

1999

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CIVIL AVIATION AMENDMENT BILL 1998

SUPPLEMENTARY EXPLANATORY MEMORANDUM
AMENDMENTS TO BE MOVED ON BEHALF OF THE GOVERNMENT

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

CIVIL AVIATION AMENDMENT BILL 1998

OUTLINE

The purpose of the amendments to the *Civil Aviation Amendment Bill 1998* is to clarify the ability of persons external to CASA who are authorised to provide safety regulatory services (“external service providers”) to charge, and to charge market rates, for the provision of those services. The amendments fall into the following categories:

- amendments to ensure that external service providers are able to charge fees for providing safety regulatory services;
- amendments to ensure that external service providers can receive and recover the fees they charge;
- amendments to backdate the effect of these amendments to 15 June 1988 (when the Civil Aviation Authority was formed out of the Department of Transport and Communications) and 6 July 1995 (when the Civil Aviation Safety Authority was formed out of the Civil Aviation Authority); and
- a technical amendment to correct an oversight that was noticed after passage in the House of Representatives.

FINANCIAL IMPACT STATEMENT

These amendments are machinery in nature and have no budgetary impact.

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NOTES ON AMENDMENTS

Amendment number 1 is a technical amendment. It inserts a reference to the new item 17A in clause 2.

Amendment number 2 inserts new subclauses 2(4) and 2(5) that provides for the commencement dates of the new Items 26A and 27A as being 15 June 1988 and 6 July 1995 respectively.

Amendment number 3 inserts new subclauses 4(2A) and 4(2B). Subclause 4(2A) provides that fees charged to a person by an external service provider for services provided at the person's request is taken to have been agreed between the two parties if, in all the circumstances (and disregarding the amendments made by new items 26A and 27A), the fee was validly charged. The purpose of this amendment is to impute agreement between an external service provider and its customer for the purposes of new subsection 97AB, where there was no actual agreement. The provision only operates to impute that agreement in relation to services provided between 15 June 1988 and the date of commencement of this Bill.

Subclause 4(2B) provides that the new item 27A will not affect the validity of the current regulations prescribing fees for services provided by CASA.

Amendment number 4 corrects an omission from the Bill. It inserts item 17A which replaces the term "domestic commercial flight" with the term "regulated domestic flight" in paragraph 28(1)(c) of the *Civil Aviation Act 1988*. Identical replacements were made to other provisions in the Act when the Bill was introduced; the need to make a similar replacement in this paragraph was inadvertently overlooked.

Amendment number 5 inserts new item 26A, which will establish a new section 97AB 'Charging of fees by external service providers'. Delegates and authorised persons under the Civil Aviation Act and its regulations who are not employed or contracted by CASA are defined as external service providers. This item provides that these providers may negotiate and charge fees for regulatory services provided to persons who require such services. While the fees are subject to agreement between external service providers and their customers, and are therefore set by the market for safety regulatory services, they may not amount to taxation. New section 97AB also provides that fees charged are payable to the provider, and the provider may recover those fees in a court of competent jurisdiction.

In the absence of this item, these providers may only have been able to charge fees prescribed in the Civil Aviation (Fees) Regulations. Further, the fees would be payable to CASA and not the provider who performed the regulatory services.

This amendment also inserts new item 27A, which will amend paragraph 98(3)(u) to ensure that regulations prescribing fees will not apply to regulatory services performed by external service providers.

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