Date Introduced: 9 May 1984
House: House of Representatives
Presented by: Hon. K.C. Beazley, M.P., Minister for Aviation

Short Digest of Bill

Purpose

To make provision regulating the use in Australian courts of evidence obtained by the operation of cockpit voice recorders (CVRs) where the Air Navigation Regulations or Orders made under the Regulations require a CVR to be operated.

Background

A cockpit voice recorder (CVR) is a device for tape-recording conversations among crew members in the cockpit of an aircraft. It is ruggedly protected and uses a continuous loop of tape so that when stopped, as by a crash of the aircraft, the last minutes prior to the impact are preserved for the assistance of air safety investigators seeking to determine the cause of the crash.

The Bill makes legislative provision limiting the use of CVRs. The matter has previously been negotiated privately between the Australian Federation of Air Pilots and the Department of Aviation, most recently in 1975. The 1975 agreement provides that CVR information be used only where the accident resulted in death of the pilots, or their incapacity to give evidence of events prior to the accident.

A legislative provision is more certain. It would be introduced by the Bill's addition of a new section 27A to the Air Navigation Act 1920. The section is expressed to apply to proceedings in any court in Australia, and limits the use of CVR information in proceedings against a crew member.

Enumerated constitutional powers of the Commonwealth Parliament relevant to legislation with respect to air safety matters include the trade and commerce power and the external affairs power. In the case of Airlines of N.S.W. v New South Wales [No. 2] (1965) 113 CLR 54, matters incidental to the regulation of interstate trade and
commerce or raised as an external affair by the Chicago Convention on International Civil Aviation were held to authorize regulations under Commonwealth legislation which affected intra-State air operations, for reasons of safety, regularity and efficiency of air navigation. Special characteristics of air navigation, such as that controlled air space is not safe unless controlled by a single (Federal) agency were referred to, although State legislative competence to regulate intra-State carriage of goods or persons by air was not thereby further abridged.

The legislative provision in respect of CVRs is constitutional in its relationship to air safety matters. Evidence law in State courts generally is a matter for State law.

Main Provisions

New section 27A added to the Air Navigation Act 1920 from the date of Royal Assent prohibits the use of CVR recordings as evidence against a crew member in criminal proceedings absolutely, and in civil proceedings except as permitted by sub-section 27A(4). "Crew member" is defined to cover all persons employed by the aircraft operator on duty on the relevant flight. The limitation of the section to voice recordings is set out in sub-section (11).

The procedure for use of CVR recordings involves a preliminary examination of the material prior to admission. Sub-section (6) provides that even where admitted the CVR recording is not evidence for the purpose of determining liability of a crew member.

Offences are created of publishing or communicating CVR information, or contravening a non-disclosure order made by the Court under sub-section (7).

Sub-section (9) prevents any private disciplinary action being taken against a crew member on the ground of CVR information.

For further information, if required, contact:

6 June 1984

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