AIR NAVIGATION (CHARGES) AMENDMENT BILL 1984

Date Introduced: 13 September 1984
House: House of Representatives
Presented by: Hon. K.C. Beazley, M.P., Minister for Aviation

Purpose

To introduce provisions to encourage punctual payment of air navigation charges by providing for a lien on aircraft, and ultimately an order for sale; to enable setting of charges by regulation rather than legislative amendment, to introduce separate air navigation and airport charges.

Background

A wide ranging inquiry into recovery of costs attributable to the aviation industry in Australia, chaired by Mr H. Bosch, was set up by the Government and reported in November 1984. The terms of the independent inquiry do not extend to air fares but concern the operating cost of airlines and other aircraft operators. The general aviation sector, comprising light aircraft used for various purposes, is of special interest to the inquiry.

Air navigation charges in 1983-84 yielded some $123m in total and are estimated to yield $134m in 1984-85. In 1983-84, about half of the total was contributed by the two domestic airlines.[1] Charges are levied under Schedules to the Air Navigation (Charges) Act 1952 (the "Act"). Charges payable are computed principally on the basis of the maximum permissible take-off weight of the aircraft. Three categories of operations are distinguished and charged under separate Schedules. Firstly, airline operators and foreign charter operators are charged under Schedule 1 of the Act. The charge per flight is proportional to a route factor defined for each route in Australia and intended to reflect the navigation facilities provided on the route. Secondly, general aviation operators are required to pay an annual charge per aircraft under Schedule 2 of the Act. The charge is payable on the anniversary of the aircraft's registration. The charge is based upon the "unit charge" for aircraft of that weight class, a figure which is also used in calculations under
Schedule 1. The final charge under Schedule 2 depends upon whether the aircraft is classed as private, aerial work or charter. Paragraph 10 of Schedule 2 provides a discretion for remission of charges by the Minister, the Secretary, or Secretary's delegate on such terms "as he thinks fit". Remissions may apply for example to agricultural aircraft, or to aircraft based at aerodromes other than Commonwealth aerodromes.[2]

Schedule 3 of the Act levies charges on certain foreign aircraft.

Outline

The Bill would repeal the Schedules, with effect from a date to be proclaimed, and provides for charges to be determined in accordance with regulations made under the Act. The regulations made may eventually impose separate charges for use of navigational facilities and for use of airport facilities, as is done in most of the rest of the world (Canberra Times, 5 June 1984).

Amendments to substantive sections of the Act introduce a statutory lien which will provide the Commonwealth with security. Liens would be vested in the Commonwealth where an air navigation charge remains unpaid 28 days after it became payable. Liens are to be entered in a public Register. Proposed section 5B specifies the consequences of a lien, including that after a further 6 months the aircraft's certificate of registration may be cancelled and that after 9 months the aircraft may be seized, and sold by auction or privately.

The Bill further provides for the payment of penalty interest on unpaid air navigation charges at a rate of 1.5% per month compound, or such other rate as is prescribed. Also, the period of grace for payment before a penalty charge is imposed will be reduced from 45 days to 28 days.

Main Provisions

The Bill introduces, with effect from the date of Royal Assent, provisions permitting a remission or refund of penalty interest on unpaid charges (clauses 2, 7, 8 and 9).

With effect from 1 January 1985, the Bill increases the rate of penalty interest and reduces the period for payment of the charge (clause 2). Other provisions of the Bill are to commence on a date fixed by Proclamation.
In respect of charges which become payable, whether under existing or future methods of calculation, the Bill allows circumstances for remission or refund to be prescribed by regulation, and introduces a statutory lien in new section 5B (clause 5). The lien in favour of the Commonwealth is raised by the making of an entry in the Register of Statutory Liens kept under subsection 5B(3). Section 5C requires notification of a lien to such persons as are prescribed.

Liens may arise where 29 days or more have passed since a charge became payable and it has not been paid. The lien operates as a security interest but after a further 6 months, the aircraft's certificate of registration may be cancelled pending payment. After 9 months the aircraft may be seized or sold. Penalties are prescribed for obstructing or hindering such a seizure (section 5E). The Commonwealth is immune from suit for damage arising from seizure except where wilfully or negligently caused (section 5F).

Section 5G provides that the decision to cancel registration for non-payment within 6 months of the lien being raised is reviewable by the Administrative Appeals Tribunal, following a request to the Secretary to reconsider the decision.

The Bill introduces a new section 6 authorizing the Governor-General to make regulations setting charges. The regulations may extend beyond the calculation of charges to matters including review of decisions by the Administrative Appeals Tribunal and the maintenance and provision of documentary evidence establishing liability to charges (clause 6).

The Bill repeals Schedules 1, 2 and 3 in which the basis for charging is presently set out (clause 10).

Commencement provisions treat debts outstanding at the date of commencement as if newly incurred on that date (clause 11).

Remarks

The Bill provides for cancellation of an aircraft's registration in certain circumstances for non-payment of air navigation charges. Some doubts have been expressed as to the constitutionality of this measure, the revocation of an aircraft's registration on these grounds arguably not falling within the limited Commonwealth power over air navigation examined in Airlines of NSW Pty. Ltd. v New South Wales (No. 2) 113 CLR 54. In that case regulations which applied to and licensed intra-State air operations but were
directed to the safety, regularity and efficiency of air operations were held valid. Another regulation providing that such licences authorized "conduct of operations in accordance with the provisions of the licence subject to the Act and those Regulations and to the other laws of the Commonwealth" was found invalid.

For further information, if required, contact:

22 February 1985

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References