

1985

THE SENATE

(PRIVATE SENATOR'S BILL—SENATOR CHIPP)

A BILL

FOR

An Act to prohibit the passage of aircraft carrying nuclear weapons through Australian airspace

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Australian Airspace (Nuclear Weapons Prohibition) Act 1985*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“aircraft” means a vessel used in air navigation;

“Australia” means Australia or an external Territory;

“Australian airspace” means the airspace above Australia and above Australian waters;

“Australian waters” means—

- (a) the territorial sea of Australia and the waters on the landward side of the territorial sea of Australia, whether or not waters of the sea and whether or not waters within the limits of a State or of an internal Territory; or
- (b) the territorial sea of an external Territory and the waters on the landward side of the territorial sea of that Territory, whether or not waters of the sea and whether or not waters within the limits of that Territory;

“master”, in relation to an aircraft, includes a person having command or charge of the aircraft;

“nuclear weapons” includes—

- (a) nuclear weapons systems;
- (b) nuclear warheads, nuclear projectiles and nuclear devices capable of exploding as a result of the energy released by the fission, fusion or fission and fusion of atomic nuclei; and
- (c) components for nuclear weapons, including nuclear weapons systems, and nuclear warheads, nuclear projectiles and nuclear devices described in paragraph (b);

“officer” means a person who is—

- (a) an officer for the purposes of the *Customs Act 1901*;
- (b) a member of the Australian Federal Police;
- (c) a member of the Police Force of a State or Territory; or
- (d) a member of the Defence Force.

Extension to external Territories

4. This Act extends to the external Territories.

Aircraft carrying nuclear weapons not to enter Australian airspace

5 (1) It is by this Act declared that the entry into Australian airspace of an aircraft armed with, or carrying, nuclear weapons is, except as provided in sub-section (2), prohibited absolutely.

(2) Sub-section (1) does not prevent an aircraft entering Australian airspace by reason only—

- (a) that it is intending to land in Australia in consequence of an unforeseen emergency which has rendered it necessary for the aircraft to land in order to secure the safety of the aircraft, of its cargo or of human life; or
- (b) that it is departing from Australia for a foreign country, or a place outside Australian waters, after having landed in Australia in the circumstances described in paragraph (a).

Duty of Commonwealth

6. (1) Without limiting the generality of section 5, it is by this Act declared

to be the duty of the Government of the Commonwealth to take all reasonable measures necessary—

- (a) to prevent a contravention of section 5 in respect of an aircraft armed with, or carrying, nuclear weapons; and
- (b) to secure the departure from Australian airspace of such an aircraft in respect of which there has been a contravention of that section.

(2) The Minister may, by instrument in writing, direct the taking of such action, including the use of force, as is, in his opinion, reasonably necessary to be taken for the purpose of the performance of the duty imposed on the Government of the Commonwealth by sub-section (1).

(3) Action duly taken by a person under and in accordance with the directions of the Minister under sub-section (2) shall be deemed to have been lawfully taken by the person.

(4) Where, in an action brought against the Commonwealth for loss or damage suffered by a person in consequence of action purporting to have been taken for the purpose of the performance of the duty imposed on the Government of the Commonwealth by sub-section (1), the court is satisfied—

- (a) that the action directed to be taken was of such a kind that it could not reasonably have been directed having regard to all the circumstances of the particular case; or
- (b) that the action taken was not in accordance with the direction of the Minister under sub-section (2),

the Commonwealth is liable for the loss or damage so suffered.

(5) Sub-section (3) does not prevent an action lying against a person for loss or damage suffered by another person in consequence of action purporting to have been taken by the first-mentioned person for the purpose of the performance of the duty imposed on the Government of the Commonwealth by sub-section (1) if the action so taken was not in accordance with the direction of the Minister under sub-section (2).

(6) A person is not entitled to receive damages for loss or damage from the Commonwealth under sub-section (4) and also from another person under sub-section (5).

(7) A copy of an instrument made under sub-section (2) shall be laid before each House of the Parliament on the first sitting day of that House following the signing of that instrument.

Powers of officers

7. An officer may, for the purpose of ascertaining whether there has occurred a contravention of section 5 in respect of an aircraft that has landed in Australia—

- (a) board the aircraft and search the aircraft;
- (b) require the master of the aircraft to give information to the officer concerning the aircraft;

- (c) require the master of the aircraft to produce to the officer all or any of the books and papers in the master's possession or under the master's control relating to the aircraft or the cargo carried by the aircraft or, in the case of an armed aircraft, the armaments on the aircraft and the shells or other projectiles carried on the aircraft; and
- (d) take copies of, or extracts from, any documents, books or papers produced to the officer in pursuance of a requirement under this section or found by the officer in the course of searching the aircraft.

Obstruction of officers

8. A person shall not—

- (a) fail to facilitate by all reasonable means the boarding of an aircraft by an officer under section 7;
- (b) refuse to allow a search to be made which is authorized by section 7;
- (c) refuse or neglect to comply with a requirement made by an officer under section 7; or
- (d) when lawfully required by an officer to give information, give false or misleading information to an officer.

Penalty: \$1,000 or imprisonment for 6 months.

Jurisdiction of courts

9. (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against section 8, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

(2) Subject to section 80 of the Constitution, where a person has committed an offence against section 8 of this Act outside a Territory and is found in, or brought into, the Territory, a court of the Territory has the same jurisdiction in respect of the offence as it would have if the offence had been committed in the Territory.

(3) The trial of an offence against section 8 not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.