future safety risks, including:
 - giving CASA the necessary powers to deal decisively and properly with operations that do not meet safety standards;
 - strengthening CASA’s capacity to obtain information on suspected safety deficiencies; strongly supporting a culture of self-reporting by operators, affirming the obligation on Air Operator’s Certificates (AOC) holders to notify CASA immediately of any failures in safety compliance;
 - ensuring CASA’s penalty provisions provide a balanced and effective range of responses to breaches, including:
 - examining the operation of the demerits points system to ensure its balanced application;
 - clarifying the circumstances in which breaches and the actions taken in response are to be made public, with an increased emphasis on transparency; and
 - considering the options of substantially increased financial penalties where appropriate and revised disclosure provisions.²

It is these commitments that the Government seeks to implement through the Bill.

In *Flight Path to the Future*, the Government also stated it would:

2. *ibid.* pp. 24–25.

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- enhance the independence of the Australian Transport Safety Bureau (ATSB) as a safety investigation agency by establishing it as a statutory agency within the Infrastructure portfolio, working under a Commission structure.³

This commitment is implemented through the associated Bill, the Transport Safety Investigation Amendment Bill 2009.

Aspects of the Civil Aviation Amendment Bill 2009 dealing with CASA governance have also been influenced by the inquiry of the Senate Rural and Regional Affairs Committee on the [Administration of the Civil Aviation Safety Authority \(CASA\) and related matters](#).⁴ Recommendation 1 of the Committee's [report](#) states:⁵

The committee recommends the Australian Government strengthen CASA's governance framework and administrative capability by:

- introducing a small Board of up to five members to provide enhanced oversight and strategic direction for CASA; and
- undertaking a review of CASA's funding arrangements to ensure CASA is equipped to deal with new regulatory challenges.

Australian aviation safety

In the recent 20–26 January 2009 annual edition of the authoritative European-based *Flight International* magazine, article '[Accidents and Incidents: Jan-Dec 08](#)', three Qantas incidents receive mention among 24 total 'significant non-fatal incidents' worldwide. The events were the loss of electrical power in a Boeing 747 approaching Bangkok Airport in January, the onboard explosive decompression of a Boeing 747 over the Philippines in July and the unexpected dives experienced by those aboard an Airbus A330 flying over northwest Australia in October 2008. These three incidents involved over a thousand people and fortunately all survived. Following media reports of [bogus](#) aviation maintenance staff, on 5 February 2009, the CASA Director of Aviation Safety signed an instrument of directions relating to Qantas Airways Limited and the control of its licensed maintenance personnel and their qualifications ([CASA 82/09](#)).⁶ In the Explanatory Statement to that instrument, CASA stated that it was 'not satisfied that Qantas Airways

3. *ibid.*, p. 25.

4. See http://www.aph.gov.au/Senate/committee/rrat_ctte/casa/index.htm, accessed 20 February 2009.

5. See http://www.aph.gov.au/Senate/committee/rrat_ctte/casa/report/report.pdf, accessed 20 February 2009.

6. CASA Instrument No. 82/09, 5 February 2009. See <http://casa.gov.au/rules/miscinst/2009/CASA82.pdf>. accessed 20 February 2009.

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Limited has adequate control of its licensed maintenance personnel and their qualifications'.⁷

In 2008 following a series of incidents, CASA conducted two additional intensive audits of Qantas.⁸ The first was a full maintenance audit of one aircraft of each major aircraft type in the Qantas fleet. The second audit focused on the effectiveness of Qantas maintenance systems in managing and implementing airworthiness directives.

On the other hand, national aviation safety statistics here are not conclusive of any particular trend. The January 2009 Australian Transport Safety Bureau (ATSB) report on '[Aviation statistics: 1 January 1998 to 31 December 2008](#)' shows trends in air safety. In 2008, 38 people died in aviation incidents compared to 23 in 2007, but the overall trend is arguable. The Explanatory Notes say:

Table 1: The significant increase in incident numbers from 2003 are the result of a healthier industry wide reporting regime supported largely with the introduction of the TSI (Transport Safety Investigation Act/Regulations 2003) in 2003 which provided specific guidelines for mandatory reporting requirements...

Tables 10 to 12: The spike in the 2000 and 2005 fatality number and rate for low capacity air transport is attributed to two accidents, which collectively resulted in 23 fatalities (ATSB investigation reports 200002157 and 200501977 refer).⁹

Table 1 indicates the 'Total number of accidents, serious incidents and incidents by occurrence category and year, 1998 to 31 December 2008', with serious incidents rising from 6 in 2003 to 64 in 2008, apparently for the reasons stated above. Incidents rose from 4,856 to 7,833 over the same period, at least demonstrating that a better reporting regime now applies. The [ATSB provides a brief overview description](#) of these newer reporting requirements.¹⁰

Table 10 of 'Air transport accident rates per 100,000 hours flown, 1998 to 2007' shows that, for high capacity aircraft only a very marginal increase in accidents from 2005 to 2008 and, the spike in 2005 as noted for low capacity aircraft. Similarly, Table 11 of 'General aviation accident rates per 100,000 hours flown, 1998 to 2007' only shows very

7. *ibid.*

8. CASA, media release, *Qantas safety review actions*, 1 September 2008. See <http://www.casa.gov.au/media/2008/08-09-01a.htm>, accessed 24 February 2009.

9. ATSB Transport Safety Report, Aviation statistics AR-2008-057(4), January 2009. See <http://www.atsb.gov.au/publications/2009/pdf/AviationStats.pdf>, accessed 20 February 2009.

10. ATSB Aviation Safety Accident or Incident Notification Requirements. See <http://www.atsb.gov.au/aviation/editorials/e00017.aspx>, accessed 20 February 2009.

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marginal trends. Ditto for Table 12: ‘Total air transport and general aviation accidents rates per 100,000 hours flown, 1998 to 2007’.

[Air passengers at Australia’s capital city airports and nationwide](#) increased at 4 per cent per annum, with 23.5 million international and 48.8 million domestic passenger movements in 2007-08.¹¹

Safety Reports

On 04 April 2007 [the ATSB released a 500-page final report](#) into Australia’s worst civil aviation accident since 1968 at Lockhart River Queensland in which 15 people died. The report spelt out contributing safety factors involving the pilots, the operator and the regulator as well as other safety factors, and made further recommendations to improve future safety, including a large number relating to CASA operations stating that:

The regulatory oversight was also not as good as it could have been, especially when Transair moved from a charter to a regular passenger transport operator and was growing rapidly in Australia. In addition to the serious pilot and company contributory factors, if CASA’s guidance to inspectors on management systems and its risk assessment processes had been more thorough, the accident may not have occurred.¹²

In particular [recommendation R20070004](#) states that:

CASA did not have a systematic process for determining the relative risk levels of airline operators. This issue was discussed in the analysis section of the draft report but was not listed as a safety issue. However, it has now been included as a safety issue following assessment of comments on the draft report. The Australian Transport Safety Bureau recommends that the Civil Aviation Safety Authority address this safety issue.

And in response from CASA:

CASA has a project underway to review, and if necessary, redesign elements of the oversight regime. The implementation phase of the project commences in early 2008. This project also includes a risk assessment module. It is intended that the entire surveillance system be based upon an integrated risk framework.

11. Avline, December 2008. See http://www.bitre.gov.au/publications/97/Files/Avline_13.pdf, accessed 20 February 2009.

12. ATSB *media release*, ‘Final ATSB investigation report on Lockhart River 15 – fatality aviation accident’ 4 April 2007. See http://www.atsb.gov.au/newsroom/2007/release/2007_18.aspx, accessed 20 January 2009.

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On 20 March 2008, The Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Anthony Albanese MP, released a report on the relationship between the Australian Transport Safety Bureau (ATSB) and the Civil Aviation Safety Authority (CASA) by Mr Russell Miller (the [Miller report](#))¹³, saying that:

Mr Miller undertook the review at the request of the former Transport Minister following comments from the Queensland State Coroner about the observed tensions between the two agencies during the inquest into the tragic accident at Lockhart River in 2005.¹⁴

The Miller Report provided a number of recommendations largely administrative in nature while other recommendations involved more complex legislative and governance issues. One group of recommendations related to the protection of information collected during ATSB investigations, namely that in strictly limited circumstances information should be provided to CASA to facilitate immediate safety action. Other recommendations related to the governance structure for ATSB and CASA:

20.3 While tensions between the safety regulator and accident investigator in Australia should not be unexpected, the Coroner correctly observed that the tensions he had detected went well beyond the constructive tension one would expect. Others interviewed by the Review recounted examples that support the view that, although the behaviour evident in the Lockhart River Inquest may have been an extreme example, this tension has existed for quite some time and has affected the relationship between the ATSB and CASA in a negative way....

20.10 On a more positive note, it is clear to the Review that the ATSB and CASA have each recognised that they need to each invest more in their relationship and have taken some positive steps to do so. This is a very encouraging sign.

23. CASA governance issues

23.1 Some industry experts raised issues with CASA's current governance structure, suggesting that re-introduction of a board that could support the Director of Aviation Safety would improve safety outcomes by providing high level and widely based guidance for the organisation on key safety issues arising from ATSB investigations. The Review noted these suggestions but felt that they were beyond the Terms of Reference...

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13. ATSB/CASA Review 2007: Report to the Minister for Infrastructure, Transport, Regional Development and Local Government. See http://www.infrastructure.gov.au/aviation/safety/pdf/ATSB_CASA_Review_2007.pdf, accessed 20 February 2009.
 14. The Hon Anthony Albanese MP, media release, *Release of Miller Report*, 20 March 2008. See http://www.minister.infrastructure.gov.au/aa/releases/2008/March/AA019_2008.htm, accessed 20 February 2009.

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23.3 After the changes to CASA governance which saw the Board replaced, responsibility for the relationship between CASA and ATSB was delegated by the Director of Aviation Safety to the Deputy Chief Executive Officer. It remains as such today. That is not a matter of particular governance concern, but there is an absence of clear protocols setting out the scope of the Deputy Chief Executive Officer's responsibilities and objectives and clear lines of authority to ensure that the Deputy Chief Executive Officer has adequate resources available to properly manage CASA's relationship with the ATSB.

Further in relation to passenger transport:

41.1 The *Civil Aviation Act* and the *Transport Safety Investigation Act* both make it clear that aviation safety is a primary objective, but neither explicitly gives primacy to promoting the safety of passenger transport operations.

The Miller Report noted:

If the serious and imminent risk to air safety that prompted CASA to act in the first place has not abated within five business days, CASA is not entitled to extend this suspension. The suspension will automatically lift unless CASA applies to the Federal Court and is able to satisfy the Court that there are reasonable grounds to believe that the suspended holder is likely to engage in conduct that contributes to or results in a serious and imminent risk to air safety... If the Federal Court is satisfied the suspension should continue, the Court may extend the suspension for up to 40 days to allow CASA to complete an investigation into the circumstances.

The Minister's Second Reading Speech for this Bill indicated that CASA's ability to monitor overseas operators flying into Australia was of concern, both in their home and overseas jurisdictions.¹⁵ Accordingly, the Bill includes measures directed to that end.

The Bill also amends the routine automatic stay of reviewable decisions provisions to involve the Administrative Appeals Tribunal rather than allow operator to use legal means to avoid actions.

The CASA Board

In October 2003, the *Civil Aviation Act 1988* was significantly amended to include additional compliance measures and additional governance measures that abolished the then CASA Board and designated the Director of Aviation Safety as the Chief Executive Officer (CEO) of CASA. The Director is appointed by the Minister and during the current period has been Mr Bruce Byron AM. Background to the decision to abolish the then CASA Board in 2003 is contained in the [Bills Digest](#) to the Civil Aviation Amendment

15. The Hon. Anthony Albanese, Second reading Speech, Civil Aviation Amendment Bill 2009, House of Representatives, *Debates*, 12 February 2009, p. 4.

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Bill 2003.¹⁶ The relevant section of this is reproduced for convenience in Appendix 1 of this Digest.

The [CASA Corporate Plan 2008–09 to 2010–11](#) notes that:

CASA operates under the financial and governance arrangements of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). In the 2007–08 to 2009–10 Corporate Plan it was reported that CASA had made the necessary preparations, in conformity with the then government's requirements, for transition to the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*, with intended effect from 1 July 2008. In the event, the then government deferred the planned transition.

The government will implement its policy to establish a board for governing CASA. The Senate inquiry into the administration of CASA, which reported in September 2008, also recommended appointment of a board.¹⁷

The *Flight Path to the Future* green paper proposed a five member Board comprising a chair, deputy chair, the CASA CEO and two other members. It proposed that, in consultation with the Minister, the Board would appoint the CEO. However, on 16 December 2008, the [Minister announced](#) a new CEO for CASA, Mr John McCormick to replace Mr Bruce Byron AM from 28 February 2009.¹⁸ He will prepare for establishment of the Board to be in place by 1 July 2009.

Flight Path to the Future also noted that the Government would give due consideration to CASA's long term funding arrangements:

The Government has also considered whether it would be appropriate for CASA to transition to the *Financial Management and Accountability Act 1997* (FMA Act) according to the financial management principles established in the *Review of the Corporate Governance of Statutory Authorities and Office Holders* (Uhrig Review) presented in 2003.

The Government does not propose to do this at this time. CASA will be retained as a statutory authority under the CAC Act and the Government will review this

16. Bills Digest No. 148 2002-03, Parliamentary Library, Canberra. . See <http://www.aph.gov.au/Library/pubs/bd/2002-03/03bd148.pdf>, accessed 20 February 2009.

17. See <http://www.casa.gov.au/corporat/corpplan/>, at p. 8, accessed 20 February 2009.

18. The Hon. Anthony Albanese MP, media release, *New CEO for CASA*, 16 December 2008, see http://www.minister.infrastructure.gov.au/aa/releases/2008/December/AA202_2008.htm, accessed 20 February 2009.

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arrangement in two years. The new CASA Board will be responsible for the efficient, effective and ethical use of Commonwealth resources.¹⁹

Flight Path to the Future examined CASA's regulatory powers and industry interactions, considering options for voluntary and mandatory aviation safety reporting requirements, as well as increased penalties for regulatory breaches. The Aviation Regulatory Review Taskforce recommended that the current regulatory reform process be completed by 2011–12.

Flight Path to the Future also noted that CASA's internal reforms would have to overcome some inconsistent practices in regulatory performance. The [CASA Corporate Plan 2008–09 to 2010–11](#) proposes a comprehensive series of initiatives to enhance aviation safety regulation.

Committee consideration

At its meeting of 12 February, the Senate Selection of Bills Committee resolved not to refer the Bill for inquiry.

Position of significant interest groups/press commentary

There appears to have been no comment on the Bill by aviation or related groups.

ALP/Australian Democrat/Greens/Family First policy position/commitments

There appears to have been no comment on the Bill by any non-government parties or individual Members or Senators.

Financial implications

The Explanatory Memorandum to the Bill states:

The financial impact of the Bill on the Commonwealth is expected to be minimal. A modest increase in resourcing for CASA to support the new Board is currently being considered as part of the 2009-10 Budget process.²⁰

19. *op. cit.*, p. 55.

20. Explanatory Memorandum, p. 4.

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Main provisions

Schedule 1 – Governance of CASA

Item 18 repeals the current Part VII in the Act and inserts:

- a **new Part VII** (which deals with the new CASA Board), and
- a **new Part VIIA** (which deals with CASA’s Director of Aviation Safety (the Director) and CASA’s staff).

Under **new section 52**, the Board will consist of the Director and up to four members, one of which will be the Chair. Members (this does not include the Director) are appointed by the Minister on part-time basis, on terms up to 3 years, and are eligible for reappointment. The Minister must ‘ensure an appropriate balance of professional expertise’ in appointing members, but ‘need not ensure that particular sections of the civil aviation industry are represented’: **new section 54**. The remaining provisions as to board membership, such as outside employment, remuneration and termination are standard. However, **new paragraph 60(2)(c)** enables the Minister to terminate the appointment of members if the ‘Minister thinks performance of the [relevant] Board member has been unsatisfactory for a significant period of time’. The Explanatory Memorandum comments that:

Unsatisfactory in this provision is taken to mean with respect to contributing to the functions of the CASA Board, in the wider context of civil aviation.²¹

Similarly, **new subsection 60(3)** enables the Minister to terminate the appointment of all Board members or individual Board members if the ‘Minister is of the opinion that the performance of Board members *or* the performance of CASA has been unsatisfactory for a significant period of time’. The Explanatory Memorandum comments that:

For example, the Minister would be able to consider CASA’s performance was unsatisfactory because of matters such as failing to perform its functions, failing to comply with Directions or meeting relevant administrative requirements. This section is not intended to be used where it is claimed that CASA performance is unsatisfactory merely because CASA is implementing a Government policy with which a person does not agree.²²

The functions of the Board are set out in **new section 53**. These are to:

- decide the objectives, strategies and policies to be followed by CASA
- ensure that CASA performs its functions in a proper, efficient and effective manner

21. op. cit. p. 7.

22. ibid.

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- ensure that CASA complies with directions given by the Minister in section 12B.

Decisions of the Board will normally be taken at meetings, though the Bill includes standard provision for decisions to be made out of session. Decisions at Board meetings are by majority vote of those attending and voting, although there is provision for a casting vote by the member presiding (normally the Board Chair) if necessary.

Item 21 deletes the existing power in section 94A of the Minister to delegate his or her powers to the Secretary of the administering Department, and inserts **new section 95** which allows the Board to delegate in writing any or all of its powers to any particular member or members, the Director, or any member of CASA. In exercising such powers, the delegate must comply with the directions of the Board.

Under **new Part VIIA**, the Director is appointed by the Board on a full-time basis for a term of up to five years, and is eligible for reappointment. The Board must first consult with the Minister. An existing Board member cannot be appointed as Director. The remaining provisions as to the Director's employment, such as outside employment, remuneration and termination are standard. The Board may, after consulting with the Minister, terminate the Director's appointment if it is 'satisfied that the Director's performance has been unsatisfactory': **new paragraph 81(e)**.

The duties of the Director are to manage CASA subject to the directions of, and in accordance with policies determined by, the Board: **new section 73**.

Under **item 25**, in the event that a person is holding the office of Director under existing section 84 of the Act immediately before the Act comes into force (scheduled to be 1 July 2009), that person is deemed to have been appointed Director under the new scheme.

Schedule 2 - Enforcement

Item 7 inserts **new subsection 23(2AA)**, containing a new offence of the negligent carriage or consignment of dangerous goods on board an aircraft. Such goods can only be carried or consigned where permitted by relevant regulations (including any conditions that attach) or with the written permission of CASA. The maximum penalty for the offence is 2 years imprisonment. This supplements existing carriage or consignment of dangerous goods offences in section 23, which carry maximum penalties of to seven years imprisonment. The Explanatory Memorandum appears to suggest that carriage or consignment of dangerous goods most often occurs through negligence rather through intention or recklessness,²³ hence the need for the new provision with a fault element (negligence) to reflect this.

Part IIIA of the Act deals with CASA's investigatory powers. **Item 15** repeals existing section 32AC, which deals with entry to premises with consent for inspection purposes,

23. *ibid.*, p. 10.

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and replaces it with a new version that takes account of Australia's obligations in respect of monitoring compliance with the New Zealand civil aviation legislation under an ANZA mutual recognition agreement. Fundamentally, however, there are no significant changes to the relevant inspection powers. **Items 16 and 17** makes similar procedural changes, but in the context where inspection is under warrant.

Existing section 32AH deals with 'discovery of evidence'. **Item 21** repeals this section and substitutes **new sections 32AH-AHN**. These deal with powers of an inspector when searching premises either with consent or under warrant. These standard provisions include the use of 'necessary and reasonable' force against persons or things when operating under a warrant, compelling assistance with respect to computer records, and seizure of evidential material. Note that the issue of entry, search and seizure provisions in Commonwealth legislation has been significant issue in recent years, particularly the lack of justification in some explanatory material to Bills in cases where the Bills have contained extensive entry, search and seizure powers. In January 2008, the Government released its [response](#) to the extensive 2006 [report](#) of the Senate Scrutiny of Bills Committee of 2006 on such matters. The Explanatory Memorandum to the Bill comments:

The Bill contains a number of changes to CASA's investigative powers and search and seizure procedures to bring them into line with current Commonwealth criminal justice procedures and practices. It will also extend powers to allow CASA to use search and seizure powers under Chapter 7 of the Criminal Code. Amongst other things, these changes require that CASA investigators are appropriately qualified and comply fully with contemporary requirements governing the conduct of searches under, and in the absence of, a search warrant, the management of evidence and the use of computers and related equipment in the analysis of evidence.²⁴

Item 26 inserts offences relating to warrants, for example knowingly making a materially false or misleading statement in the course of applying for a warrant. The offences carry a maximum penalty of 2 years.

Schedule 3 – Other amendments

Items 1-6 relate to Air Operator's Certificates (AOCs) for foreign registered aircraft where these aircraft conduct, or propose to conduct, flights to and from, or within, Australian territory. AOCs are granted by CASA. These items amend the Act to allow CASA to require holders of, and applicants for, such AOCs to provide evidence in respect of:

- both any safety deficiencies in relation to their overseas operations *and* their ability and willingness to address these,
- management and control of their operations, and

24. Op. cit., p. 3.

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- the foreign regulatory authorities or authorities responsible for safety and related matters

CASA then may use the above evidence in deciding on AOC applications and the like by foreign operators.

Items 7-15 amend the current demerit point scheme in the Act. The scheme requires CASA to suspend all civil aviation authorisations (CAAs) held by a person within a particular CAA class where they incur 12 or more demerit points²⁵ in that class of CAA over a three year period. Demerit points are incurred where holder commits one or more of a very wide range of strict liability offences set out in the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1988. The length of the suspension is on a sliding scale according to how many demerit points the holder incurred:

- 12-15 points - 90 days
- 16-19 points -120 days
- 20 or more points - 150 days

Thus if a person had 11 points and then incurred another 3 points through a prescribed offence, they would be suspended for 90 days. However, CASA may also reinstate a CAA under certain grounds.

Regulations under the Act set out the various classes for the purposes of the scheme and which CAAs belong in what class (there are 15 classes in all). The Explanatory Memorandum accompanying the (then) Civil Aviation Amendment Bill 2003 explained the concept of these classes and the application to demerits scheme:

when the specified maximum number of points is reached or exceeded for that class, all the authorisations in that class will be suspended or cancelled. For example, where an authorisation holder accrues several points against their commercial pilot licence, and several points against their private pilot licence, all their pilot licences will be subject to suspension or cancellation. However, if the person also holds maintenance authorisations, for example, those authorisations are not suspended or cancelled.

As the scheme currently stands, it appears demerit points can only be incurred if a person holds a CAA at the time of the offence. However, **item 8**, along with subsidiary changes, removes this loophole. The changes mean that, if a person commits an offence to which the demerit points would otherwise be attached, and then subsequently gains or regains²⁶ a

25. Where a holder has previously been suspended, less demerit points are required before a second suspension takes place - only 6 demerit points in relation to the same class of authorisations over three years is required.

26. A person might 'regain' a CAA if they had previously transferred or surrendered the CAA in question, but it was later transferred or given back to them.

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CAA, the points will count against the relevant CAA for three years after the offence occurred. Thus if someone commits a 6 demerit point offence on 1 January 2010, and then subsequently acquires a relevant CAA on 1 July 2010, those 6 points will count against the CAA until 31 December 2012. If the person then incurred another 6 demerit points before 31 December 2012, the CAA would be suspended.

Items 16-19 amend the automatic ‘stay’ provisions in existing section 31A of the Act.

Under various parts of the Act and regulations, if CASA decides to suspend, vary or cancel a certificate, permission, permit or licence (for example, an AOC), it must first give a ‘show cause’ notice to the holder of the relevant certificate etc to allow the holder to make a case why it should not be suspended etc. It is important to appreciate that section 31A of the *Civil Aviation Act 1988* (the Act), which deals with the ‘automatic’ stay of CASA’s decision to suspend, vary or cancel various types of certificates, permissions, permits or licences, does not apply to a suspension of civil aviation authorisations (CAAs) made by CASA under the ‘serious and imminent risks to air safety’ provisions in Division 3A (sections 30DA-DI) of the Act or CAA suspensions or cancellations under the Division 3D (section 30DS-EJ) demerits.

Section 31A provides that any such suspension etc that requires a ‘show cause’ notice process does not come into effect until the end of the fifth business day after CASA gives the notice to the relevant holder. However, should the holder apply to the Administrative Appeals Tribunal (AAT) for an review of CASA’s decision by the fifth day, the stay will continue in force until the AAT’s ruling on the decision is made and comes into force, or until 90 days after CASA originally notified the holder of its decision, whichever occurs first. If the holder subsequently withdraws their application, the stay lapses.

Under the proposed amendments the five-day stay remains, the holder must lodge an application to extend the stay (rather than as currently just lodge an application for general merits review of CASA’s decision) within that five day period. The Explanatory Memorandum to the Bill comments that:

Stay applications are heard in the AAT on an **expedited basis**, and these amendments will ensure that authorisation holders, whose privileges CASA has decided to vary, suspend or cancel, may not continue to operate for an extended period of time (pending a merits review of CASA’s decision), without the AAT deciding, as quickly as possible, that it is appropriate that they might do so. [emphasis added].²⁷

Should an application to be made to the AAT to extend the stay within the five day period, the stay will remain in place until the AAT makes a decision whether to extend it or not. Obviously the effectiveness of the proposed amendments depends on the AAT being able to rapidly hear and decide on applications for extensions of stays, and certainly quicker than 90-day period referred to above.

27. op. cit., p. 16.

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Appendix 1

Civil Aviation Safety Authority governance issues – extract from [Bills Digest no. 148 2002-03](#) on the Civil Aviation Amendment Bill 2003

The Civil Aviation Safety Authority (CASA) was established in July 1995 as an independent statutory authority under section 8 of the Civil Aviation Act 1988 (the Act). CASA was formed out of the old Civil Aviation Authority, which was split in two, with service provider functions being taken up by the new Airservices Australia. Under section 9 of the Act, CASA is responsible, amongst other things, for the safety regulation of civil air operations within Australian territory, the operation of Australian registered aircraft, and for the promotion of high standards of aviation safety.

CASA is governed by a Board of Directors, appointed by the Minister for Transport and Regional Services. An Executive Team of 7 is responsible for strategic decision making, supported by a broader Senior Management Group. Within CASA, the Director of Aviation Safety is the chief executive officer and a member of the Board. The Director takes overall responsibility for CASA administration and operational activities. The Board decides the objectives, strategies and policies to be followed by CASA and ensures that CASA performs its functions in a proper, efficient and effective manner. CASA, the Department of Transport and Regional Services (which includes the Australian Transport Safety Bureau) and Airservices Australia constitute a tripartite structure responsible for providing safe aviation within Australia, each with separate and distinct functions.

CASA is no stranger to management controversies and personality conflicts within its governing Board. After the current Federal Government took office, the CASA Board became the centre of some fierce debates and public campaigns against it. Following wide criticism of the Board, the then Minister for Transport and Regional Services Mr John Sharp facilitated changes to its membership. On 6 May 1997, after new legislation expanded the CASA board to seven positions, Mr Dick Smith was appointed CASA Deputy Chairman under Chairman Justice William Fischer. Mr Laurence Foley later joined the Board. In June, Ms Gabi Hollows and Captain Molloy retired to be replaced by Dr Paul Scully-Power and Mr Bruce Byron.

On 26 August 1997, the Broderick/Willoughby report into the relationship between the Director of Aviation Safety and the CASA Board made recommendations on corporate governance. On 26 September 1997, CASA Director Mr Leroy Keith left after the Board passed a no-confidence motion in his management strategy to be replaced by Mr John Pike. Chairman Justice William Fischer and member Dr Clare Pollock both resigned in protest at the Board's handling of the former Director. On 24 December 1997, Mr Smith was appointed as Chairman of CASA, with Dr Scully-Power as Deputy Chairman, with Mr Michael Ryan, Mr Tony Pyne and Ms Janine Shepherd joining Mr Bruce Byron and Mr Laurence Foley on the Board. On 1 July 1998, Mr Mick Toller became the new Director of Aviation Safety.

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Following a fatal seaplane crash north of Sydney in July 1998, Stephen Skehill was commissioned by the Minister to review CASA's regulation of the seaplane's operators, Aquatic Air. Mr Skehill's report was completed in October 1998 and tabled in Parliament in February 1999. The report found that a small number of CASA actions were defective and not to be preferred, although not improper, including its failure to suspend Aquatic Air. The then CASA Chairman, Mr Dick Smith, was reported as believing that the Skehill report showed the continuing existence of deficiencies at CASA.⁴ However, Mr Smith resigned in March 1999 amid allegations of collusion between the CASA board and airlines over a trial of low flight level airspace management. Ms Janine Shepherd resigned on 23 March 1999, while Mr Byron's term of office expired on 30 June 1999. In July 1999, Ms Megan Cornelius was appointed to the Board and Mr James Kimpton became Deputy Chairman with Dr Scully-Power now as Chairman.

In September 1999, the Senate forced the tabling of a second report by Mr Skehill on the appointment of a CASA Board member, Mr Laurie Foley, as Assistant Director, Aviation Safety Compliance. This (second) Skehill investigation into CASA corporate governance cleared Mr Laurie Foley over selection processes. On 19 June 2000, Mr Peter Harris, Secretary of the Department of Transport and Regional Services, joined the Board.

In November 1999 the Australian National Audit Office (ANAO) released Aviation Safety Compliance by CASA. While concluding that CASA was a competent agency, the report noted continuing turmoil within CASA that warranted stable management processes. CASA agreed with all of the 13 recommendations relating to safety targets and corporate plans so that procedures and documentation adhered better to regulations. A follow-up ANAO audit report found in mid-2002 that CASA's management of aviation safety compliance systems had improved with only three new matters arising, although risk identification processes had stalled.

In February 2000, the Federal Government appointed a new consultative body, the Aviation Safety Forum (ASF), to provide strategic advice to CASA on matters of cultural change, cost structures, the Regulatory Reform Plan (discussed in next section) and policy aspects, and serve as a link to industry interests.

In May 2000, the International Civil Aviation Organisation concluded that Australia's air safety system was generally satisfactory after a safety audit of CASA found some 16 action points. A copy of the Action Plan to address the recommendations may be found on-line at: www.dotrs.gov.au/avnapt/ipb/icao/usoap.htm. Such outcomes were reassuring in a time of continuing change and Ansett's later eventual demise, amid media claims that CASA was ill-equipped in skills and culture to identify and correct problems and issues that may cause a major air disaster.

In October 2000, the Senate Rural and Regional Affairs and Transport Legislation Committee produced a report on CASA's actions in relation to another small aviation operator, ARCAS Airways. The report contained details about concealment of unofficial aircraft defect records and led to recommendations for legal prosecutions and the creation

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of a new position of the Deputy Director of Aviation Safety (Mr Bruce Gemmel) within CASA. CASA responded by taking action on the recommendations and demoted Mr Foley as its head of aviation safety compliance. On 22 December 2000, Mr Foley resigned, to be later 'replaced' by Mr Mike Williams. Mr Peter Harris had left the Board on 19 June 2000, while Mr Pyne and Mr Ryan completed their terms in December 2000.

In mid 2001, the CASA Chairman Dr Paul Scully-Power retired and was replaced by Mr Ted Anson, then Chairman of the Australian Maritime Safety Authority (AMSA). The Government asked Mr Anson to consider the existing CASA Board structure and to report on whether it was appropriate for safety regulation to be a statutory authority. The report was completed in mid-2002 but not publicly released. The main features of the Bill were foreshadowed in the Minister's announcement of 18 November 2002. These proposed changes seemed to have generally been seen as a move in the right direction by the aviation industry.

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