

**Submission to the Senate's Legal and Constitutional Affairs Committee concerning the Aviation Crimes and Policing Legislation Amendment Bill 2010**



New South Wales  
Council for  
Civil Liberties

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for Civil Liberties Inc**

The Council for Civil Liberties thanks the Senate Committee for the opportunity to comment on this bill. Essentially, we do not believe that this is the way to determine penalties.

*The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.*

*CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).*

*CCL was established in 1963, and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive use of power by the State against its people.*

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**A. Intimidation.**

1. In case of *Lustig v Regina*<sup>1</sup>, Peter Lustig was convicted of interfering with the performance by a cabin attendant of his duties because of a simple dispute over the opening of a coat locker. Lustig argued with the attendant, and later objected to being told to leave the plane, since he had children to pick up when he reached his destination. He used the address system to tell the other passengers about it. The court held that using the address system made it more difficult for the attendant to use it, and that was interfering with his performance of his duties.<sup>2</sup>

Though interference per se is no longer a crime, the case is instructive. The term was neither defined nor limited; and as a result, Lustig has a criminal offence on his record, for what was at worst a mild piece of misbehaviour.

2. The bill introduces a new offence of assaulting or intimidating a crew member, without there being any requirement that safety is at risk. The maximum penalty for the new offence is set at 10 years imprisonment.

CCL is concerned that without a significant qualification being left on the offence of intimidation, a passenger may be subject to conviction for behaving with justified annoyance by, for example, shouting or threatening to inform the crew member's employer.

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<sup>1</sup> *Lustig v Regina* [2009] NSWCCA 143

<sup>2</sup> Paragraph 48

While assault is properly a crime whether or not it endangers the aeroplane, no reason has been given for the introduction of an unqualified crime of intimidation, nor for the penalty—other than architectural neatness and that it would be easier to provide a conviction. These are never good reasons for legislation. The Committee should express its disgust.

## **B. The penalties**

1. The bill substantially increases the penalties for a variety of offences. There is a belief held by some of the more excitable sections of the media that increasing penalties is being tough on crime, and that it is likely to have a deterrent effect. Neither of these things is true—adopting a law and order stance is a sign of a politician's weakness; and increases in penalties have been found to have only a slight deterrent effect. In the case of the offences covered in this bill, no deterrent effect is likely.

2. We recognise that in his second reading speech the Minister calls for the penalties to reflect the seriousness of the offences. There is however no argument in the Explanatory Memorandum that addresses that issue—it depends instead on an arbitrary grouping of the offences, or comparisons with other offences.

## **Recommendation**

Actions which endanger the safety of an aeroplane are obviously very serious indeed. Assault is properly a crime. We recommend however that the penalties be set in accordance with the relative gravity of the offenses, eschewing architectural neatness. And we recommend that the offense of intimidation remain qualified, and its penalty be set in accordance with the gravity of the offense.

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