

2002-2003

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CIVIL AVIATION AMENDMENT BILL 2003

REVISED EXPLANATORY MEMORANDUM

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE
BY
THE HOUSE OF REPRESENTATIVES
TO THE BILL AS INTRODUCED

(Relevant ASRS Sections)

Protection from administrative action for voluntary reporting

The Bill introduces a protection from administrative action, based on the system administered by the National Aeronautical Space Administration in the United States on behalf of the Federal Aviation Administration.

Under the scheme, an authorisation holder will be protected from administrative action in respect of an authorisation (ie suspension, cancellation or variation of the authorisation, or the giving of an infringement notice) if the authorisation holder voluntarily discloses to a reporting body separate from CASA that they have committed a minor offence, within ten days of doing so, and before they receive any communication from CASA in relation to the contravention. It is not the intention of the scheme to protect an authorisation holder from prosecution action.

Details about the reporting body and the operation of the scheme will be prescribed in the regulations. This is not intended to be a whistleblowing scheme and the protection will only apply to the person who reports the contravention.

The protection will apply only in relation to 'reportable contraventions'. A 'reportable contravention' is a contravention that is eligible to be reported so as to receive the protection. Reportable contraventions will be contraventions of the regulations and will not include deliberate contraventions of the regulations; contraventions of prescribed regulations (ie the regulations to which the protection will not apply in any circumstances will be prescribed); contraventions that cause or contribute to an accident or serious incident before

or after the breach is reported; and contraventions involving fraudulent behaviour.

The reporting body will log each report in a confidential reporting system; and will issue a receipt to the authorisation holder which sets out the authorisation holder's name, the date the report was made, and the date and nature of the contravention. There will be no limit to the number of reports an authorisation holder is able to submit, but they can only be protected from administrative action for one reportable contravention every five years.

Should CASA be alerted to the contravention reported, through an independent investigation of a safety matter, within 5 years after the contravention is reported, the authorisation holder will be protected from administrative action in respect of the contravention, providing they can produce proof that they reported the contravention, and provided that the contravention was in fact reportable.

Reports under this scheme will not relieve an authorisation holder of their mandatory reporting obligations under the *Transport Safety Investigation Act 2003*.

CASA will not be able to use a report of a reportable contravention; the fact that the report has been made; or a receipt given to it by an authorisation holder, as evidence in criminal proceedings against the person who reported the contravention, if at the time the proceedings commence, the contravention is still reportable.

The Bill provides for regulations to be made dealing with the information reported to the prescribed person under the scheme. Such regulations may not allow 'personal information' within the meaning of the *Privacy Act 1988* ('Privacy Act') to be disclosed. However, it is envisaged that the reporting body will publish de-identified information arising from reports, which will facilitate analysis of trends that may indicate a need for training etc.

The scheme is intended to encourage self-reporting of minor breaches without the fear of reprisal, and provide a means to identify general trends in matters of concern relating to air safety.

Division 3C

Item 15 establishes a new scheme under Division 3C whereby an authorisation holder will be protected from administrative action (suspension, variation or cancellation of their authorisation, or the giving of an infringement notice) if they voluntarily report a contravention of the regulations within 10 days of the contravention to an independent reporting body. Division 3C does not confer any immunity from prosecution.

Division 3C encompasses:

- new s.30DL provides definitions for ‘accident’, ‘serious incident’, ‘prescribed person’ and ‘reportable contravention’. This definition of ‘reportable contravention’ details the contraventions that will not be covered by the protection;
- new s.30DM provides that the regulations will prescribe a person for the purposes of the scheme and ensures that the prescribed person may be a statutory authority or statutory office holder;
- new s.30DN provides that details of the reporting scheme, including the operation of the scheme, will be prescribed under the regulations. s.30DN also prevents the disclosure of personal information within the meaning of the Privacy Act;
- new s.30DO prevents CASA from taking administrative action in respect of a reportable contravention if the authorisation holder can prove they have reported the contravention in the required timeframe, and before the issue of an infringement or show cause notice;
- new s.30DP details the nature of the proof CASA requires for the protection to apply;
- new s.30DQ provides that an authorisation holder can only be protected from administrative action from one reportable contravention every five years; and
- new s.30DR provides that a report of a reportable contravention; the fact that the report has been made; or a receipt produced as proof that a reportable contravention was reported in the required timeframe, cannot be used as evidence in any criminal proceedings against the authorisation holder, if at the time the proceedings commence, the contravention is still reportable.