



Civil Aviation Amendment Act 2003

No. 105, 2003

**An Act to amend the *Civil Aviation Act 1988*, and
for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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An Act to amend the *Civil Aviation Act 1988*, and for related purposes

[Assented to 21 October 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Civil Aviation Amendment Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.
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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	21 October 2003
2. Schedule 1, item 1	The day on which this Act receives the Royal Assent	21 October 2003
3. Schedule 1, item 2	At the end of the period of 4 months beginning on the day on which this Act receives the Royal Assent	At the end of 20 February 2004
4. Schedule 1, item 3	The day on which this Act receives the Royal Assent	21 October 2003
5. Schedule 1, items 4 and 5	At the end of the period of 4 months beginning on the day on which this Act receives the Royal Assent	At the end of 20 February 2004
6. Schedule 1, items 6 to 8	The day on which this Act receives the Royal Assent	21 October 2003
7. Schedule 1, item 9	At the end of the period of 4 months beginning on the day on which this Act receives the Royal Assent	At the end of 20 February 2004
8. Schedule 1, items 10 to 13	The day on which this Act receives the Royal Assent	21 October 2003
9. Schedule 1, items 14 to 17	At the end of the period of 4 months beginning on the day on which this Act receives the Royal Assent	At the end of 20 February 2004
10. Schedule 1, items 18 to 48	The day on which this Act receives the Royal Assent	21 October 2003
11. Schedule 2, item 1	At the end of the period of 4 months beginning on the day on which this Act receives the Royal Assent	At the end of 20 February 2004
12. Schedule 2, item 2	The day on which this Act receives the Royal Assent	21 October 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

- (1) Each Act, and each regulation, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.
- (3) To avoid doubt, regulations amended under subsection (1) are taken to still be regulations.

4 Application and savings

- (1) The first corporate plan prepared by the Director under section 44 of the *Civil Aviation Act 1988* must be given to the Minister within 12 months after the last corporate plan that the Board of CASA gave to the Minister under that section.
- (2) The amendments made by items 22 and 23 apply to the first corporate plan prepared by the Director and each subsequent corporate plan.
- (5) The person who held office as the Director immediately before the commencement of item 26 holds office as the Director after the commencement of that item as if the person had been appointed, for a period determined by the Minister for the purposes of this subsection, under section 84 of the *Civil Aviation Act 1988* as amended.
- (6) The period determined by the Minister for the purposes of subsection (5) must not exceed the unexpired part of the person's current term.
- (7) The terms and conditions determined by the Board in relation to the Director under section 12C of the *Remuneration Tribunal Act 1973* continue in effect after the commencement of item 28 as if the terms and conditions had been determined by the Minister.

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- (8) The terms and conditions applicable under section 91 of the *Civil Aviation Act 1988* continue in effect after the commencement of item 42 as if the terms and conditions had been determined by the Director.
- (9) The amendment made by item 43 does not affect a delegation by the Director to a member of the staff of CASA.
- (9A) The repeal of regulation 268 of the *Civil Aviation Regulations 1988* by this Act does not apply to notices served by CASA before the repeal happened.
- (10) In this section:

CASA means the Civil Aviation Safety Authority established by the *Civil Aviation Act 1988*.

Director has the meaning given by subsection 3(1) of the *Civil Aviation Act 1988*.

item means an item of Schedule 1.

Schedule 1—Amendments

Civil Aviation Act 1988

1 Subsection 3(1) (definition of *Board*)

Repeal the definition.

2 Subsection 3(1)

Insert:

business day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

3 Subsection 3(1) (definition of *Chairperson*)

Repeal the definition.

4 Subsection 3(1) (definition of *civil aviation authorisation*)

After “authorisation under”, insert “this Act or”.

5 Subsection 3(1) (definition of *civil aviation authorisation*)

After “authorisation is called an”, insert “AOC, permission,”.

6 Subsection 3(1) (definition of *corporate plan*)

Omit “Board”, substitute “Director”.

7 Subsection 3(1) (definition of *Deputy Chairperson*)

Repeal the definition.

8 Subsection 3(1) (definition of *member*)

Repeal the definition.

9 Subsection 3(1)

Insert:

show cause notice means a written notice to the holder of a civil aviation authorisation:

- (a) that, by this Act or the regulations, is required to set out the reasons why CASA is considering making a decision under the Act or regulations; and
- (b) that is required to state a period during which the holder may show cause why CASA should not make the decision.

10 After subsection 12(1)

Insert:

- (1A) Without limiting subsection (1), a direction under that subsection may require CASA to consult:
 - (a) in the manner specified by the Minister; and
 - (b) about matters specified by the Minister; and
 - (c) with bodies and organisations specified by the Minister.

11 After subsection 12A(1)

Insert:

- (1A) Subsection (1) does not permit the Minister to notify views in relation to a particular case or a particular holder of a civil aviation authorisation.

12 Subsection 12A(2)

Omit “take account of”, substitute “act in accordance with”.

13 After section 12B

Insert:

12C Director and Minister may enter into agreements about the performance of CASA’s functions etc.

- (1) The Minister may enter into an agreement with the Director about the performance of CASA’s functions and the exercise of CASA’s powers.
- (2) The Director must take all reasonable steps to comply with the terms of an agreement.
- (3) The Director must notify the Minister of any matters that may significantly affect the Director’s ability to comply with a term of an agreement.

- (4) Subsection (1) does not permit an agreement to the extent that a term of the agreement would have the effect of requiring CASA to perform a function or exercise a power in relation to a particular case or a particular holder of a civil aviation authorisation.

12D CASA must report to the Minister as required

- (1) The Minister may direct CASA to report to the Minister or to the Secretary of the Department in accordance with arrangements specified by the Minister and about matters specified by the Minister.
- (2) CASA must comply with a direction under subsection (1).

14 At the end of section 28BA

Add:

- (4) Before making a decision under subsection (3), CASA must:
- (a) give the holder of the AOC a notice setting out the reasons why CASA is considering making the decision; and
 - (b) allow the holder of the AOC to show cause, within such reasonable time as CASA specifies in the notice, why CASA should not make the decision.
- (5) If CASA makes a decision under subsection (3), the notice of its decision must include a summary of section 31A. However, a failure to include such a summary does not affect the validity of the notice.

15 After Division 3 of Part III

Insert:

Division 3A—Serious and imminent risks to air safety

Subdivision A—Preliminary

30DA Engage in conduct

In this Division:

engage in conduct means to do an act or omit to do an act.

Subdivision B—Suspension for contravening the serious and imminent risk prohibition

30DB Serious and imminent risk prohibition

The holder of a civil aviation authorisation must not engage in conduct that constitutes, contributes to or results in a serious and imminent risk to air safety.

30DC Suspension

- (1) Where CASA has reason to believe that the holder of a civil aviation authorisation has engaged in, is engaging in, or is likely to engage in, conduct that contravenes section 30DB, CASA may suspend the authorisation by giving written notice to the holder.

Note: CASA is not required to give the holder a show cause notice before making a decision under this subsection.

- (2) The notice of the decision must include a summary of Subdivisions C and D. However, a failure to include such a summary does not affect the validity of the notice.
- (3) The suspension ends at the end of the fifth business day after the day on which the holder was notified of the suspension, unless before that time CASA makes an application to the Federal Court under section 30DE.

Note: If CASA makes an application in time, the suspension continues in force until it comes to an end under the rules in section 30DJ.

30DD CASA may suspend despite other processes

- (1) CASA may make a decision under section 30DC in relation to a civil aviation authorisation even if CASA has given the holder of the authorisation the show cause notice required before making a decision under another provision of this Act or the regulations.
- (2) A suspension of a civil aviation authorisation under section 30DC has effect despite a stay (whether or not a stay under section 31A) of an earlier decision to vary, suspend or cancel the authorisation.

Subdivision C—Court order in relation to the serious and imminent risk prohibition

30DE Application for and making of order

- (1) If CASA suspends a civil aviation authorisation under section 30DC, CASA may, before the end of the fifth business day after the day on which the holder of the authorisation was notified of the suspension, apply to the Federal Court for an order under this section.
- (2) If the Federal Court is satisfied that there are reasonable grounds to believe that the holder has engaged in, is engaging in, or is likely to engage in, conduct that contravenes section 30DB, the Court must make an order that prohibits the holder from doing anything that is authorised by the authorisation but that, without the authorisation, would be unlawful.
- (3) In deciding under subsection (2), the Federal Court must have regard to section 3A and subsection 9A(1).
- (4) Subject to section 30DF, an order continues in force for the period determined by the Federal Court when making the order, being the period (not more than 40 days) that the Court considers reasonable to allow CASA to complete an investigation into the circumstances that gave rise to CASA's decision to suspend the authorisation.

30DF Court may vary period of order

- (1) On application by CASA or the holder of the civil aviation authorisation, the Federal Court may:
 - (a) extend (but not for more than 28 days); or
 - (b) shorten;the period determined by the Court in relation to an order under subsection 30DE(4) (the *original period*).
- (2) An application under subsection (1) must be made before the end of the original period.
- (3) CASA may apply only once to extend the period of an order.

- (4) If the Court has heard and determined an application under subsection (1) in relation to an order, no further applications to vary the period of that order may be made.
- (5) If:
- (a) a party (being CASA or the holder of the civil aviation authorisation concerned) applies to vary the period of an order; and
 - (b) before the Court determines the application, the other party also applies to vary the period of the order;
- the Court must hear the applications together.
- (6) If an application is made to vary the period of an order, the order continues in force until the day worked out under the table.

Period of order when an application to vary is made		
Item	If..	the order continues in force until..
1	the holder applies to shorten the period and CASA does not apply to extend it	the earlier of: (a) the last day of the original period; and (b) if the Court grants the application—the day determined by the Court in granting the application.
2	CASA applies to extend the period of the order and the holder does not apply to shorten it	whichever of the following applies: (a) if the Court grants CASA’s application—the day determined by the Court in granting the application; (b) if the Court refuses CASA’s application before the end of the original period—the end of the original period; (c) if the Court refuses CASA’s application after the end of the original period and before the 28th day after the end of the original period—the day of the refusal; (d) otherwise—the 28th day after the end of the original period.

Period of order when an application to vary is made		
Item	If...	the order continues in force until...
3	the Court hears applications from both parties together under subsection (5)	whichever of the following applies: (a) if the Court grants one of the applications—the day determined by the Court in granting the application; (b) if the Court refuses both applications before the end of the original period—the end of the original period; (c) if the Court refuses the extension application after the end of the original period and before the 28th day after the end of the original period—the day of the refusal; (d) otherwise—the 28th day after the end of the original period.

Subdivision D—Investigation and further action by CASA

30DG CASA must investigate circumstances giving rise to suspension decision

If the Federal Court makes an order under section 30DE in relation to a civil aviation authorisation, CASA must, by the end of the period that the order is in force, complete an investigation into the circumstances that gave rise to CASA's decision to suspend the authorisation under section 30DC.

30DH CASA may give a show cause notice within 5 days after end of order

- (1) This section applies if, after CASA's investigation under section 30DG:
 - (a) CASA has reason to believe that a serious and imminent risk to air safety would exist if the civil aviation authorisation were not varied, suspended or cancelled; and
 - (b) the grounds for CASA's belief are related to the circumstances that gave rise to CASA's decision to suspend the authorisation under section 30DC.

- (2) CASA may, within 5 business days after the last day on which the order is in force:
- (a) give the holder of the authorisation a show cause notice; and
 - (b) allow the holder to show cause, within such reasonable time as CASA specifies in the notice (not more than 28 days), why the authorisation should not be varied, suspended or cancelled.

Note: The suspension under section 30DC continues in force beyond the end of the order and may continue until at least the end of the 5 days that CASA has to decide whether to give a show cause notice—see section 30DJ.

30DI CASA may vary, suspend or cancel an authorisation within 5 days after end of show cause period

- (1) This section applies if, after the end of the period specified in a show cause notice given under section 30DH:
- (a) CASA is satisfied that a serious and imminent risk to air safety would exist if the civil aviation authorisation were not varied, suspended or cancelled; and
 - (b) the grounds for CASA's belief are related to the circumstances that gave rise to CASA's decision to suspend the authorisation under section 30DC.

- (2) CASA may vary, suspend or cancel the authorisation, by written notice given to the holder of the authorisation within 5 business days after the end of the period specified in the show cause notice.

Note: The suspension under section 30DC continues in force beyond the end of the period specified in the show cause notice and may continue until the end of the 5 days that CASA has to decide whether to vary, suspend or cancel the authorisation—see section 30DJ.

30DJ When a suspension under section 30DC ends

If CASA suspends a civil aviation authorisation under section 30DC and applies to the Federal Court for an order under section 30DE, the suspension continues in force until the time worked out under the table (unless earlier revoked).

When a section 30DC suspension ends		
Item	If...	suspension ends at...
1	CASA's application for an order is withdrawn or refused	the time of withdrawal or refusal.
2	in the 5 business days after the last day on which the order was in force, CASA does not give the holder a show cause notice under section 30DH in relation to the authorisation	the end of the fifth business day after the order ceased to be in force.
3	CASA varies, suspends or cancels the authorisation under section 30DI	the time the holder is notified of the variation, suspension or cancellation.
4	CASA gave the holder a show cause notice under section 30DH in relation to the authorisation, but, in the 5 business days after the last day of the period specified in the notice, CASA does not vary, suspend or cancel the authorisation	the end of the fifth business day after the last day of the period specified in the show cause notice.

Division 3B—Enforceable voluntary undertakings

30DK Enforceable voluntary undertakings

- (1) CASA may accept a written undertaking given by the holder of a civil aviation authorisation in connection with a matter:
 - (a) arising under this Act or the regulations; and
 - (b) in relation to which CASA has a function or power under this Act or the regulations.
- (2) The period for which the undertaking applies must not exceed 6 months. However, CASA may accept a further undertaking from the holder.
- (3) The undertaking must not require, or have the effect of requiring, the holder to pay money to CASA.
- (4) CASA must publish details of the undertaking on the Internet.

- (5) The holder may withdraw or vary the undertaking at any time, but only with the consent of CASA.
- (6) If CASA considers that the holder has breached any of the terms of the undertaking, CASA may apply to the Federal Court for an order under subsection (7).
- (7) If the Federal Court is satisfied that the holder has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the holder to comply with that term of the undertaking;
 - (b) an order directing the holder to pay to the Commonwealth an amount up to the amount of any financial benefit that the holder has obtained directly or indirectly and that is reasonably attributable to the breach of the undertaking;
 - (c) any other order that the Court considers appropriate.

Division 3C—Protection from administrative action for voluntary reporting

Subdivision A—Preliminary

30DL Definitions

In this Division:

accident means an occurrence that is associated with the operation or maintenance of an aircraft and that results in:

- (a) the death of, or serious injury to, a person; or
- (b) the destruction of, or serious damage to, an aircraft or other property (whether or not property on the aircraft).

prescribed person means the person prescribed under section 30DM.

reportable contravention means a contravention of the regulations, other than the following:

- (a) a contravention that is deliberate;
- (b) a contravention that is fraudulent;

- (c) a contravention that causes or contributes to an accident or to a serious incident (whether before or after the contravention is reported);
- (d) a contravention of a regulation that is prescribed for the purposes of this paragraph.

serious incident means an occurrence that is associated with the operation or maintenance of an aircraft where either or both of the following applies:

- (a) the occurrence gives rise to a danger of death or serious harm to a person;
- (b) the occurrence gives rise to a danger of serious damage to an aircraft or other property (whether or not property on the aircraft).

30DM Prescribed person

- (1) The regulations may prescribe a person for the purposes of this Division.
- (2) Without limitation, the person prescribed under subsection (1) may be:
 - (a) a statutory corporation; or
 - (b) any person from time to time holding, occupying or performing the duties of, a specified position or office (including a statutory office).
- (3) The prescribed person has the powers and functions conferred on the person by the regulations.

30DN Voluntary reporting scheme

- (1) The regulations may establish a scheme for the voluntary reporting of reportable contraventions to the prescribed person.
- (2) The regulations may prescribe:
 - (a) the purposes of the scheme; and
 - (b) the manner in which reports are to be made; and
 - (c) the use by the prescribed person of information contained in reports; and
 - (d) any other matters necessary or incidental to the establishment or operation of a scheme in accordance with subsection (1).

- (3) The regulations must not permit the prescribed person to disclose information about a reportable contravention that is personal information within the meaning of the *Privacy Act 1988* (except where the person who reported the contravention consents to the disclosure).

Subdivision B—Protection from administrative action

30DO Protection for reporting a reportable contravention

- (1) In exercising a power under this Act or the regulations to vary, suspend or cancel a civil aviation authorisation, CASA must disregard a reportable contravention if the holder of the authorisation proves to CASA, in accordance with section 30DP, that the holder reported the contravention to the prescribed person:
- (a) within 10 days after the contravention; and
 - (b) before the holder was given the show cause notice for the proposed decision.
- (2) If:
- (a) the holder of a civil aviation authorisation is given an infringement notice under the regulations; and
 - (b) the holder proves to CASA, in accordance with section 30DP, that the holder reported the contravention to the prescribed person:
 - (i) within 10 days after the contravention; and
 - (ii) before the holder was given the infringement notice;
- then:
- (c) the holder is not required to pay the penalty specified in the infringement notice; and
 - (d) the notice is taken to be withdrawn.

30DP Proof of report

It is proof in accordance with this section if:

- (a) before CASA varies, suspends or cancels the authorisation;
or
- (b) before the due date for payment of the penalty specified in the infringement notice;

the holder produces a receipt from the prescribed person that identifies:

- (c) the holder; and
- (d) the date the report was made to the person; and
- (e) the date and nature of the contravention.

30DQ Only protected once every 5 years

Section 30DO does not apply to a reportable contravention by the holder of a civil aviation authorisation if, in the 5 years ending on the date of the contravention:

- (a) CASA was required by that section to disregard another reportable contravention by the same holder; or
- (b) an infringement notice given to the same holder for another reportable contravention was taken under that section to be withdrawn.

30DR Use of information

- (1) None of the following is admissible in evidence in any criminal proceedings against the holder of a civil aviation authorisation:
 - (a) a report of a reportable contravention made by the holder to the prescribed person;
 - (b) a receipt given to CASA in accordance with section 30DP by the holder;
 - (c) any other evidence of the fact that a report of a reportable contravention was made by the holder to the prescribed person.
- (2) Subsection (1) only applies if the contravention is still a reportable contravention at the time when the criminal proceedings commence.

Division 3D—Demerit points scheme

Subdivision A—Preliminary

30DS Definitions

In this Division:

demerit cancellation notice means a notice under section 30EC.

demerit suspension notice means a notice under section 30DY or 30DZ.

prescribed offence means an offence prescribed under section 30DT.

register means the register kept under section 30EG.

30DT Regulations may prescribe offences that the demerit points scheme applies to

The regulations may prescribe:

- (a) offences to which this Division applies; and
- (b) the number of points that are incurred in relation to an offence.

30DU Classes of civil aviation authorisations

The regulations must prescribe classes to which particular civil aviation authorisations belong, having regard to the activities covered by the civil aviation authorisations.

30DV Other regulations

If:

- (a) a civil aviation authorisation is cancelled; and
- (b) if the authorisation had not been cancelled, a subsequent suspension or cancellation under this Division would have had effect in relation to the authorisation; and
- (c) the cancellation mentioned in paragraph (a) is later set aside by the Administrative Appeals Tribunal;

the regulations may provide that the subsequent suspension or cancellation under this Division has effect in accordance with the regulations.

Subdivision B—Incurring demerit points

30DW When demerit points are incurred

The holder of a civil aviation authorisation incurs demerit points for a prescribed offence if:

- (a) the holder is given an infringement notice under the regulations in relation to the offence and pays (in whole or in part) the penalty specified in the notice; or
- (b) the holder is convicted or found guilty of the offence.

30DX Demerit points are incurred in relation to a class of authorisations

If the holder of a civil aviation authorisation incurs demerit points, the demerit points are incurred in relation to the class of authorisations to which the offence relates.

Subdivision C—Consequences of incurring demerit points

30DY First-time demerit suspension notice

- (1) CASA must give the holder of a civil aviation authorisation a demerit suspension notice under this section if:
 - (a) the holder incurs demerit points for a prescribed offence; and
 - (b) taken together with demerit points incurred by the holder for offences committed by the holder in the 3 years ending on the day the offence was committed, the holder has incurred at least 12 demerit points in relation to the same class of authorisations; and
 - (c) the holder has not previously been given a demerit suspension notice in relation to that class of authorisations.
- (2) The effect of giving the notice is that:
 - (a) from the start date specified in the notice, all of the holder's civil aviation authorisations of that class are suspended for the suspension period; and
 - (b) the holder is not entitled to be granted a civil aviation authorisation of that class, from the date of the notice until the end of the last day on which a civil aviation authorisation of that class is suspended as a result of the notice.

- (3) The suspension period for an authorisation is:
- (a) if the total of the demerit points counted under paragraphs (1)(a) and (b) is 12, 13, 14 or 15—90 days; or
 - (b) if the total of the demerit points counted under paragraphs (1)(a) and (b) is 16, 17, 18 or 19—120 days; or
 - (c) otherwise—150 days.

Note: The suspension period for a particular authorisation may be affected by section 30EB.

30DZ Second-time demerit suspension notice

- (1) CASA must give the holder of a civil aviation authorisation a demerit suspension notice under this section if:
- (a) the holder incurs demerit points for a prescribed offence; and
 - (b) taken together with demerit points incurred by the holder for offences committed by the holder in the 3 years ending on the day the offence was committed, the holder has incurred at least 6 demerit points in relation to the same class of authorisations; and
 - (c) the holder has, once previously, been given a demerit suspension notice in relation to that class of authorisations.
- (2) The effect of giving the notice is that:
- (a) from the start date specified in the notice, all of the holder's civil aviation authorisations of that class are suspended for the suspension period; and
 - (b) the holder is not entitled to be granted a civil aviation authorisation of that class, from the date of the notice until the end of the last day on which a civil aviation authorisation of that class is suspended as a result of the notice.
- (3) The suspension period for an authorisation is:
- (a) if the total of the demerit points counted under paragraphs (1)(a) and (b) is 6, 7, 8 or 9—90 days; or
 - (b) if the total of the demerit points counted under paragraphs (1)(a) and (b) is 10, 11, 12 or 13—120 days; or
 - (c) otherwise—150 days.

Note: The suspension period for a particular authorisation may be affected by section 30EB.

30EA Details in a demerit suspension notice

A demerit suspension notice must state the following:

- (a) the date of the notice;
- (b) the start date, being the date that the suspension period begins (which must not be earlier than the 28th day after the date of the notice);
- (c) the suspension period;
- (d) the class of authorisations covered by the notice;
- (e) any other information required by the regulations.

30EB Suspension period not to be served concurrently

A day is not counted for the purposes of a suspension period that applies to a holder's civil aviation authorisation under this Division if:

- (a) on that day, a suspension of the authorisation has effect under another provision of this Act or the regulations; or
- (b) the day is a day prescribed by the regulations for the purposes of this section.

Example: At the time that a 90 day suspension under section 30DY comes into force, another suspension of one of the affected civil aviation authorisations has been stayed under section 31A. 20 days into the section 30DY suspension, the Administrative Appeals Tribunal reviews the other suspension and upholds it. The other suspension runs for 30 days. Those 30 days do not count for the purposes of the section 30DY suspension of the relevant authorisation. The section 30DY suspension of that authorisation has 70 days to run after the end of the other suspension.

30EC Demerit cancellation notice

- (1) CASA must give the holder of a civil aviation authorisation a demerit cancellation notice if:
 - (a) the holder incurs demerit points for a prescribed offence; and
 - (b) taken together with demerit points incurred by the holder for offences committed by the holder in the 3 years ending on the day the offence was committed, the holder has incurred at least 6 demerit points in relation to the same class of authorisations; and
 - (c) the holder has, twice previously, been given a demerit suspension notice in relation to that class of authorisations.

- (2) The effect of giving the notice is that:
- (a) from the start date specified in the notice, all of the holder's civil aviation authorisations of that class are cancelled; and
 - (b) the holder is not entitled to be granted a civil aviation authorisation of that class for 3 years from the date of the notice.

30ED Details in a demerit cancellation notice

A demerit cancellation notice must state the following:

- (a) the date of the notice;
- (b) the start date, being the date that the cancellation begins (which must not be earlier than the 28th day after the date of the notice);
- (c) the period of disqualification mentioned in paragraph 30EC(2)(b);
- (d) the class of authorisations covered by the notice;
- (e) any other information required by the regulations.

30EE Expiry of demerit points

If the holder of a civil aviation authorisation is given a demerit suspension notice or a demerit cancellation notice, all demerit points incurred by the holder that counted under subsection 30DY(1), 30DZ(1) or 30EC(1) towards that suspension or cancellation are disregarded for the purposes of subsequent calculations of demerit points under those subsections.

Note: Demerit points incurred after the date of the notice but before the suspension or cancellation begins are not disregarded.

Subdivision D—Reinstatement of civil aviation authorisation in special circumstances

30EF CASA may reinstate if satisfied that holder's livelihood depends on authorisation

- (1) A holder of a civil aviation authorisation who has been given a demerit suspension notice or demerit cancellation notice may apply to CASA to have the authorisation reinstated.

- (2) Subsection (1) applies despite paragraphs 30DY(2)(b), 30DZ(2)(b) and 30EC(2)(b).
- (3) If, and only if, CASA is satisfied that the suspension or cancellation would cause the holder severe financial hardship because, without the authorisation, the holder would not be able to earn the holder's principal or only income, CASA may:
 - (a) reinstate the authorisation; and
 - (b) impose on the authorisation such conditions as CASA considers appropriate in the circumstances.

Subdivision E—Administration of the demerit points scheme

30EG CASA must maintain a demerit points register

- (1) CASA must maintain a register that records details necessary for, or directly relevant to, the administration of this Division.
- (2) CASA must, if it becomes aware of it, correct any mistake, error or omission in the register.
- (3) The regulations may provide for other matters in relation to the keeping of the register.

30EH CASA may maintain other records

For the purposes of administering this Division, CASA may, in addition to the register, keep records of information obtained and actions taken under this Division.

30EI Demerit points incurred to be included in register

If the holder of a civil aviation authorisation incurs demerit points in relation to a prescribed offence, CASA must record in the register:

- (a) the number of demerit points prescribed by the regulations in relation to the offence; and
- (b) the date the offence was committed; and
- (c) the class of authorisations in relation to which the demerit points are incurred.

30EJ Expired points to be removed from register

CASA must remove from the register demerit points that can no longer be taken into account under subsection 30DY(1), 30DZ(1) or 30EC(1).

16 Subsection 31(1) (paragraph (b) of the definition of *reviewable decision*)

Repeal the paragraph, substitute:

- (b) the imposition or variation of a condition, or the cancellation, suspension or variation of an authorisation, contained in such a certificate, permission, permit or licence; or
- (c) a decision under subsection 30EF(3) (about reinstating a civil aviation authorisation that has been suspended or cancelled under Division 3D);

but does not include:

- (d) a suspension of a civil aviation authorisation under section 30DC (suspension for contravening the serious and imminent risk prohibition); or
- (e) a suspension or cancellation of a civil aviation authorisation under Division 3D (the demerit points scheme).

17 After section 31

Insert:

31A Automatic stay of certain reviewable decisions

- (1) This section applies to a decision under this Act or the regulations that is reviewable by the Administrative Appeals Tribunal if, before making the decision, CASA was required by this Act or the regulations to give a show cause notice to the holder of the civil aviation authorisation concerned.
- (2) This section does not apply to a decision under section 30DI or a decision under the regulations to cancel a licence, certificate or authority on the ground that the holder of that licence, certificate or authority has contravened a provision of this Act or the regulations (including the regulations as in force by virtue of a law of a State).
- (3) If this section applies to a decision, the operation of the decision is stayed by force of this section.

- (4) The stay ceases to have effect at the end of the fifth business day after the day CASA notified the holder of the decision, unless, before the end of that fifth business day, the holder applies to the Tribunal for review of the decision.
- (5) If the holder applies to the Tribunal in accordance with subsection (4), the stay continues to have effect until the earlier of:
 - (a) the time when the decision of the Tribunal on the application comes into operation; and
 - (b) the end of the 90th day after the day CASA notified the holder of the decision.
- (6) If the holder applies to the Tribunal in accordance with subsection (4), the holder must give a copy of the application to CASA as soon as practicable after lodging it with the Tribunal.
- (7) At any time before the end of the period mentioned in paragraph (5)(b), the holder may apply to the Tribunal for an order under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*. Any time limit for making such an application does not apply if this subsection applies.

31B Stay ends if application is withdrawn

- (1) If the holder of a civil aviation authorisation withdraws an application covered by section 31A, the stay ceases to have effect from the time of the withdrawal.
- (2) The holder must notify CASA of the withdrawal as soon as practicable.

31C Tribunal's ordinary powers not affected

To avoid doubt, section 31A does not affect:

- (a) the operation of subsection 31(2); or
- (b) the powers of the Tribunal under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*.

31D CASA may still suspend for a serious and imminent risk

Nothing in section 31A prevents CASA from suspending a civil aviation authorisation under section 30DC (suspension for contravening the serious and imminent risk prohibition).

Note: See also section 30DD.

18 Section 32

Omit “Board”, substitute “Director”.

19 Part IV

Repeal the Part.

20 Subsection 44(1)

Repeal the subsection, substitute:

- (1) The Director must prepare a corporate plan at least once a year and give it to the Minister for the Minister’s approval.

21 Subsections 44(3) and (6)

Omit “Board”, substitute “Director”.

22 Subsections 45(2) and (5)

Omit “Board”, substitute “Director”.

23 Subsection 45(5)

After “give it to the Minister”, insert “for the Minister’s approval”.

24 Paragraph 49(2)(a)

Omit “section 12”, substitute “section 12 or 12D”.

25 Section 49

Omit “Board” (wherever occurring), substitute “Director”.

26 Subsection 84(1)

Omit “recommendation from the Board”, substitute “report from the Secretary of the Department”.

27 After subsection 84(2)

Insert:

- (2A) The Director holds office on a full-time basis.

28 After subsection 84(3)

Insert:

(3A) The Minister is the employing body for the Director for the purposes of the *Remuneration Tribunal Act 1973*.

Note: The office of Director is a principal executive office for the purposes of the *Remuneration Tribunal Act 1973*—see paragraph (e) of the definition of *principal executive office* in subsection 3(1) of that Act.

29 Subsection 84(4)

Omit “Board”, substitute “Minister”.

30 At the end of subsection 84(4)

Add:

Note: This subsection has no effect at any time when a determination is in force under section 12C of the *Remuneration Tribunal Act 1973*—see subsection 12C(3) of that Act.

31 Subsection 84A(1)

Omit “Board”, substitute “Minister”.

32 At the end of section 84A

Add:

(3) The Director is the chief executive officer of CASA.

33 After section 84A

Insert:

84B Functions of Director

The Director’s functions include the following:

- (a) deciding the objectives, strategies and policies to be followed by CASA;
- (b) ensuring that CASA performs its functions in a proper, efficient and effective manner;
- (c) ensuring that CASA complies with directions given by the Minister under sections 12, 12B and 12D;
- (d) ensuring that CASA acts in accordance with the views of the Minister notified to CASA under section 12A.

84C Application of the *Commonwealth Authorities and Companies Act 1997*

- (1) The Director is the director of CASA for the purposes of the *Commonwealth Authorities and Companies Act 1997*.
- (2) Matters that must be disclosed by the Director under sections 27F and 27G of the *Commonwealth Authorities and Companies Act 1997* must be disclosed to the Minister.
- (3) Sections 27J and 27K of the *Commonwealth Authorities and Companies Act 1997* do not apply in relation to the Director.

34 Section 85

Omit “Board’s”, substitute “Minister’s”.

35 At the end of section 86

Add:

Note: This section has no effect at any time when a determination is in force under section 12C of the *Remuneration Tribunal Act 1973*—see subsection 12C(3) of that Act.

36 Section 87

Omit “Board” (wherever occurring), substitute “Minister”.

37 Section 88

Omit “Board”, substitute “Minister”.

38 Section 89

Omit “Board’s”, substitute “Minister’s”.

Note: The heading to section 89 is altered by omitting “**Board’s**” and substituting “**Minister’s**”.

39 At the end of section 89

Add:

- (2) Before terminating the Director’s appointment, the Minister must have received a report about the proposed termination from the Secretary of the Department.

40 Subsection 90(1)

Omit “, after receiving a recommendation from the Board,”.

41 Subsection 90(2)

Omit “Board”, substitute “Minister”.

42 Section 91

Omit “Board”, substitute “Director”.

43 Section 94

Repeal the section, substitute:

94 Delegation by the Director

- (1) The Director may, in writing, delegate all or any of CASA’s powers under this Act to an officer.
- (2) The Director may, in writing, delegate the Director’s powers under sections 44, 45 and 91 of this Act to an officer.

44 Section 94A

Repeal the section, substitute:

94A Delegation by Minister

- (1) The Minister may delegate the Minister’s powers under sections 85, 87 and 90 to the Secretary of the Department.
- (2) In exercising any powers under the delegation, the Secretary must comply with any directions of the Minister.

45 Section 96

After “12B”, insert “, 12D”.

Note: The heading to section 96 is altered by omitting “**directions or notices**” and substituting “**directions, notices etc.**”

46 At the end of section 96

Add:

- (2) If the Director and the Minister enter into an agreement under section 12C, the Minister must cause a copy of the agreement to be

laid before each House of the Parliament within 15 sitting days of that House after the agreement is entered into.

47 Subsection 97AB(5) (paragraph (a) of the definition of *external service provider*)

Repeal the paragraph.

48 Subsection 98(3B)

Omit “a member or”.

Schedule 2—Amendment of regulations

Civil Aviation Regulations 1988

1 Regulation 268

Repeal the regulation.

2 After subregulation 269(1)

Insert:

- (1A) CASA must not cancel a licence, certificate or authority under subregulation (1) because of a contravention mentioned in paragraph (1)(a) unless:
- (a) the holder of the licence, certificate or authority has been convicted by a court of an offence against a provision of the Act or these Regulations (including these Regulations as in force by virtue of a law of a State) in respect of the contravention; or
 - (b) the person was charged before a court with an offence against a provision of the Act or these Regulations (including these Regulations as in force by virtue of a law of a State) in respect of the contravention and was found by the court to have committed the offence, but the court did not proceed to convict the person of the offence.
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*[Minister's second reading speech made in—
House of Representatives on 27 March 2003
Senate on 9 October 2003]*

(47/03)
