

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1984

(Minister for Aviation)

A BILL

FOR

An Act to amend the *Air Navigation Act 1920*

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

Short title, &c.

1. (1) This Act may be cited as the *Air Navigation Amendment Act 1984*.

(2) The *Air Navigation Act 1920*¹ is in this Act referred to as the Principal Act.

Commencement

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

3. After section 27 of the Principal Act the following section is inserted:

Evidence of cockpit voice recordings

“27A. (1) A cockpit voice recording made during the flight of an aircraft operated by an Australian operator is not admissible in evidence in any criminal proceedings in an Australian court against a crew member.

“(2) Subject to sub-section (4), a cockpit voice recording made during the flight of an aircraft operated by an Australian operator is not admissible in evidence in any civil proceedings in an Australian court.

“(3) A party to proceedings in an Australian court for damages in respect of personal injury, death or damage to property may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that a cockpit voice recording, or part of a cockpit voice recording, made during the flight of an aircraft be admissible in evidence in the proceedings.

“(4) Where an application is made to a court under sub-section (3), the court shall examine the cockpit voice recording and, if it is satisfied, after hearing such argument (if any) as it considers necessary from the legal representatives of the parties to the proceedings—

- (a) that, if the other evidence available to the court in the proceedings is the only evidence so available, a material question of fact in the proceedings will not be able to be properly determined;
- (b) that the cockpit voice recording, or a part of the cockpit voice recording, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact; and
- (c) that, in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs the public interest in protecting the privacy of members of crews of aircraft,

the court may order that the cockpit voice recording, or that part of the cockpit voice recording, be admissible in evidence in the proceedings and, where the court makes such an order, the cockpit voice recording or that part of the cockpit voice recording is, notwithstanding sub-section (2), admissible in evidence in the proceedings.

“(5) The only persons who may be present at an examination by a court of a cockpit voice recording for the purposes of sub-section (4) are—

- (a) the person or persons constituting the court, other than the members of the jury (if any);
- (b) the legal representatives of the parties to the proceedings; and
- (c) such other persons (if any) as the court directs.

“(6) Where a cockpit voice recording, or a part of a cockpit voice recording, made during the flight of an aircraft is, pursuant to sub-section (4), admitted in evidence in proceedings—

- (a) the cockpit voice recording, or that part of the cockpit voice recording, is not evidence for the purpose of the determination of the liability in the proceedings of a crew member; and
- (b) if there are 2 or more defendants in the proceedings of whom at least one is a crew member and at least one is not a crew member, the cockpit voice recording, or that part of the cockpit voice recording, is evidence for the purpose of determining whether or not any crew member has been negligent, to the extent only that such a determination is relevant to the determination of the liability in the proceedings of any defendant who is not a crew member.

“(7) Where—

- (a) a court examines a cockpit voice recording under sub-section (4); or
- (b) a cockpit voice recording or part of a cockpit voice recording is admitted in evidence in proceedings pursuant to an order made by a court under sub-section (4),

the court may direct that the cockpit voice recording or the part of the cockpit voice recording, or any information obtained from the cockpit voice recording or part of the cockpit voice recording, shall not be published or communicated to any person, or shall not be published or communicated except in such manner, and to such persons, as the court specifies.

“(8) A person shall not make a publication or communication to any person in contravention of a direction under sub-section (7).

“(9) A person is not entitled to take any disciplinary action against an employee of the person on the ground of a cockpit voice recording or any part of a cockpit voice recording or information obtained from a cockpit voice recording or any part of a cockpit voice recording.

“(10) A person (other than a person who is a Commonwealth officer within the meaning of the *Crimes Act 1914*) shall not publish or communicate to any person—

- (a) a cockpit voice recording or any part of a cockpit voice recording; or
- (b) any information obtained from a cockpit voice recording or any part of a cockpit voice recording,

otherwise than in the interests of air safety or for the purposes of, or in connection with—

- (c) criminal proceedings, other than criminal proceedings of the kind referred to in sub-section (1); or
- (d) civil proceedings of the kind referred to in sub-section (3).

“(11) A reference in this section to a cockpit voice recording is a reference to a recording, made by the use of a cockpit voice recorder, of any voice communication made on the flight deck of an aircraft by a person on that flight deck to another person on that flight deck, and includes a reference to any transcript or substantial summary of such a recording.

“(12) A reference in this section to a cockpit voice recording made during the flight of an aircraft is a reference to a cockpit voice recording made during any period (whether before, during or after that flight) in which the cockpit voice recorder was required, by the Air Navigation Regulations or by Air Navigation Orders issued under those regulations, to be operated in connection with that flight.

“(13) In this section, unless the contrary intention appears—

‘Australian court’ means a court in Australia;

‘Australian operator’ means an operator whose principal place of business is in Australia;

‘cockpit voice recorder’ means a device that meets the requirements for cockpit voice recorders that are specified in Air Navigation Orders made under the Air Navigation Regulations;

'crew member', in relation to a flight of an aircraft, means a person who, at the time when the flight took place, was employed by the operator of the aircraft and was assigned for duty on the aircraft for the purposes of the flight;

'operator' has the same meaning as in the Air Navigation Regulations.

"(14) This section has effect notwithstanding anything in any other law and sub-section (9) also has effect notwithstanding anything in any agreement."

NOTE

1. No. 50, 1920, as amended. For previous amendments, see No. 93, 1936; Nos. 6 and 89, 1947; No. 80, 1950; No. 39, 1960; No. 72, 1961; No. 8, 1963; No. 93, 1966; No. 79, 1971; Nos. 130 and 216, 1973; No. 124, 1974; No. 91, 1977; No. 19, 1979; No. 27, 1980; No. 80, 1982; and No. 39, 1983.