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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Reference: Civil Aviation Amendment Bill 2003

MONDAY, 5 MAY 2003

CANBERRA

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SENATE**RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE****Monday, 5 May 2003**

Members: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Cherry, Colbeck, Ferris and O'Brien

Participating members: Senators Abetz, Boswell, Brown, Carr, Chapman, Coonan, Eggleston, Chris Evans Faulkner, Ferguson, Harradine, Harris, Hutchins, Knowles, Lightfoot, Mason, Sandy Macdonald, McLucas, Murphy, Payne, Ray, Santoro, Stephens, Tchen, Tierney and Watson

Senator Lees for matters relating to Air Safety

Senators in attendance: Senators Allison, Colbeck, Ferris, Heffernan and O'Brien

Terms of reference for the inquiry:

Civil Aviation Amendment Bill 2003.

Committee met at 2.36 p.m.

CHAIR—I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is meeting on this beautiful, sunny day to consider the Civil Aviation Amendment Bill 2003. On 26 March 2003, the Senate referred the bill to this committee for examination and report by 16 May 2003. The purpose of the bill is to effect reform to the structure and administration of CASA, the Civil Aviation Safety Authority, and to the enforcement and oversight of air safety issues in Australia. The committee has received six submissions on the bill and now authorises them for publication.

Today's hearing is public and open to all. A *Hansard* transcript of the proceedings is being made, which will be available from the committee secretariat or via the Parliament House Internet home page next week. It should be noted that the committee has authorised the recording, broadcasting, and rebroadcasting of these proceedings in accordance with the rules contained in the order of the Senate of 23 August 1990 concerning the broadcasting of committee proceedings. Before the committee commences taking evidence, let me place on the record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Any act by any person which may operate to the disadvantage of a witness on account of evidence given by him or her before the Senate or any committee of the Senate is treated as a breach of privilege.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Senate. The Senate also has the power to order the production and/or publication of such evidence. I should add that any decision regarding the publication of in camera evidence or confidential submissions would not be taken by the committee without consultation and prior reference to the person whose evidence the committee may consider publishing.

Today the committee will be hearing from the Department of Transport and Regional Services, CASA and the Australian Licensed Aircraft Engineers Association. We will commence by hearing from witnesses from the Department of Transport and Regional Services.

[2.38 p.m.]

DOLAN, Mr Martin Nicholas, First Assistant Secretary, Aviation and Airports Policy, Department of Transport and Regional Services

HARTLEY, Dr Douglas Thompson, Director, CASA Reform, Department of Transport and Regional Services

PARKER, Ms Marlene Elizabeth, Policy Officer, CASA Reform, Aviation and Airports, Department of Transport and Regional Services

CHAIR—Welcome. Would you care to make an opening statement.

Mr Dolan—I will make a very brief one, Mr Chairman. I think the material we have provided to the committee should give the overview that we would wish the committee to have. In essence, the main objectives of the bill are to introduce revised governance arrangements for CASA by way of abolishing the board and creating a more direct relationship between the minister and the director of aviation safety and to introduce five new enforcement measures to enhance the tools available to CASA to enforce breaches of its regulatory regime. These additional tools will also incorporate an enhanced focus on procedural fairness.

In developing the bill, the varying concerns of the aviation industry expressed over several years have been taken into account. Indeed, the demerit point scheme as proposed and the voluntary self-reporting scheme have been modelled on schemes already in place here and overseas. The bill is not intended in any way to dilute CASA's existing powers and will therefore not in any way reduce Australia's high standards of aviation safety.

Senator O'BRIEN—In the overview of the department's submission, you were advised that the new regime being implemented is 'heavily based on the findings of an independent review undertaken by Mr Ted Anson, the current chairman of CASA'. What categorises the independence of that review?

Mr Dolan—The independence relates to the commission that the minister gave to Mr Anson on his appointment as chair to explicitly and independently look into these matters.

Senator O'BRIEN—So not necessarily independent of interest in the issues but independent in the sense you describe?

Mr Dolan—Yes.

Senator O'BRIEN—Is it correct that the minister commissioned this review because of dissatisfaction with CASA's regulatory performance?

Mr Dolan—I am not sure I can fully comment on the minister's views in that I know the minister has expressed in public his views that there were perceived problems with, as he has expressed it, CASA being seen as judge, jury and executioner. A key part of trying to have a more expansive approach to the enforcement regime was to pick up those sorts of issues.

Senator O'BRIEN—Was there dissatisfaction with the regulatory powers available?

Mr Dolan—I am not quite sure what you mean by regulatory powers. If you mean the regulatory regime as it currently exists, elements of that, such as the enforcement powers, would seem to be not up to the mark.

Senator O'BRIEN—I suppose enforcement powers are powers.

Mr Dolan—Exactly.

Senator O'BRIEN—When did the minister commission the review? Can a copy of the review and terms of reference be provided to the committee?

Mr Dolan—The review was commissioned on Mr Anson's appointment as chairman of CASA, which from my recollection was in about June 2001. I have asked the minister whether the government wishes the review to be tabled. The indication to me has been that it does not wish to do so.

Senator O'BRIEN—What about the terms of reference?

Mr Dolan—Could I take that on notice? Obviously I am not in a position to commit the minister on that.

Senator O'BRIEN—Did the review also include the issue of the function of developing regulations?

Mr Dolan—Certainly there was discussion on the way through the development of the legislation as to how best develop new regulations, yes.

Senator O'BRIEN—What was Mr Anson's recommendation on that issue?

Mr Dolan—I am not in a position to comment on Mr Anson's recommendation since the government has indicated it does not wish to release the report.

Senator O'BRIEN—Mr Toller has previously expressed a preference for the regulation writing function to stay in CASA. As I understand it, that has not necessarily been the department's view. Does that remain the case?

Mr Dolan—The legislation makes no provision for a change in those arrangements.

Senator O'BRIEN—Isn't there a perceived conflict in the same authority writing the rules and enforcing them?

Mr Dolan—In my view, it is not entirely accurate to describe it as the same authority writing the rules. Certainly the technical capacity to develop and consult on proposed regulations is with CASA, but the regulations are brought to the Governor-General, who has the power under the act by the minister.

Senator O'BRIEN—But the only body with expertise and with direct input is CASA.

Mr Dolan—The body with the expertise with regard to safety and its appropriate regulatory enforcement is CASA, I agree.

Senator O'BRIEN—That has the direct input into writing the regulations. That is not to say there are not others who would have expertise who might also play a role.

Mr Dolan—Yes. That function rests with CASA.

Senator O'BRIEN—Does leaving the regulation writing function with CASA indicate that no other options were considered?

Mr Dolan—It does not necessarily indicate that. What you see in front of you is the result of the government's decisions on this matter.

Senator O'BRIEN—So what options were considered?

Mr Dolan—That would be canvassing the recommendations that went to government that the government has indicated it does not wish to release. I can take all these questions back to the minister.

Senator O'BRIEN—Please do so. This is a process of inquiring into the rationale for the legislation which the government commenced. If the government is not prepared to assist that inquiry, one has to suspect the government's motives in commencing the inquiry and this process and then denying it information. You might take that back as well. On page 4 of your submission, you discuss in very broad terms the consultation process undertaken by Mr Anson to form his recommendations. Was there ever a public invitation to make a submission and have input into the inquiry from industry?

Mr Dolan—Not that I am aware of, but I will check and clarify the matter. If there is any further information I can provide, I will do so.

Senator O'BRIEN—If there was not, could you let us know why there was not.

Mr Dolan—I could certainly take that on notice.

Senator O'BRIEN—Did Mr Anson's inquiry actually receive any written submissions?

Mr Dolan—I was not directly involved in the preparation of Mr Anson's report, so I cannot really comment on that.

Senator O'BRIEN—Does that mean you do not know?

Mr Dolan—It means I do not know.

Senator O'BRIEN—Has the department seen Mr Anson's report?

Mr Dolan—Yes.

Senator O'BRIEN—Did that report set out details of consultation? I am not asking for what it actually said but whether it said anything about that.

Mr Dolan—I would be relying on my memory, which is sometimes a dangerous thing. I can certainly get an answer to that question on notice.

Senator O'BRIEN—What process did the department use or consider using for the purpose of consultation to seek responses and views on matters which were relevant to the recommendations?

Mr Dolan—I think we are heading towards territory where there is a somewhat grey area between the policy decision making processes of government and the outcomes of those processes. There was no explicit consultation by the department with stakeholders on the recommendations made by Mr Anson between the time his report was made and the time the government made a decision on how to move forward.

Senator O'BRIEN—So I take it the government decided there would be no consultation process about that decision?

Mr Dolan—My understanding is that the government was of the view that a range of industry views had been made known over a considerable period of time to CASA, to the department and to the government through the Anson process.

Senator O'BRIEN—So the answer is yes? There was no process of consultation once the government had decided upon this course of action?

Mr Dolan—That is correct.

Senator O'BRIEN—There is a standard consultation process which is understood and used by industry. There is a discussion paper entitled *Notice of proposed rule making: summary of responses on the draft legislation or regulation change*. Do you know why it was decided not to follow this process with this substantial legislative change?

Mr Dolan—This change was made largely with the assistance of the department in consultation with CASA rather than through the normal CASA rule making processes. They seem to be different from those processes.

Senator O'BRIEN—On page 5 of your submission you mention the Aviation Safety Forum. What is the role of that forum?

Mr Dolan—The Aviation Safety Forum is an advisory forum to the director, Mr Toller, and board of CASA with regard to the strategic direction of the organisation.

Senator O'BRIEN—Was that forum consulted about the issues in this bill?

Mr Dolan—I do not recall. I am an observer of the Aviation Safety Forum, so that is what I am relying on. I do not recall any consultation on what is in the bill. I do believe information was provided.

Senator O'BRIEN—After the decision was made?

Mr Dolan—Yes.

Senator O'BRIEN—If the situation is not as you have just described—that is, that there was consultation—

Mr Dolan—I will provide any clarifying information as necessary.

Senator O'BRIEN—You also mention on the same page the Standards Consultative Committee that complements the work of the Aviation Safety Forum. What is the role and membership of that committee?

Mr Dolan—The details of that are probably for CASA. Again, it is the consultative committee for CASA. Its role is essentially focused on providing input to the organisation on appropriate regulatory standards for the industry.

Senator O'BRIEN—Was that committee consulted on the matters that are the subject of this bill after the decision to pursue was taken or, for that matter, before?

Mr Dolan—Not before. I have no direct knowledge of the SCC, so I cannot comment on the latter. I am sure CASA could provide that information.

Senator O'BRIEN—Mr Bruce Byron was appointed by the minister as special adviser on the reform program. What is his role?

Mr Dolan—I do not have the full details of that. Mr Byron was not appointed as an adviser to the department.

Senator O'BRIEN—Do you know whether he was consulted about the matters in this bill?

Mr Dolan—I do not have personal knowledge of that, but I can undertake to make inquiries to find out what I can.

Senator O'BRIEN—Do you know what Mr Byron's view is of the measures to be promulgated with this legislation?

Mr Dolan—The only discussion I have had with Mr Byron that would be relevant to answer that question was an informal one at the margins of an Aviation Safety Forum meeting of which he is the chair, where he expressed himself to be broadly happy with what the government had announced.

Senator O'BRIEN—In the submission, you say his role is an impartial role as an advocate for the aviation industry and the regulatory review process by collecting feedback from the aviation community whilst ensuring CASA takes the ideas and comments into account as new safety regulations are developed. I am struggling with the term 'impartial advocate'. You might tell me how that works. Who is he advocating for? How does he do that impartially?

Mr Dolan—I think Mr Byron's role is to express a view on behalf of a somewhat disparate industry. So there is impartiality in attempting to establish either a consensus or a majority view to take forward.

Senator O'BRIEN—He collects different views and then makes a decision on which ones should be pursued somehow?

Mr Dolan—The sorts of forums, particularly the Aviation Safety Forum, that Mr Byron is involved in tend to work to a considerable extent by consensus. To that extent, I think it would be appropriate to reflect what he does as bringing forward consensus views.

Senator O'BRIEN—Do you know if he has collected any feedback from the aviation community on the matters contained in this legislation?

Mr Dolan—No, I do not.

Senator O'BRIEN—Can I ask some questions about the process of consultation for matters in this bill. It is proposed that matters not come into effect until four months after the commencement of this bill. Why?

Mr Dolan—A new enforcement regime that applies to an extensive industry is something that requires some considerable element of communication before it is brought into force so that people understand the full range of penalties that they may be exposed to and how they may be enforced.

Senator O'BRIEN—What we are having with this legislation is not consultation but explanation after the legislation has been passed. It is road mapping the legislation, saying, 'Yes, here is what it means for you.'

Mr Dolan—That is the intention of the four months, yes.

Senator O'BRIEN—Who will conduct that process—CASA, the department or someone else?

Mr Dolan—It will be done by CASA, if the legislation is passed, as the authority that will be enforcing the legislation.

Senator O'BRIEN—And will CASA pay for that consultation process out of its budget?

Mr Dolan—That is my understanding, but you might wish to confirm it with my colleagues from CASA.

Senator O'BRIEN—If they are not going to do it from their budget, is it the intention of government to supplement their budget?

Mr Dolan—At one level, I could say that is a matter for the budget process. But I am not aware of any intention on the part of the government to provide supplementary funding for that purpose.

Senator O'BRIEN—So essentially the government is asking the parliament to agree to the changes in the legislation in detail and then CASA will talk to the industry about them?

Mr Dolan—There has been communication to industry already on the shape of the legislation and what is entailed in it. The detailed further consultation or discussion with industry and the preparation of the appropriate procedural manuals and so on in CASA is the sort of thing that a period of time is there to fill in.

Senator O'BRIEN—Do I presume correctly that it was a government decision not to use the normal regulatory development and change process in terms of consultation for this bill?

Mr Dolan—Yes.

Senator O'BRIEN—Page 4 of the submission mentions the minister's policy statement issued 3½ years ago entitled *A measured approach to aviation safety reform*. Which of the matters in this bill were actually foreshadowed in that policy?

Mr Dolan—I do not have in front of me anything that would map directly between the two. The statement was a comparatively high-level statement and actually referred more to matters like enforcement than extensive detail on those things. But we can give you a document mapping the appropriate bits.

Senator O'BRIEN—I do not recall any policy in that document to abolish or consider abolishing the CASA board. I recall it was our policy at the last election, but I certainly do not recall it being a government policy position then or earlier. Perhaps you can confirm that for us. Did the policy document mention anything about a system of demerit points or a system of show-cause notices?

Mr Dolan—Not to my recollection.

Senator O'BRIEN—Voluntary enforceable undertakings were the subject of an earlier Senate hearing when they were in a different bill. Can you assure me today that all issues raised by the industry have been addressed in this bill so that we will not be, as someone put it to me, fax-bombed on this bill?

Mr Dolan—The only reason I hesitate is that we focused on the report of the committee and its recommendations in constructing the modifications to the VEU scheme. I am not sure you could say that all submissions brought to the committee and its hearings were consistent, but we have certainly taken full account of the recommendations.

Senator O'BRIEN—The Guild of Air Pilots and Air Navigators have raised an issue in their submission about command and control within CASA and whether the new structure with direct ministerial reporting means more or less political pressure from the minister. Which is it—more or less political pressure from the minister?

Mr Dolan—That is a question that I would characterise as being in the same category as asking, 'When did you stop beating your wife?' and not one I am sure I am in a position to comment on, anyway. The intention of the legislation is to give the minister the capacity directly to give strategic direction to CASA, rather than through the intermediacy of the board, in exercising his ministerial responsibilities. It is a more direct relationship between the minister and the organisation.

Senator O'BRIEN—That is what I thought. The ALAEA has asked if the new governance arrangements will rob CASA of some of its protection from political interference in what should be objective safety airworthiness functions. Can you comment on this concern?

Mr Dolan—Any reading of the proposed legislation and the material that has been provided around it indicates that the minister's powers are explicitly not directed towards CASA's carrying out of its regulatory functions but more to the broader strategic direction of the organisation. So I do not think that is a fair characterisation of what is proposed.

Senator O'BRIEN—And ALAEA suggest that in order to obtain more objectivity, the ATSB should be given the power of implementation of its recommendations resulting from objective risk analysis and incident-accident investigation. Can you comment on that suggestion? What are its merits, downsides and risks?

Mr Dolan—I think the most appropriate comment I can make is that the Transport Safety Investigation Bill 2003 outlined the role that the government saw was appropriate for the ATSB and this bill outlines the role it sees as appropriate for CASA. So there is no intention to vary those. There is a whole debate about the relationship between the ATSB's investigatory role and how it gets expressed in regulatory change. This represents the government's position on how to get the balance between the two.

Senator O'BRIEN—What will be the role of the departmental secretary in this model? Can you provide a little more detail?

Mr Dolan—The role of the departmental secretary will be to advise the minister from a whole-of-portfolio perspective about matters that may be relevant to the strategic direction of CASA. To achieve this, the secretary will need some powers to receive information that otherwise would go direct to the minister and to carry out a few other largely administrative roles.

Senator O'BRIEN—That is the extent of it?

Mr Dolan—That is the way it has been constructed, yes.

Senator O'BRIEN—The submission from the Guild of Air Pilots and Air Navigators contains a view that there should be industry agreement on the allocation of demerit points for the program to have credibility and consistency. That is not part of the model, is it?

Mr Dolan—I am sorry, but I am not sure I understand the question.

Senator O'BRIEN—As I understand their submission, there should be some consensus on how you allocate demerit points for the program.

Mr Dolan—The government has come to a view at this point as to the allocation of demerit points.

Senator O'BRIEN—Sorry?

Mr Dolan—The government has come to a view about the allocation of demerit points.

Senator O'BRIEN—And no consultation will be entered into?

Mr Dolan—I am not aware of any intention on the government's part to consult on that explicit detail.

Senator O'BRIEN—The Australian Federation of Air Pilots, AFAP, raised their concerns directly with the department, and they went to CASA. They were forwarded to your department on 14 April. They are apparently concerned about analogies with the police force. They argue that CASA is a safety authority, not a police force. Do you think that is how they will be seen in this new regime—as a police force?

Mr Dolan—To the extent that any organisation has an enforcement regime that it has to put in place, it has what could be characterised as a policing role. To that extent, for better or for worse, CASA will have some element that might be seen as a policing element. That the demerit point scheme was modelled on one relating to motor vehicles does not necessarily immediately lead to the view that CASA is a police force. At least, it does not lead me to that view.

CHAIR—I will call for a break in this questioning and ask Senator Allison whether she has any questions.

Senator ALLISON—I want to follow up on those questions about what can be delegated by the minister to the secretary. I do not have the act in front of me. The bill refers, under section 94A, to the fact that the minister may delegate. Do the sections referred to in the act describe what kind of matters can be delegated to the secretary or is there no limit on those delegations?

Mr Dolan—We are trying to track the bits to give you a full answer. The key point is that the minister may delegate effectively three powers. The provision in the act currently says the director shall not engage in paid employment outside the duties of his or her office except with the board's approval. Under the new legislation, it becomes a ministerial power which can be delegated to the secretary of the department. Similarly, the current section 87 of the act is about leave of absence for the director and the appointment of an acting director. So they are the three key administrative powers.

Senator ALLISON—So they are administrative?

Mr Dolan—Yes.

Senator ALLISON—They are not substantive?

Mr Dolan—No.

Senator ALLISON—So all substantive decision making could be referred to the secretary?

Mr Dolan—There is no provision—

Senator ALLISON—Delegated, I am sorry.

Mr Dolan—in the act to refer the delegation to the secretary other than for those, and the delegation of a power to receive information.

Senator ALLISON—Is there anything in the bill which would indicate how this would work? Does this delegation take place on a case by case basis, on a decision by decision basis, or would the minister delegate those powers specifically in advance, if you like, of the operation of the bill?

Mr Dolan—Either alternative would be open to the minister—either a general delegation of power to apply or a delegation in specific circumstances.

Senator ALLISON—I know you have answered this for Senator O'Brien, but I think it is worth restating that supposedly this bill is about having less political interference in the operation of CASA and yet we have a greater role for the minister. Can you explain that dichotomy?

Mr Dolan—I am struggling to remember where I or our material have said that it is about a reduction or increase in political interference. The way we have described the act and the way the minister described the act when it was introduced in parliament relates to the capacity for the minister to more directly guide the organisation rather than through a board, which the government does not see as an appropriate governance model for a safety regulatory agency.

Senator ALLISON—So political interference—wherever it has been used; I am not sure—might be referring to those members of the board rather than to the minister? I will leave that with you. How will the CEO be appointed? Is there a process by regulation for this?

Mr Dolan—The act gives the minister the power to appoint the chief executive.

Senator ALLISON—And there are no processes describing what that should be?

Mr Dolan—The only reference to how that is to be done is on the basis of a report from the secretary of the department. So the minister is advised by the secretary of the department in the appointment process.

Senator ALLISON—So can we be assured that there is going to be a job description, some sort of selection criteria established? What are the protections against this being a job for the boys, or the girls, for that matter?

Mr Dolan—There are two elements to that. The first is that appointments explicitly relate to the Remuneration Tribunal legislation and the role they play in setting out terms of appointment and so on. On the other matter, other than the provision that relates to the advice of the secretary of the department, there is not anything in the bill that describes the process for appointment. But it models a range of other legislation, including the Public Service Act, on the issue of secretaries of departments.

Senator ALLISON—I have some questions about the demerit register. Is that a document which will be publicly available? Will it be on the web site?

Mr Dolan—The status of someone in terms of the number of demerit points will not be a publicly available matter. If someone no longer has a licence or if permission is suspended, that would be.

Senator ALLISON—So someone can have 11 demerit points and still be flying and their unsuspecting customers will not know this?

Mr Dolan—That is correct. I would not have expressed it in those terms, but yes. Until the point where the full amount of demerit points has been reached, that is a matter between the operator and CASA.

Senator ALLISON—So once the demerit points have been reached, does it then become public knowledge—

Mr Dolan—Yes.

Senator ALLISON—in that they are suspended. So it will be assumed they have run up their 12 demerit points?

Mr Dolan—The fact that they are suspended is a piece of public information, yes.

Senator ALLISON—On the question of suspension, I notice that the explanatory memorandum says that CASA has no discretion in relation to the issue of the suspension once those 12 demerit points, or six in the subsequent term, have been arrived at. Subdivision D provides for the minister or maybe the CEO to take into account financial hardship and not suspend. I forget the exact phrase. How is it that that is not in the explanatory memorandum? Wouldn't it be the case that nine times out of 10 financial hardship would be incurred by a suspension?

Ms Parker—The scheme will provide that if the authorisation holder is suspended and it causes financial hardship, they can appeal to CASA to have their authorisation reinstated. The same applies to cancellation.

Senator ALLISON—So the explanatory memorandum is incorrect in this respect?

Ms Parker—If you give me a moment, I will just have a look through it.

Mr Dolan—I would not characterise this as incorrect, although we can check it.

Ms Parker—The fourth paragraph on page 4 explains that where an authorisation holder has several authorisations and all the authorisations are suspended or cancelled, they can apply to CASA to have a particular authorisation reinstated with special conditions if the suspension or cancellation will cause them severe financial hardship. Is that the explanation that you are referring to?

Senator ALLISON—This applies to organisations that have fairly large operations. Is that what we are talking about?

Mr Dolan—Perhaps it is worth clarifying at this point that the demerit scheme is not aimed at large operators but at individual permit holders and small operators. Existing CASA systems for managing larger operators will remain as part of the range of options available to CASA to enforce safety.

Senator ALLISON—Could you perhaps explain the distinction between those who are entitled on the basis of financial hardship to appeal against the suspension and those who are not? Can you explain more clearly who is and who is not entitled to do that and under what circumstances?

Mr Dolan—The question of who is entitled to do that is restricted, for the purposes of these proposed amendments, to the demerit point scheme itself. The demerit point scheme is aimed at smaller operators in the aviation industry, but a number of them hold in some cases several permissions. You could have a pilot who has both a commercial and a private pilots licence, for example. But when you are talking about large operators with a complex operation, obviously the demerit point scheme does not lend itself to that sort of environment, and a different approach to regulation and enforcement of those sorts of operators—

Senator ALLISON—I will put it another way. What kind of operator is not entitled to seek an appeal or to make an appeal against a suspension once the demerit points have been accumulated?

Mr Dolan—I am trying to characterise it in the terms that anyone who has their licence or permission suspended as a result of the demerit points scheme has the capacity to apply to CASA for reinstatement for severe financial hardship. But if the demerit point scheme does not apply, if it is not used as the enforcement option, that provision does not apply either.

Senator ALLISON—So it is discretionary or it is not non-discretionary? It is not automatic?

Mr Dolan—The suspension of the licence is automatic on reaching 12 points. What happens after that suspension in terms of an appeal does involve an element of discretion.

CHAIR—What actually have you got to do to get a demerit point? Is it the equivalent of a speeding fine or not stopping at the stop sign?

Ms Parker—The number of demerit points—

CHAIR—A lot of us would not own up to how many demerit points we have on our drivers licences. I am just a bit intrigued.

Ms Parker—In terms of the number of points that will be allocated for each breach, it will depend on the current penalty points in the regulations now. So if I recall correctly, anything up to 10 penalty points will incur one demerit point and it will be a maximum of three demerit points per offence depending on—

CHAIR—Is that for—

Ms Parker—I do not know the regulations offhand.

CHAIR—Is it for doing a left-hand entry into a right-hand circuit? What is it for?

Mr Dolan—It is probably better if you were to direct questions containing that level of detail to CASA, who will be enforcing it. The basic design, as Ms Parker has indicated, is to map the existing gradations of penalty onto it.

CHAIR—All I am trying to get into my head is whether a person is safe who has accumulated the maximum number and gets to the point Senator Allison referred to, where they are making, because of their income or whatever, some sort of a mercy plea. I will ask CASA.

Mr Dolan—I think it is probably—this gets to the way we do try to describe it in the explanatory memorandum—the situation that if you get the maximum number of demerit points, you lose all your permissions and authorisations. Although you may have racked up your points just on one of them, the default is that you lose the lot, and there may be the capacity to reinstate in some circumstances.

Senator ALLISON—I am sorry to pursue this point, but it concerns reinstatement on the basis of financial hardship. Are there any guidelines that would operate in terms of that? Does it depend on the degree of financial hardship as to whether or not a licence is reinstated?

Mr Dolan—It would be a matter for administrative decision making by CASA under the arrangements. I am not aware that any detailed guidance has been developed at this point as to how that discretion would be exercised.

Senator ALLISON—So we do not know how that would be exercised. What happens to the 12 demerit points at that point? You have your 12 points. Your licence is suspended. You claim financial hardship. Your licence is reinstated. Do your demerit points go, as they would if you had served out your suspension, as it were?

Mr Dolan—No. The aim is that the overall arrangement of demerit points, the fact that you have reached a particular level of demerit points and have a suspension is still in effect. But there is the equivalent, to map it back to what happens with motor vehicles, of a special licence being made available.

Senator ALLISON—So you would have the licence, which would be instated, not reinstated. In what sense is it special?

Mr Dolan—I am sorry, I am trying to draw an analogy. The analogy is what happens in some circumstances where, for example, a taxi driver as a private driver reaches the maximum number of demerit points and appeals on the basis of hardship and gets some form of conditional licence issued. That is the sort of circumstance that is being mirrored in this legislation in relation to aviation permits. But it will not actually be a special licence as such. That is a motor traffic description.

Senator ALLISON—I understand that. What will happen in actual experience? What will be the conditions that might apply to a licence for an aircraft for an airline operator?

Mr Dolan—CASA already has a wide range of capacities to put conditions and various other restrictions on its licences and other authorisations and permits. So it is within that framework that these sorts of things are possible.

Senator ALLISON—Will this be spelt out in regulations or not?

Mr Dolan—I have to confirm that I would expect it is more likely to be spelt out in CASA's internal documents, such as in an enforcement manual.

Senator ALLISON—If, for instance, passengers are carried, would that be a consideration in terms of reinstatement of the licence or not?

Mr Dolan—Given the nature of the basic legislation, it would have to be, in terms of CASA's overall responsibilities for aviation safety.

Senator ALLISON—It would have to be?

Mr Dolan—The question of safety remains the key consideration for CASA in carrying out its overall responsibilities.

Senator ALLISON—And you do not think that should be spelt out in the bill?

Mr Dolan—No. I do not think it is something for the principal legislation. But we may have a different view.

Senator ALLISON—The Australian Licenced Aircraft Engineers Association says that under the proposed provisions for the automatic stay of CASA decisions, the period of appeal lodgment for which the automatic stay remains valid should be extended to 14 days from five days. Do you have any comment to make about that suggestion?

Mr Dolan—There is always a difficult balance in these matters regarding the capacity of an individual or an organisation to seek the review of a decision. The need of CASA is to remain focused on the safety of aviation and the travelling public. Five working days was seen to be about the appropriate time in terms of that balance.

Senator ALLISON—What sort of range was considered?

Mr Dolan—I must admit that I cannot actually recall the discussion or exchanges where these matters were fully debated. I cannot remember the range that was discussed.

Senator ALLISON—So the stay is for 90 days. Would it not be possible for that to remain the length of time and not be affected by an extension such as this being suggested? What is affected by changing it from five days to 14 days? What is the downside, if you like, to it being 14 days?

Mr Dolan—It means in a range of circumstances where someone does not want to exercise their right, the move to suspend or cancel goes forward expeditiously. As I said, there is a balance between safety and the right of individuals to appeal.

Senator ALLISON—The stay is already in place. What is the problem with safety?

Ms Parker—Some of the other reasoning behind that was that the automatic stay scheme applies to serious and non-serious cases of air safety. It may not necessarily be a serious and imminent risk, in which the Federal Court scheme would take effect, where CASA would automatically suspend them. But it may be a serious case—not serious enough for them to take it to the Federal Court for an urgent suspension. It was felt that under the current scheme CASA will make a decision under the current regulation 269 after a show-cause notice has been issued to suspend, vary or cancel an authorisation. That takes effect after a certain number of days, to my knowledge. But the onus is on the operator to go to the AAT now if they want to have that decision stayed while the AAT considers it. Sometimes it can take the AAT a period of time, in which case they are suspended and probably grounded while that happens. Under the new scheme, they are not going to

be automatically grounded. They will be given the opportunity to continue flying. But we were trying to balance aviation air safety with industry concerns for the viability of their businesses.

Senator ALLISON—I understand the need for balance. I am trying to also get from you the practical effect of five days versus 14.

Ms Parker—Yes. CASA's decision will not take effect until that automatic stay is either continued while the AAT is considering it and then it is dependent on what the AAT decides, or it will take effect five days after the operator does not take on board the opportunity to go to the AAT. They could decide to leave it to the last minute, yes. But in deciding to give an automatic stay, it is important that they are not allowed to continue flying if they are a high enough serious risk to be a danger to air safety. It was considered that five days was the best balance for that reason. CASA's decision cannot take effect while the automatic stay is in effect. Therefore, after five days, if they do go to the AAT, then the stay continues. But if they do not, then CASA's decision takes effect.

Mr Dolan—Bear in mind that not all people who have their licences or permissions and authorisations suspended actually wish to appeal or to avail themselves of an AAT process. We want to give people sufficient chance to get their appeal in. We still want CASA decisions to take effect as quickly as possible. That is what we are trying to balance with the five days.

CHAIR—We are running out of time. I would hate to deprive CASA of a fair hearing. Can you summarise your questions, Senator Allison, or have you got endless more questions?

Senator ALLISON—I do not have endless more questions at all. I have only one more.

CHAIR—Right. Away you go.

Senator ALLISON—It is another that comes out of the submission provided to us. The Australian Licenced Aircraft Engineers Association is concerned that provisions for the suspension of licences and the subsequent appeals process is intended to apply primarily to holders of air operator certificates, not to licensed aircraft maintenance engineers, and that the appeals process through the Federal Court would be much more onerous on individual engineers. They suggest that a process of appeals to a tribunal could be introduced instead. The Guild of Air Pilots and Air Navigators suggests an aviation tribunal be set up as well. What does the department think about that?

Mr Dolan—My understanding of the government's views is that it is not taken with the idea of setting up additional tribunals and wishes to rely on the AAT. The system is designed for what is a range of different activities in the aviation sector. The particular provision relating to injunctions in the Federal Court is in a very restricted range of circumstances, and I think we should bear that in mind. My understanding is that the comparable situations have arisen over the last year on about six occasions, when the power that would now be in terms of an injunction in the Federal Court under this bill would be used. So that is about six times a year at most.

In terms of the rest of the courts, other than in cases of serious and imminent danger to safety, the only substantive change for aircraft maintenance relates to the fact of an automatic stay once there has been an action taken against a licence or permission. So I am not sure that I understand, other than the Federal Court case, what the issue is.

Senator ALLISON—Perhaps I could ask you to look at that submission together with the Air Safety Australia submission and provide the committee with answers to some of the issues raised in them.

Mr Dolan—I am happy to provide a written briefing on that.

CHAIR—Do you want to put questions on notice?

Senator ALLISON—It is one that was circulated to us just minutes before—the submission from Air Safety Australia.

Senator O'BRIEN—Do you want me to put my questions on notice?

CHAIR—Senator Colbeck has one question.

Senator COLBECK—I think I have actually had it answered. I am looking to consider the issues that Senator Allison was exploring a little further. Essentially what you are saying with the demerit point system is that a pilot who has a commercial licence and a private licence clocks up points on his private licence. If he loses that licence, he loses the lot. He can then make an application to have his commercial licence given back to him on a conditional basis. Is that essentially the situation? He might have three or four licences and

clocks up points on one and loses the lot but has the capacity to have one or more of those given back to him on a basis with conditions?

Mr Dolan—That is essentially the case. The losing of all permissions or authorisations or licences is meant to ensure that there is appropriate safety focus behaviour in relation to all elements of someone's aviation activities.

Senator COLBECK—So in the circumstance where he applied to have one or more of those others renewed, he would have to go through a process to explain why, and the safety implications might be in getting those given back to him on that conditional basis?

Mr Dolan—That is the intention.

Senator COLBECK—Thank you.

ACTING CHAIR (Senator Ferris)—If there are no further questions, I thank you very much for—

Senator O'BRIEN—I have quite a number of questions and I discussed with the chair putting them on notice.

ACTING CHAIR—You might like to proceed with your questions until the chair returns.

Senator O'BRIEN—Some have indeed been touched upon. The department's submission advises that this new system of voluntary reporting is based on the US system. That system is administered by NASA on behalf of the FAA. It is called the aviation safety reporting system. Is that a correct understanding of the situation?

Mr Dolan—It is based on the American system to the extent that is possible given the fundamentally different nature of the enforcement regimes in the two countries.

Senator O'BRIEN—What is the significance of NASA operating the system for the FAA?

Mr Dolan—The same reason that we are looking to the ATSB to provide such a service—it is independence from the regulator.

Senator O'BRIEN—And here the parallel would be the ATSB performing the same sort of role for CASA as NASA in the US?

Mr Dolan—Yes.

Senator O'BRIEN—There are a range of breaches where protection is not available. Examples are deliberate breaches of regulations and endangering fare paying passengers et cetera. At what point is the assessment to be made that a confession is not eligible for protection?

Mr Dolan—At the point where CASA intends to proceed to appropriate enforcement action, the permit holder will have the capacity to show that they have reported the offence to the ATSB. So it is at the point that CASA intends to take action if it comes into effect.

Senator O'BRIEN—So that is the objective assessment? There is no subjective assessment of that?

Mr Dolan—No. If it has been reported and accepted as fitting the parameters of the reporting scheme, there will be some sort of receipt or other documentation to show that the report has been made. That can be used appropriately.

Senator O'BRIEN—So there would be some process within CASA so someone cannot say, 'They held up this matter while this person was given time to consider confessing but mine went straight through without proper consideration and I was going to confess but they said it was too late'? These things are going to arise. We could almost bet on it, I would suggest.

Mr Dolan—The capacity to report will be there. Since it is a confidential reporting scheme for ATSB, CASA's enforcement activities will proceed in isolation from any reports until that point of interaction when someone says, 'I have reported this appropriately in accordance with the scheme.'

Senator O'BRIEN—What does the once-in-five-year rule mean? The air pilots guild refers to that.

Mr Dolan—That is the fact that you can only claim effective exemption on reporting against an enforcement once in five years. It is to discourage a pattern of behaviour where you realise you have done something wrong and seek protection on a regular basis.

Senator O'BRIEN—Is that paralleled in the US regulations?

Mr Dolan—That is my understanding, yes.

Senator O'BRIEN—Are there limits on the use of reportable information in criminal proceedings?

Mr Dolan—No.

Senator O'BRIEN—Perhaps on notice you can provide comments on the ALAEA's concerns with regard to limits on the use of reportable information in criminal proceedings. It is at page 4 of their submission.

Mr Dolan—Yes.

Senator O'BRIEN—With regard to the automatic stay of CASA decisions in cases other than a serious and imminent air safety risk, who within CASA will decide what is a serious and imminent air safety risk?

Mr Dolan—My understanding is that there will be a very small number of senior people in CASA who will be authorised to come to such a decision.

Senator O'BRIEN—You do not know at what level?

Ms Parker—From my understanding, there are only three officers delegated to make those decisions and they are the general manager and above.

Senator O'BRIEN—Will there be any role for anyone outside CASA to make those decisions?

Ms Parker—Not until it gets to the court. If CASA wants its suspension to be maintained, it has to apply to the Federal Court within five days. They will make their own independent assessment based on the provisions in the act and what they hear from the other party involved. At the moment, there is not that scope for the other parties to do that.

Senator O'BRIEN—What is wrong with the ALAEA's suggestion that the proposed appeal lodgment time for automatic stay remain valid for 14 days? I know you tried to make the case for five days, but that is not paralleled in too many places, is it?

Mr Dolan—As I was trying to explain, it is the balance between whether the stay is automatic. Even for those cases where someone will not appeal, it is a matter of finding the appropriate time frame for the CASA decision to come into effect reasonably quickly while still giving people sufficient time to lodge notice of their intention to appeal.

Senator O'BRIEN—It is five days, not working days, isn't it?

Mr Dolan—Five working days.

Senator O'BRIEN—I will put the rest of my questions to CASA on notice at the direction of the chair.

CHAIR—I am sorry, but we are going to run out of time.

Mr Dolan—We have agreed to provide comments on several of the submissions. What time frame are we expected to do that within?

CHAIR—It will be a week after we get the *Hansard*.

Mr Dolan—Perhaps I will talk to Mr Snedden.

CHAIR—Thank you very much for your attendance and endurance.

[3.49 p.m.]

GEMMELL, Mr Bruce Robert, Deputy Director of Aviation Safety, Civil Aviation Safety Authority

ILYK, Mr Peter, General Counsel, Civil Aviation Safety Authority

TOLLER, Mr Mick, Director of Aviation Safety, Civil Aviation Safety Authority

CHAIR—Welcome. Do wish to make an opening statement?

Mr Toller—I have no opening statement to make.

CHAIR—What do you lose demerit points for? I will give an example. In 1964 when I was a trainee pilot, I went out one day and a bloke took off on the taxiway. I presume you would lose demerit points for that.

Mr Ilyk—The demerit points operate from infringement notices or prosecutions. It applies to any offence under the Civil Aviation Regulations. For example, if you get an infringement notice for low flying, you pay that infringement notice and you will incur some demerit points. If you do not pay the infringement notice, CASA takes the matter to court for prosecution. If you are found guilty of that offence, you will incur demerit points. So it is any of the offences under the regulations.

CHAIR—So is a person who loses however many demerit points you can lose before you lose your licence considered a risk to air safety at that point?

Mr Ilyk—At which point?

CHAIR—When you have run out of points and you are appealing on economic grounds to get your licence back.

Mr Ilyk—Well, you do not get your licence back. You may very well get—

CHAIR—Continue to fly.

Mr Ilyk—You may very well get a conditional reinstatement of part of your authorisation, which may have significant conditions attached to it. For example, you may be a pilot who flies commercially but, having incurred a whole lot of demerit points in your private flying capacity, you can then appeal. Having had your licence suspended, you could then appeal to CASA and say, 'I actually earn my livelihood from flying, but when I fly commercially I don't do the sorts of things I do as a private flyer. I earn my living off that.' CASA could take that into account and give you a conditional licence so that you get conditional authorisation to use your old licence only for the purpose of flying in your job and for no other purpose.

CHAIR—It would be improper to ask anyone at the table whether they have ever lost a demerit point.

Senator O'BRIEN—They have not because there is no system. Did CASA have any involvement with Mr Anson's review process? Was CASA consulted?

Mr Toller—Certain officers within CASA were consulted by the independent consultant who was employed as part of that process. Two of CASA's officers, Mr Ilyk and Mr Elder, acted as assistants to Mr Anson during his review.

Senator O'BRIEN—When did CASA first become aware that the minister was advised by Mr Anson to abolish the board?

Mr Toller—The first that CASA became aware of it was when the board was briefed on the day that the minister made the public announcement.

Senator O'BRIEN—In your letter to the secretary of this committee, Mr Toller, you say that the governance issues in this bill are a matter for government and CASA makes no comment on them. Are you saying that as director of CASA you have no views on these issues?

Mr Toller—As an individual I have views. CASA itself has no particular views. We can work with whatever arrangement the government asks us to work with.

Senator O'BRIEN—I understand that the only consultative responsibility CASA will have on this bill is to explain it after it has passed. I take it my questions were correct and that you have not been advised of any special budgetary allocation to do that and that it will come out of your resources generally?

Mr Toller—That is correct. We have not been advised of any additional budgetary input for this process. The four-month period we talked about is partly an educational one for industry. More importantly, the reason why it needs to be there is in terms of ensuring that all CASA staff are fully trained in the new enforcement

provisions before they actually come into effect. It is also about ensuring that the correct processes are in place before they actually come into effect.

Senator O'BRIEN—So you have to train CASA staff, establish your structures appropriately to fit the model and explain it to the public?

Mr Toller—That is correct.

Senator O'BRIEN—Is four months long enough?

Mr Toller—We believe four months is adequate. You can take longer, obviously, but we believe that four months is adequate.

Senator O'BRIEN—How much do you expect it will cost to retrain CASA staff?

Mr Toller—It is very hard to put a cost on it because it is a training exercise that is probably well worth doing anyway as part of our normal staff training, so it is almost part of the operational budget rather than an additional budget.

Senator O'BRIEN—How much do you expect it will cost for the public consultation?

Mr Toller—The public education?

Senator O'BRIEN—Yes.

Mr Toller—I think our current plans are to use *Flight Safety Australia* magazine, which goes out six times a year, bimonthly, to all ARN holders. So that is the way we will ensure that the industry is fully informed, who are the main stakeholders in this.

Senator O'BRIEN—You will not be having consultative meetings, forums—

Mr Toller—We had not planned that, no.

Senator O'BRIEN—So there has been no extended process up to this point and there will not be one afterwards. It will just be a series of articles in magazines?

Mr Toller—Not that we will be a part of, no.

Senator O'BRIEN—Well, you are the only part of the plan, according to Mr Dolan. As far as consultation goes, you are it. So that is all you are going to do?

Mr Toller—Our position, on the assumption that the bill is passed, is that we will take over the responsibility of implementing the changes to the act, and particularly the enforcement changes to the act.

Senator O'BRIEN—I hope you can assure me that you will not need to spend money on your computer system to fit this model.

Mr Toller—I do not think we have any plans in that area, but if we have, we will discuss—

Senator O'BRIEN—Take it on notice.

Mr Toller—We have about 23 days, I suspect.

Senator O'BRIEN—We may well. However, given the amount of money that has been spent on computer systems, I would like you to tell the committee whether this will involve further modifications to your computer systems.

Mr Toller—I am not aware of any modifications to the current computer systems other than a database of the demerit points, which is not a significant expense.

Senator O'BRIEN—How much is involved in that?

Mr Toller—I will have to take that on notice.

Senator O'BRIEN—I could ask you whether there is an initial and a long-term cost expected out of it, but perhaps we will come to that later. I take it CASA did not have any formal role in consultation in relation to corporate governance changes for CASA.

Mr Toller—No.

Senator O'BRIEN—Could you remind the committee what CASA's normal consultation process is when regulatory changes are contemplated, or as they have been to date.

Mr Gemmell—Well, they do according to the issue at hand. With more complex issues, there would normally be a process of issuing a discussion paper, which is available for usually three months. Responses are collected. Subsequently, we will put out a notice of proposed rule making, which would include in it a

summary of the responses we received to the discussion paper. Again, that would go out for a period usually of about three months. Finally, we would introduce the draft regulations together with the summary of responses to the NPRM.

Senator O'BRIEN—So there has been no discussion paper for the industry on these changes? There has been no notice of proposed rule making? There has been no consultation and therefore no compilation of a summary of industry responses and opinions on any of these issues?

Mr Gemmell—I should make it clear that what I am describing to you is the standard CASA consultative process for a regulation change.

Senator O'BRIEN—I understand that. I am asking the questions for completeness so that the committee does not say something and then finds that CASA comes back and said, 'Yes, we did this or that.'

Mr Gemmell—To my knowledge, there was no NPRM issued by the department. CASA was never the instigator of this proposal.

Senator O'BRIEN—The enforcement measures are significant regulatory changes, aren't they?

Mr Gemmell—Well, there are some major regulatory changes involved in the enforcement area.

Senator O'BRIEN—So there has been no discussion paper. CASA has not done anything in relation to consultation about that?

Mr Gemmell—No. Our position is that discussion and consultation processes to deliver it through to the bill have passed. It is a matter for the department and government to pursue. Once the bill is passed, we will take charge of the public education and the enforcement arrangements.

Senator O'BRIEN—But you have a Standards Consultative Committee that involves representatives from industry. You are telling us that the department has made no attempt to use that structure for consultation purposes on these changes?

Mr Gemmell—The Standards Consultative Committee is a consultative body for CASA. The department has not raised this issue with them. I can assure you I would have had a keen interest to hear what the propositions were.

Senator O'BRIEN—And I take it CASA has not felt that it could or should go down the path of those processes because it is not in control of this process?

Mr Gemmell—It is not our responsibility to propose. These are not, in essence, CASA's proposals; they are the government's proposals. It is a matter for the department to decide how they wish to pursue them.

Senator O'BRIEN—The explanatory memorandum advises on page 16 that usage and uptake of the new measures will be monitored jointly by the department and CASA. How will that monitoring be conducted, or haven't they talked to you about that yet?

Mr Gemmell—We have not really put in place any particular arrangements for that at this stage. That is part of what the four months is about to ensure that we monitor it.

Senator O'BRIEN—So they have not talked to you about that yet?

Mr Gemmell—No. Well, I assume that we have talked about it. We have not put any details together on how that will work. There is no problem with that. We imagine that we would just report on it. If there is reporting, we would report in the annual report in the usual way.

Senator O'BRIEN—So that monitoring will commence as soon as the measures come into place?

Mr Gemmell—It will not commence until the measures come into place and we will see how they go. There is another element to that, which is the bit that is not CASA's responsibility, and that is the indemnity arrangements run by the ATSB. That will not be monitored by CASA because we do not play a role particularly in that.

Senator O'BRIEN—Will CASA be compiling the statistics on how the new system is operating?

Mr Gemmell—We are certainly in a position to compile the statistics on how many imminent safety things we have done and how the AAT arrangements are going. All that information will be available to us, so we will certainly do that.

Senator O'BRIEN—Is it intended that that information will be available off the CASA web site?

Mr Gemmell—It is our intention for it certainly to be in the annual report. I do not know whether we could keep a dynamic database on the web site. We will to some extent. For example, if someone loses their

authorisations under the demerit system, that information will go up on the web site—the fact that they have lost their authorisation.

Mr Ilyk—It would seem certainly easier to use. But it would have to be published under the bill as it stands that details of the EVUs have to be put onto the Internet.

Senator O'BRIEN—Will there be monitoring of the more subjective issues about the uptake of measures, where there is discretion in the legislation and where that discretion has been exercised?

Mr Ilyk—Could you repeat that question.

Senator O'BRIEN—Where there is a discretionary power, officers have a choice of outcomes. Will there be statistics kept on how those discretions are exercised between different options?

Mr Ilyk—It is not different to the situation at the moment. All the powers are discretionary, apart from the automatic demerit suspension and cancellation. There is no discretion in that. All the others are discretionary, as all the powers are at the moment. They continue to be part of a review process. We look to see whether we are exercising them correctly if there is a criticism of them in places like the AAT or the Federal Court. So they are continually monitored. Details of the exercise of those powers will be in the normal statistics in terms of the number of cancellations and suspensions and matters that went to the Federal Court. They are all part of the statistical analysis that we keep anyway.

Senator O'BRIEN—The explanatory memorandum on page 6 states that the bill is largely of a machinery nature and, aside from some savings from the abolition of the CASA board, will have no financial impact on the Commonwealth. Will there be a financial impact either on the Commonwealth or on CASA as a result of the implementation of this new regime? Is it going to cost CASA anything, Mr Toller?

Mr Toller—I do not think so overall, no. I am trying to think of a way in which it would cost. Obviously, we are making a saving from the government structure, and some of that may be put back—

Senator O'BRIEN—So how much does the board cost you?

Mr Toller—I think the board budget for this financial year is \$491,000. My belief is that some of that may well be put back into beefing up the structure of the organisation in terms of supporting the chief executive, but not very much. There may be the necessity to create one or two new positions, but basically that is a saving.

Senator O'BRIEN—So it will not be a \$491,000 saving?

Mr Toller—No. But there will be saving there. In terms of additional costs to CASA and, therefore, the Commonwealth, I actually cannot see any significant ones other than, as I say, setting up the initial database and the cost of implementation of the scheme.

Senator O'BRIEN—What about the process of reporting to the minister?

Mr Toller—That will just be part of the normal day-to-day duties or week-to-week duties of the chief executive.

Mr Ilyk—In terms of the enforcement, again, I do not think there will be any overall increase in costs. It is a bit hard to say how many people take advantage of the automatic stay. It may be that every decision we make automatically gets appealed to the AAT, so we may have a lot more AAT cases. We do not know. It may very well be that there will not be any increase at all.

Senator O'BRIEN—Will there be any decrease? You don't know?

Mr Toller—It is hard to tell. History will tell.

Senator O'BRIEN—I am wondering whether the government is likely to say, 'Well, we think it's going to decrease your costs. We're going to cut your budget.'

Mr Toller—Without wishing to be held to it in future years, my guess is that probably it will remain about the same.

Senator O'BRIEN—Isn't it likely that the demerit point system and perhaps other aspects of the bill will increase the compliance costs, if only just in terms of keeping up the records so that you know when people have hit their limit?

Mr Gemmill—There is certainly some effort involved in keeping things like records, but why we are having so much difficulty trying to answer is that we see this to be just increasing the range of tools available to CASA to enable it to take the appropriate response to a particular regulatory breach or issue or concern.

CASA will have to respond in some way to a regulatory breach now. If it occurs today, we can only use the tools we have. This will give us more tools. So, yes, there is some effort involved in trying to comply with some of the things, but we think that is well worthwhile to ensure our actions are appropriately geared to the safety issues concerned.

Mr Ilyk—Technically, there should be no need to increase the number of staff in the enforcement area to maintain it. It will be done on the basis of current resources.

Senator O'BRIEN—Time will tell, won't it, Mr Ilyk.

Mr Ilyk—It will, but I suspect that is correct.

Senator O'BRIEN—It is inevitable that there will be initial education and training costs. Have you any handle on what they might be?

Mr Toller—We discussed that earlier. The predominant education medium we will use is the *Flight Safety Australia* magazine—

Senator O'BRIEN—I mean for your staff.

Mr Toller—for the industry. For our staff, yes, there will be training involved. But, as I say, I regard that almost as part of the standard operational training budget. I think it is a valid piece of refresher training that we will undertake.

Senator O'BRIEN—It won't be valid; it will be essential for you to operate the new scheme.

Mr Toller—It will be, yes. We will take that opportunity to ensure that everybody fully understands the new enforcement system.

Senator O'BRIEN—So is everyone the subject of a training program every year now?

Mr Toller—Not necessarily, no.

Senator O'BRIEN—Will everyone be trained because of this new system?

Mr Toller—All those compliance officers and administrative officers who need to have knowledge of the scheme will be trained in the scheme, yes.

Senator O'BRIEN—What proportion of CASA's work force would you think would need to be trained in this scheme?

Mr Toller—As a rough guess, somewhere around half.

Senator O'BRIEN—Is it normal to have to train half your work force each year?

Mr Toller—When there is a significant regulatory change, yes.

Senator O'BRIEN—Well, it is not a yearly thing. It is when something as large as this happens.

Mr Toller—Yes.

Senator O'BRIEN—I take it that it is normal for CASA to pay those costs?

Mr Toller—Yes.

Senator ALLISON—I will turn to the question I have pursued with the department about reinstating the licences following the automatic suspension after 12 demerit points. It seems to me that a case for severe financial hardship would be relatively easy to make. Can you indicate whether in your experience those who are likely to reach their 12 demerit points would be reliant on whatever they engage in for their either principal or only income?

Mr Ilyk—We cannot speak about that in terms of experience because we do not have any. This is a brand new scheme. But I think what we have to understand is how this scheme works. The demerit point scheme is actually going to be more targeted towards individual pilots rather than organisations because it is the owner of the organisation who incurs the demerit points. AOC holders, certificate of approval holders, are basically corporations. We are not going to be essentially targeting corporations as holders of certificates under this scheme. This is more intended to be directed to people like pilots who hold a licence who basically contravene provisions of the regulations. So in terms of saying it is easy to make that argument, it probably will not be that easy because you then have to suppose that the people who will be getting all these demerit points will be people who make flying as their primary living and get their income from that. I do not think that will be the case. It will probably be more—

Senator ALLISON—Do you keep statistics about which pilots tend to be fined or breach whatever rules and regulations there are? On what basis do you make that judgment?

Mr Ilyk—On the basis of past records when we have a look at records. Mainly it is not all directed towards people who are flying in the airlines or major operators. It generally tends to be at the lower end or private pilots.

Senator ALLISON—Why do you think it is not an obligation of CASA to impose conditions on such persons who have been determined to be in financial hardship because of a suspension? Why shouldn't conditions always be imposed on such licences?

Mr Ilyk—The first thing to remember is that there is no automatic reinstatement of anything. It is a discretionary power on the part of CASA. The use of the word 'may' in section 30EF(2) is intended as an empowering provision. It simply says CASA may impose. It has the power to impose conditions. Generally, I would think that if someone came to CASA for one of these reinstatements there would be significant conditions imposed. I do not think the 'may' there is intended to say, 'Well, you don't have to if you don't want to.' I think it is actually an empowering provision to say you have the power to impose whatever you think they need to be. Generally, in terms of commercial pilots, if that were the case, it would be a matter of saying, 'Yes, you may continue to fly,' if we made the decision to give that person a reinstatement. We would say, 'You may fly for this operator and only this operator on these days and only in these circumstances and if you breach that, then everything is gone.'

Senator ALLISON—In those circumstances, the 12 demerit points have been reached and suspension has been reinstated. At what point does that pilot go back to zero demerit points and start again?

Mr Ilyk—Once you have an automatic suspension, all the demerit points you incurred up to that point for the purposes of getting that suspension are taken off the record. Then you start again.

Senator ALLISON—So where a licence is reinstated, at what point does the clock start ticking again?

Mr Ilyk—What may in fact happen is that you may have incurred some demerit points after the time that you got to 12 and before you actually got a suspension notice. Those that you obtained up to the point that you were suspended will go. Those that you incurred after that will now start your new record.

CHAIR—How many people is this going to affect, given the current behaviour of pilots? Is this going to be a sudden imposition? It would be for someone like me. I would be restricted to taxiing around the hangar. But for the ordinary people out there, how many people are suddenly going to find themselves suspended?

Mr Ilyk—You actually have to get a number of demerit points. The fact is that you may get one infringement notice and pay it. That is probably a wake-up call anyway. It is like your drivers licence. When you get a few demerit points, you suddenly say, 'I'd better not commit any more offences like that. Otherwise I'll lose my licence.' So the whole thing is that it is intended to be a gradual reinforcement of making sure people comply with the rules. Really, I do not suspect that it will be in the hundreds. It may be in the tens or something like that.

Senator ALLISON—So if after a reinstatement of a licence because of financial hardship further demerit points are scored, does CASA have the opportunity to reconsider that reinstatement? Is it a process of saying, 'Hang on a minute. You're still doing the same stuff despite our generous reinstatement of your licence. We think there is cause for us to take action before you reach another 12'?

Mr Ilyk—Well, the person would not actually have his licence. So if he did something like that, CASA would simply revoke that reinstatement so he would not have anything then.

Senator ALLISON—So is there anything in here that tells us you have the capacity to revoke a reinstatement and lose another 12 demerit points?

Mr Ilyk—The way I see it, it would actually be conditional upon the person complying with the conditions. So the condition would be that if you breach the conditions of this licence—

Senator ALLISON—The condition might be that if there are any more demerit points you are gone?

Mr Ilyk—That is right. It is conditional. That is how we see it operating in practice.

Senator ALLISON—Don't you think it would be one of the conditions that would be a must?

Mr Ilyk—Generally, yes. But I would never say that one size fits all.

Mr Gemmell—It is also worth noting that after you have had your licence revoked the first time around, the second time around you actually have fewer points available to you.

Senator ALLISON—Yes. You only get six next time.

Mr Gemmell—So you sort of have a graded system. If you keep being naughty, you lose your stuff a lot quicker.

Mr Ilyk—Until you get your licence actually cancelled.

Senator ALLISON—Could I ask a quite general question. This is not clear to me from reading the bill. What decisions does the minister now make and, where we have a CASA board, the board makes? What in general terms does the minister decide about and what does CASA and the CEO, as head of CASA, determine, or the secretary?

Mr Toller—Currently the minister gives the broad strategic guidance and the board seeks to fulfil his wishes with the strategies that it puts in place for CASA. As I see it, the new arrangement effectively takes out the middle man in terms of strategic guidance. For the authority, it will just be effectively the minister talking direct to the chief executive. But on operational issues, the system remains the same as it is at the moment, which is that CASA is effectively independent.

Senator ALLISON—I am not quite sure. You say ‘strategic’. Presumably, the minister is involved in ticking off some strategic plan. But until that strategic plan is revisited, there are no decisions for the minister to make.

Mr Toller—The minister will receive a proposed corporate plan, which will be the three-year strategic plan. He obviously now has the ability to guide both the direction within the corporate plan in future years and perhaps in certain circumstances to make specific wishes known to the authorities as to where it should focus its resources on all issues other than safety issues. So he may say to us, ‘I want you to give more support to the aviation manufacturing industry,’ or something like that. It is in those sorts of areas that I see him having some more direct input.

Senator ALLISON—You said ‘other than safety issues’. Does this mean the minister is not involved in safety issues? Could the minister intervene, for instance, if there was a decision to reinstate the licence? Could that be brought to the minister’s attention and he could intervene?

Mr Toller—No. The situation is that operational and safety decisions will remain the remit of the chief executive.

Senator ALLISON—So how is that different from the situation when we had a CASA board in terms of the minister’s position?

Mr Toller—In terms of the minister’s position, that side of it does not change at all.

Senator ALLISON—Some suggestion has been made in a late submission by Air Safety Australia that this legislation in fact will act to dissuade someone from reporting under division 3C because they may be seriously exposed to criminal action as a result of doing so. They contrast this with the Federal Aviation Agency in the US, which has a program called ASRS. I do not know what that stands for.

Mr Toller—Aviation Safety Reporting System.

Senator ALLISON—Yes. What are the differences, and why are they there?

Mr Toller—Inherently there are not meant to be any differences. The model on which this whole indemnity scheme was based is the American safety reporting scheme. I think we have to recognise, though, that there are differences in the legislative environment between Australia and the USA. Undoubtedly they have some impact on how the indemnity scheme that we are putting forward will work. But the concept is meant to be the same. It is meant to be somebody who has inadvertently breached the regulations being able to come and say, ‘Look, I made a mistake. This is what happened,’ and being given indemnity against action for that breach on a once-every-five-years basis. It has the advantage of encouraging open reporting from which obviously safety lessons can be learned. But it is not intended to enable people to side-step the law when they are habitual offenders, if I can put it that way.

Mr Ilyk—I want to point out that the American system is based on the American regulations, the FARs. Regulation 91(25) says:

The administrator of the FAA will not use reports submitted under this scheme except information concerning accidents or criminal offences which are wholly excluded from the program.

So the American system expressly excludes criminal offences from the reporting system.

Senator ALLISON—I will read you this part of the section. You might be able to assist us:

The protection given by section 30DR is illusory. At the very least a new subsection, 30DR(1)(d), is needed, which would say any information or thing, including any document, obtained as a direct or indirect result of the making of the report.

Perhaps you could take that on notice and have a look at that in relation to the existing wording and indicate if it is unnecessary or otherwise.

Mr Ilyk—The scheme proposed here is in fact modelled on the American one. Under the American one, what happens is that the administrator is prevented from taking certificate action or licence action on the basis of a voluntary report. It does not prevent prosecution action. In this case under this scheme, CASA is prevented from taking administrative, certificate or licence action on the basis of voluntary report. CASA cannot grant an immunity from criminal prosecution. On that basis, criminal offences for prosecution purposes are not subject to this scheme.

Mr Gemmell—I cannot see any way that this scheme would discourage reporting compared to the current arrangements that we have today. Currently you are required under the rules to report accidents and incidents. That remains. Under this scheme, if you report them, you can get an indemnity under certain conditions and there are certain conditions under which you cannot. It is certainly a step forward. Others might argue you could have done it better. But it is certainly a step forward. As Mr Ilyk said, it is modelled on the system in the United States.

Senator ALLISON—Thank you. The same submission suggests that the demerit point scheme is invalid unless CAR 269(1)(a) is repealed. You might need some time to look at the submission and the arguments that are put for that—unless, Mr Ilyk, you can respond.

Mr Ilyk—I understand the point that Mr Munro is making. It is a matter that he has raised on a number of occasions. What he is basically saying is that CASA should have no power to suspend or cancel a licence. That is the bottom line. His view is that all matters should either be prosecuted or the power to suspend or cancel licences should be given to somebody else but not CASA. That is the thrust of what Mr Munro has been arguing for a significant period of time.

Senator ALLISON—And you do not agree with that?

Mr Ilyk—No. In terms of the power of regulators to suspend or cancel licences, it is an inherent part of their duty to actually do that. An example is the Therapeutic Goods Act and the recent Pan problem. It was the TGA that suspended the licence. They did not have to go to the DPP to prosecute. They did not have to go to another agency to try and suspend the licence. It is the regulator. It has that power in the same way as CASA has that power, which is in line with the American Federal Aviation Agency, the New Zealand CAA, the UK CAA and Transport Canada. Every responsible aviation authority in the world has that power. If you took that power away from CASA, it would be unique. It would be a lame duck at the end of the day.

Senator ALLISON—Thank you.

Senator COLBECK—After you have served your suspension that occurs under the demerit points system, is there any testing or examination process involved in the reinstatement of the licence after the suspension period?

Mr Ilyk—No. The current system is that if you have a pilots licence, those licences are perpetual. They remain in force until such time as either you give it up or it is cancelled. A suspension only interrupts the validity of that licence. At the end of the day, if you have a three-month suspension, there is no reissue after licence. You do not go through a retraining or re-examination. CASA can, of course—it has powers under the Civil Aviation Regulations—require a person to sit an examination or to go through an examination. I suppose if you had a situation where the regulator felt that it was in the interests of safety to require someone to undergo some sort of test or examination, it has the power to do so.

Senator ALLISON—A question has been raised by the Guild of Air Pilots and Air Navigators to do with whether there will be industry agreement on the allocation of demerit points. They say it will not have credibility or consistency unless we have industry agreement. Have you had discussions with industry? What do you think this means?

Mr Ilyk—No. I do not understand the issue about some sort of participation in the allocation of demerit points. I do not understand what that means. I am not sure what is proposed.

Senator ALLISON—I am only guessing, but I imagine that it is those matters which attract demerit points and how many for each offence and those kinds of mechanics of the system.

Mr Ilyk—That is a matter for government, I guess. The government has put the provisions in this bill and the regulations which will determine which offences attract demerit points and how many demerit points they attract. They range from one demerit point to three demerit points.

Senator ALLISON—So if in the industry pilots say it is ridiculous and they all agree that an offence attracts three demerit points, is it worth having a conversation, at least, to get some sense of agreement and concurrence?

Mr Ilyk—That is really a matter for government, I am afraid.

Senator ALLISON—Another question raised in the same submission related to who within CASA would decide what a serious and imminent air safety risk will be.

Mr Ilyk—That is a very good question. The answer is, I think, that it is something that will have to be determined on a case by case basis in the same way you have provisions in the Trade Practices Act which say a person must not engage in misleading conduct. When that first came out, no-one quite knew what that meant. It was built up on a case by case basis through the courts. I think the same issue will happen here. CASA will form a view as to what is a serious and imminent safety risk. It can only act on it for five days unless a court determines that there are reasonable grounds for believing that that conduct does constitute a serious and imminent risk. On that basis, we will build up some precedent.

Senator ALLISON—In fact, the submission is more detailed in terms of asking who will do that. It asks: ‘Will it be an individual, such as CASA’s flying operations inspector or CASA’s area manager, or will it be a central head office decision made in Canberra, or all of the above?’

Mr Toller—I understand. Can I declare not quite a conflict of interest but an interest anyway in that I am a member of the Guild of Air Pilots and Air Navigators. I have had no part whatsoever in their submission. In terms of serious and imminent safety risk, if there is to be action taken on that, it would only be taken by officers within the authority to whom I would delegate those powers. Currently that is only about two or three people within the organisation. I do not anticipate in any shape or form that being broadened. Basically, the answer to your question is that decisions of that nature will be taken at the highest levels within the authority.

Senator ALLISON—The highest level meaning the CEO?

Mr Toller—Or maybe the senior operational person to whom I delegate that authority. As I say, at the moment, I have delegated that—I am not sure to exactly how many, but maybe to two or three people. I would not anticipate that sort of number increasing.

Senator ALLISON—Presumably until we get a better definition of what this means over time.

Mr Ilyk—If we do have to take a matter to the Federal Court, we would not be doing it lightly. It would be costly for us in terms of time and resources to make sure we have all of the evidence in going to the Federal Court. So it would not be something done by an FOI in the field. It would have to be done at a fairly senior level.

Senator ALLISON—Thanks. The same submission says that the protection from administrative action for voluntary reporting is a positive step, but the once-in-five-years rule is too restrictive. Could you comment on that. They say that the aim should be to encourage self-reporting for inadvertent offences in order to track the true extent of breaches in real operations.

Mr Ilyk—The system we have in place is based exactly on what the American system is. That is a proven system. That provides for an indemnity once every five years. The point to remember, though, is that you can put in as many reports as you want. All the provision says is that you can only rely on getting an indemnity once every five years. It does not stop you putting in numerous reports.

Senator ALLISON—They are all my questions.

CHAIR—There being no further questions, thank you very much. We will have a short break.

Proceedings suspended from 4.36 p.m. to 4.46 p.m.

HEYWOOD, Mr Timothy, Assistant Federal Secretary, Australian Licenced Aircraft Engineers Association

O'RANCE, Mr Michael John, Federal President, Australian Licenced Aircraft Engineers Association

RUNTING, Mr Paul Steven, Technical Representative, Australian Licenced Aircraft Engineers Association

CHAIR—I welcome to the table witnesses from the Australian Licenced Aircraft Engineers Association. Please make an opening statement, if you wish, and then we will ask questions.

Mr O'Rance—We represent the technical committee of the ALAEA. I have a brief opening statement in order to inform senators of who we are. The Australian Licenced Aircraft Engineers Association consists of engineers licensed to undertake, supervise and certify the maintenance of aircraft and aircraft components.

The ALAEA was formed in the early 1960s to promote and enforce a high standard of aircraft maintenance. We provide our members with technical developments and legal protection in the aviation industry. ALAEA is the peak representative body of licensed aircraft engineers. We are involved in several industry and CASA groups dealing with regulation changes and inquiries into aviation related matters.

As I stated before, the group present today constitutes the technical committee of the ALAEA. A major concern to us is that procedural fairness and natural justice be afforded to individual licence holders. The proposed amendments appear to be aimed predominantly at AOC holders but may place LAMEs in a position of having to take legal action in the Federal Court rather than in a more affordable tribunal. We would like to thank the committee for the opportunity to answer any questions.

Senator O'BRIEN—We have already addressed with the department some of the matters you have raised in your submission. Would you like to address each of the matters you raised now that you have heard their responses?

Mr O'Rance—Yes.

Mr Runting—We suggested the extension to 14 days on the basis that, for individual LAMEs who may not even be members of our organisation, we actually provide legal advice and support for our members. But those individual LAMEs who may be out the back of Bourke, for want of a better term, may find it very difficult to get their AAT appeal up and running in a five-day period for whatever reason, be it a lack of finance or a lack of ability or knowledge of how to go about it or a lack of knowledge of what their rights are under the legislation. So that was the basis for that. The 14 days is typical of what has been spoken about in reporting periods for the CASR 1998. I think back to part 47 of the aircraft registration disallowance and the ensuing debate under a special SCC subcommittee. I recall two weeks being bandied about at that time. I believe it did come to pass.

We concur with the immediate authorisation suspension and welcome it as a concept. We do understand that it is mainly aimed at AOC holders in larger organisations. But as we have heard from the previous witnesses, financial hardship is taken into account. The examples used were pilots who have both private and commercial or ATPL licences. There was some acknowledgement of those potential financial hardships. We feel that immediate authorisation suspension for an individual LAME would be most inappropriate. We do feel that enforceable voluntary undertakings is a far more equitable approach for a LAME licence holder rather than suspension. They are probably the two main concerns we have with the proposed amendment in the bill.

As for voluntary reporting, the reportable contravention, our main concern was with the executive memo. I will quote from it:

CASA will not be able to use a report of a reportable contravention. The fact that a report has been made or a receipt given to it by an authorisation holder is evidence in criminal proceedings against the person who reported the contravention if at the time the proceedings commence the contravention is still reportable.

Now, to my mind, if it is a reportable contravention at the time that a report was made, then it should have that indemnity for the life of that actual report rather than retrospectively changing its status as to whether it is reportable or not. Part of that aspect of the bill that we did acknowledge was that ATSB has been mooted as the statutory body, which would act as a reporting agency. We feel that that process would go hand in hand with the current reporting system. We would like to raise for consideration at this point, although this may not be the correct forum, the issue of providing the care reporting system with some more effective legislative

power enabling ATSB to mandate remedial action from CASA or from industry, which is contrasted by its current advisory status.

Senator O'BRIEN—Do any of the responses you have heard satisfy the issues you have raised?

Mr Runting—As I said, there is the proposal for the ATSB to be a reporting agency. Obviously we are not satisfied with the 14-day issue. We are surprised that there was not any notification of consultation with industry. We are actually members of the SCC. No aspect of this proposed legislation was brought before the SCC. I was concerned with the department's statement that the demerit points will be based on the existing penalty units, which at the moment cause a great deal of consternation in industry. They are perceived as being inappropriate in certain circumstances. As Senator Allison said before, how do they ascertain the number of demerit points? We feel that the appropriate forum would be the relevant subcommittee of the Standards Consultative Committee. Obviously, we were not overly happy with that response either. As for the role of the portfolio secretary, if it is purely an administrative function, we have no problem with that. But the way it is being portrayed in the bill is somewhat ambiguous. I do not think that matter was clarified today.

Senator O'BRIEN—What is the process for regulating your members now? Can you describe the current system where, say, a LAME commits a breach of a regulation. What happens?

Mr Runting—My understanding is that they will be given a show-cause notice as to why they do not have their licence revoked. We have had instances in the last couple of years where we have represented the individual in the CASA forum, which is at the grace of CASA. We had no right to actually represent them. Basically, they can go to the AAT. I am not familiar with that particular process.

Senator O'BRIEN—So how will this new system impact on that process?

Mr Runting—I am supportive of the stay process and the automatic stay. It basically gives the individual the opportunity to get all his ducks in a row, particularly an individual who, as I said before, is out the back of Bourke and is not familiar with legal terms and processes. I can see that as being positive.

Senator O'BRIEN—But you have a problem with the Federal Court aspect of it?

Mr Runting—The Federal Court process imposes an enormous cost on the individual. That is why we feel that for LAMEs—and I suppose you could draw the same conclusion for private pilots—it would be more appropriate to go through the AAT process.

Senator O'BRIEN—Do you think the suite of reforms in this bill go far enough to improve CASA?

Mr Runting—With CASA's powers, I think it will be effective. The abolition of the board is something we have no real input into or comment on. We did make a comment. With respect to the other proposal that has been suggested, we would agree with that. We would like to see the amendments that we have proposed in our submission.

Senator O'BRIEN—Thanks, Mr Chairman.

CHAIR—Thank you very much for that. Senator Allison will put any questions that she has on notice. Thank you very much for your attendance.

Mr O'Rance—Thank you.

CHAIR—I declare the meeting closed.

Committee adjourned at 4.59 p.m.