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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AIR NAVIGATION AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

Circulated by authority of the
Minister for Aviation, the Hon.
Peter Morris, MP

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OUTLINE

The Air Navigation Amendment Bill 1986 amends the Air Navigation Act 1920 to enable ratification by Australia of the Protocol relating to an amendment to the Chicago Convention on International Civil Aviation signed at Montreal on 10 May 1984.

The Protocol amends the Chicago Convention through the inclusion of a new Article (Article 3 bis) which prohibits the use of force against civil aircraft and provides for the regulation and interception of civil aircraft flying above the territory of another state without authorisation or for any purpose inconsistent with the aims of the Chicago Convention. The Protocol will enter into force when ratified by 102 Contracting States (approximately two-thirds of the membership of ICAO).

The Bill provides legislation to give effect to the provisions of Article 3 bis relating to the regulation by Australia of civil aircraft in flight over the territory of another state.

The proposed amendments have no financial impact.

NOTES ON CLAUSES

CLAUSE 1

1. Short Title.

CLAUSE 2

2. Sections 1, 2, 3, 4 and 8 of the Bill will come into effect on the date of Royal Assent. These provisions relate to ratification of the Protocol and its inclusion as a Schedule to the Act.
3. Sections 5, 6, and 7 of the Bill that relate to the regulation by Australia of civil aircraft over the territory of another state will come into effect on a date to be proclaimed. This is to provide time for amendments to be made to the Aeronautical Information Publications that are issued by the Australian Aeronautical Information Service under sub-section 7(2) of the Principal Act. In the interests of safety it is intended to proclaim these sections as soon as possible, rather than wait until the Protocol enters into force.

CLAUSE 3

4. Section 3A of the Principal Act is amended to provide approval for the ratification of the Protocol. Previous amendments to the Chicago Convention have entailed similar amendment to this section.

CLAUSE 4

5. Section 4 of the Principal Act is amended to include the English text of the Protocol as a Schedule to the Principal Act. There are currently 9 Schedules to the Act.

CLAUSE 5

6. Amends the Principal Act by inserting section 21A. Sub-section 21A(2) extends the powers of the Commonwealth to make it an offence for the pilot in command of an Australian registered aircraft or any other aircraft operated by an Australian operator to operate that aircraft over the territory of another country for a purpose that is prejudicial to the security, public order or safety of air navigation in that country. In view of the seriousness of an offence against this provision a maximum penalty of \$5,000 or 2 years imprisonment or both is provided under this section.
7. Sub-section 21A(3) extends the Commonwealth's powers to make it a requirement for the pilot in command of an aircraft (as specified above) when flying above the territory of another country to comply with any direction that is given by an authorised official, including a direction to land at a specified aerodrome, where that aircraft is flying without authorisation or where there are reasonable grounds to believe that the aircraft is being operated for a purpose that is prejudicial to the security, public order or safety of air navigation in the country concerned. Again, in view of the seriousness of an offence against this provision a maximum penalty of \$5,000 or 2 years imprisonment or both is prescribed. It will be a defence under sub-section 21A(4) if a person who is prosecuted under this provision is able to prove that the person believed on reasonable grounds that compliance with a direction would have been more likely to endanger the aircraft or persons on board, than would have non-compliance.

8. The offences created by sub-sections 21A(2) and 21A(3) provide for prosecution of the pilot in command. This is because in each offence it is the pilot in command who would have to carry out the offence. However, potential offenders are not limited to the pilot. Ancillary offenders (including a corporation) can be prosecuted under the provisions of the Crimes Act.
9. The requirement in both offences for aircraft not to be operated for any purpose that is prejudicial to the security, public order or the safety of air navigation in a foreign country refers to the obligation that is placed on civil aircraft operating over foreign countries to do so only for legitimate aviation reasons, as envisaged by the Chicago Convention. Under the terms of Article 3 bis, countries ratifying the Article undertake to guarantee that weapons will not be used against civil aircraft, and that the safety of the aircraft and passengers will not be endangered.
10. As indicated above, persons other than the pilot in command, for example the operator, may be prosecuted for an offence against sub-section 21A(2) or 21A(3) by virtue of section 5 of the Crimes Act. However, where a body corporate is convicted of an offence against sub-section 21A(2) or 21A(3) a court may under sub-section 21A(6) impose a fine of up to \$25,000.
11. Under sub-section 21A(5), compliance with the requirements of sub-sections 21A(2) and 21A(3) will not under sub-section 21A(5), affect any other obligation that may be imposed by law, including the law of a foreign country, to comply with a direction given by an authorised official of a foreign country. In accordance with sub-section 21A(7) where a person is convicted of an offence under the law of a foreign country, that person will not be liable to prosecution for the same offence in Australia under sub-sections 21A(2) and 21A(3).

CLAUSES 6 AND 7

12. Amend sections 22 and 23 of the Principal Act to reflect the separate penalty and defence provisions in section 21A.

CLAUSE 8

13. Incorporates the Protocol as Schedule 10 to the Principal Act and reproduces the text.