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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CIVIL AVIATION AMENDMENT (RELATIONSHIP WITH ANTI-
DISCRIMINATION LEGISLATION) BILL 2004**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services,
the Honourable John Anderson, MP)

CIVIL AVIATION AMENDMENT (RELATIONSHIP WITH ANTI-DISCRIMINATION LEGISLATION) BILL 2004

OUTLINE

The purpose of the Civil Aviation Amendment (Relationship with Anti-Discrimination Legislation) Bill 2004 (the Bill) is to amend the *Civil Aviation Act 1988* (the Act) to empower the Governor-General to make regulations that may be inconsistent with the *Disability Discrimination Act 1992* and the *Sex Discrimination Act 1984* and to validate existing regulations and past actions based on those regulations.

As the Act currently stands, there is some uncertainty in relation to the validity of some actions carried out in accordance with safety regulations where these actions may appear inconsistent with either the *Disability Discrimination Act 1992* or the *Sex Discrimination Act 1984*.

This Bill is necessary for Australia to comply with its international obligations under the Convention on International Civil Aviation, done at Chicago 1944 (Chicago Convention). The International Civil Aviation Organization (ICAO) has established a set of Standards and Recommended Practices for the safety of international civil aviation. As a member state, Australia is obliged to implement ICAO standards in its aviation regulations.

Although some of these standards may appear to be inconsistent with the *Disability Discrimination Act 1992* or the *Sex Discrimination Act 1984* they are not unnecessarily restrictive or discriminatory and have been developed solely for reasons of aviation safety. For example, ICAO Annex 1 Chapter 6.3.2 states that to obtain a Class 1 Medical Assessment (to exercise the privileges of a commercial or transport pilot licence, flight navigator licence or flight engineer licence) the applicant shall not suffer from any disease or disability which could render that applicant likely to become suddenly unable either to operate an aircraft safely or to perform assigned duties safely.

In the higher interests of aviation safety it is important that the Governor-General has the power to make regulations, from time to time, that could be construed by some as inconsistent with anti-discrimination legislation.

The amendment allows the Governor-General to make regulations relating to medical fitness of flight crew or air traffic control licence holders that may be inconsistent with the *Sex Discrimination Act 1984*. However, it is possible that perceived disability discrimination may occur elsewhere in the aviation safety regulations other than in relation to medical standards. For example there is a regulatory requirement that when handicapped persons are carried in an aircraft, all reasonable precautions shall be taken to prevent hazards to other occupants. This may mean that a person must be both physically and mentally capable of opening emergency exits if seated in an exit row.

As such, a broader regulation-making power, and hence a broader scope of the validation provisions, are required in relation to inconsistency with the *Disability Discrimination Act 1992*.

As for all regulations made by the Governor-General under section 98 of the Act, regulations which have the potential to be inconsistent with Commonwealth anti-discrimination

legislation will be subject to clearance by the Human Rights Branch of the Attorney-General's Department and will undergo comprehensive consultation procedures and parliamentary scrutiny.

Financial impact statement

It is not anticipated that there will be any financial impact from the passage of this Bill.

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NOTES ON CLAUSES

Clause 1: Short Title

1. The Act, once enacted, may be cited as the *Civil Aviation Amendment (Relationship with Anti-Discrimination Legislation) Act 2004*.

Clause 2: Commencement

2. This clause provides that the Act commences on Royal Assent.

Clause 3: Schedule(s)

3. The *Civil Aviation Act 1988* is amended as set out in Schedule 1 to the Bill.

SCHEDULE 1 – Relationship between certain anti-discrimination legislation and regulations under the *Civil Aviation Act 1988*

Part 1 – Amendment of the *Civil Aviation Act 1988*

Item 1 - After subsection 98 (6)

This item amends section 98 of the Act by inserting the new subsections (6A) and (6B). Subsection 6A provides that regulations made by the Governor-General under subsection 98 (1) of the Act may contain provisions relating to medical standards that are inconsistent with the *Sex Discrimination Act 1984* where those regulations are necessary for the safety of air navigation.

Subsection 6B provides that regulations made by the Governor-General under subsection 98 (1) of the Act may contain provisions that are inconsistent with the *Disability Discrimination Act 1992* where those regulations are necessary for the safety of air navigation.

Part 2 – Provisions dealing with the effect of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998.

Item 2 - Definitions

This item provides definitions for the purposes of the provisions set out in Part 2 Schedule 1.

Item 3 - Effect of the Civil Aviation Regulations and the Civil Aviation Safety Regulations before the commencement of this Schedule

The effect of this item is to validate actions taken under the *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998* before commencement of Item 1 of Schedule 1, despite any potential inconsistency with the anti-discrimination legislation, except where the rights and liabilities of those concerned had already been determined by a court prior to commencement of that Item.

Item 4 - Effect of the Civil Aviation Regulations and the Civil Aviation Safety Regulations on and after the commencement of this Schedule

This item deems the new subsections 98 (6A) and (6B) to have always existed, the effect of which is to prospectively validate any provisions of the *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998* that may be inconsistent with the anti-discrimination legislation. This ensures valid actions may be taken under such provisions after commencement of Schedule 1 of the Bill despite any inconsistency of those regulations with existing Commonwealth anti-discrimination legislation.