



Australian Government
Department of Transport and Regional Services



Mr Phillip Bailey
Acting Secretary
Senate Legal and Constitutional Legislation Committee
Room S1.61
Parliament House
CANBERRA ACT 2600

Dear Mr Bailey

**SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
INQUIRY INTO THE PROVISIONS OF THE CIVIL AVIATION AMENDMENT
(RELATIONSHIP WITH ANTI-DISCRIMINATION LEGISLATION) BILL 2004**

I refer to your letters 22 June and 23 June 2004 to Mr Martin Dolan, in which you forwarded questions and concerns raised by the Senate Legal and Constitutional Legislation Committee during and subsequent to its inquiry into the Civil Aviation Amendment (Relationship with Anti-discrimination Legislation) Bill 2004 on 16 June 2004.

I also refer to advice provided to Dr Doug Hartley and Ms Marlene Parker of this office from Ms Alison Kelly of your office, that a response is also required advising the Committee of whether or not the Department can be sure that the intended recipients received the Information Paper that the Department circulated to community groups. I refer you to page 27 of the Hansard Transcript in this regard.

I attach for the Committee's information:

- responses to Questions on Notice from the hearing; and
- a response to a question raised by the Committee subsequent to the hearing.

Yours sincerely

Merrilyn Chilvers
Assistant Secretary
Aviation Operations

23 June 2004

Senate Legal and Constitutional Legislation Committee
Inquiry into the Provisions of the

Civil Aviation Amendment

(Relationship to Anti-Discrimination Legislation)

Bill 2004

PUBLIC HEARING

WEDNESDAY, 16 JUNE 2004

Questions on Notice from the hearing

Question 1 (Mr Dolan, p.29, *Proof Hansard*)

Senator LUDWIG—The other argument is that it seems to me that no-one has talked to HREOC about whether or not you can get a more permanent or wider exemption from the SDA or the DDA. Is that right or have you already discussed that with them? Am I wrong about that?

Mr Minogue—It is a policy matter for the minister for transport, so it is not one I can comment on.

Senator LUDWIG—Mr Dolan, can you comment on that?

Mr Dolan—If it is for the minister, I might have to consult with the minister. If I could answer that one on notice, I would prefer to do so.

Senator LUDWIG—Yes, by all means, just to clarify that position.

Response

The decision to amend the *Civil Aviation Act 1988* to ensure the validity of all air safety regulations which may be inconsistent with the SDA and the DDA, as opposed to seeking extended or wider exemptions from HREOC under those Acts, was a decision made in consultation with HREOC and was recommended by AGD.

The Attorney-General's Department have advised the Department that there is no capacity under either the SDA or the DDA to seek a permanent exemption, as the provisions of these Acts allow exemptions to be made for a maximum of five years. The policy underlying exemptions is that they enable the exempt organisation to bring itself into compliance with the relevant legislation over a period of time, or to maintain the status quo while the legislation is amended. Exemptions do not operate to validate otherwise inconsistent legislation.

It is therefore Government policy to pursue separate legislation which will remove the inconsistency between regulations made under the Civil Aviation Act 1988 and the SDA and DDA.

Question 2 (Mr Dolan, p.27, *Proof Hansard*)

CHAIR – Are you sure it reached its intended targets? Would you be surprised that you would send a document on this issue to over 20 organisations, which has prompted at least some of them to make submissions to this committee, and get no feedback on it?

Mrs Chilvers – Again it is difficult to know what is in the minds of people when they receive information from government departments.

CHAIR – I do not want to know what is in their minds, with respect, Mrs Chilvers, I was wondering what you thought of that.

Mrs Chilvers – I must admit I was surprised but assumed that they decided that the submission to your committee was perhaps a more effective way of making their views known.

CHAIR – Are you sure that your information paper got to them?

Mrs Chilvers – No –

Mr Dolan – We are not absolutely sure but we can check and get back to the committee.

Response

The Department has checked its files and can advise that it has not received any 'return to sender' notifications from the organisations and community groups to which the Information Paper was posted.

I would add, however, that in the covering letter sent with the Information Paper, the Department advised recipients about the Committee's inquiry into the Bill, and provided the necessary details to ensure anyone with a concern was aware of the opportunity to make a submission to the Committee.

**RESPONSE TO QUESTION RAISED BY THE COMMITTEE SUBSEQUENT
TO THE HEARING**

Question: By retrospectively validating regulations, the Bill may affect the rights of people who could currently argue that those regulations were invalid because of inconsistency with the DDA or the SDA.

In light of this, could you please answer the following two questions:

- 1) why is retrospective validation considered to be necessary?; and
- 2) how many people's rights may be affected by such retrospective validation?

**Joint Response provided by the Department of Transport and Regional Services
and the Attorney-General's Department**

The effect of the retrospective provisions would be to ensure that the existing regulations operate and are valid in line with previous understandings. No-one will find themselves in a worse position than they were in under the law as previously administered and understood.

Failure to make the rights, duties and obligations of persons the same whether an alleged act of discrimination occurred before or after the commencement of the Bill would leave the regulations which are to be validated by the Bill vulnerable to legal challenge. While the regulations would, under clause 4 of Part 2 of the schedule to the Bill, be validated from the date of commencement of the Bill, any prior invalidity would lead to uncertainty about the lawfulness of actions taken by persons in reliance upon those regulations prior to commencement. Thus, the decisions of medical examiners or airlines taken in good faith in reliance upon the validity of the air safety regulations prior to commencement would be thrown into doubt. Much of the utility of the Bill would thereby be defeated.

Neither the Department, CASA nor the Attorney-General's Department are aware of any people whose ability to claim invalidity of the relevant air safety regulations would be affected.