



# **Aviation Transport Security Act 2004**

## **Act No. 8 of 2004 as amended**

This compilation was prepared on 14 September 2007  
taking into account amendments up to Act No. 131 of 2007

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act to safeguard against unlawful interference with aviation, and for other purposes

## Part 1—Preliminary

### Division 1—Short title and commencement

#### 1 Short title [see Note 1]

This Act may be cited as the *Aviation Transport Security Act 2004*.

#### 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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	10 March 2004
2. Sections 3 to 133	A single day to be fixed by Proclamation, subject to subsection (3)	10 March 2005

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.

- (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) If a provision covered by item 2 of the table does not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

**Part 1** Preliminary

**Division 2** Purposes and simplified overview of this Act

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**Division 2—Purposes and simplified overview of this Act**

**3 Purposes of this Act**

- (1) The main purpose of this Act is to establish a regulatory framework to safeguard against unlawful interference with aviation.

Note: Division 10 of Part 4 has additional purposes (see section 74J).

- (2) To achieve this purpose, this Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities. In particular, it obliges certain aviation industry participants to develop, and comply with, aviation security programs.

- (4) Another purpose of this Act is to meet Australia's obligations under the Convention on International Aviation (also known as the Chicago Convention).

Note: The Chicago Convention is set out in the *Air Navigation Act 1920*.

- (5) It is not a purpose of this Act to prevent lawful advocacy, protest, dissent or industrial action that does not compromise aviation security.

**4 Simplified overview of this Act**

This Act establishes a number of mechanisms to safeguard against unlawful interference with aviation.

Part 2 requires aviation industry participants to have in place approved transport security programs. Such programs must detail how the participants will manage security for their operations.

Part 3 allows the Secretary to designate airports as security controlled airports and to establish airside and landside areas, security zones and event zones for those airports. Once established, the areas and zones are subject to requirements directed at safeguarding against unlawful interference with aviation.

Part 4 deals with a number of specific security measures, including screening, examination, certification, on-board security, persons in custody and offences in relation to weapons and prohibited items. It also allows the Secretary to give special security directions and control directions in certain circumstances. It also allows the Minister to determine a code regulating and authorising the use of optical surveillance devices at airports and on board aircraft.

Part 5 establishes the powers of officials acting under the Act. These officials are aviation security inspectors, law enforcement officers, airport security guards and screening officers.

Part 6 establishes reporting obligations in relation to aviation security incidents.

Part 7 allows the Secretary to require aviation industry participants to provide security compliance information.

Part 8 provides a range of enforcement mechanisms. These are infringement notices, enforcement orders, injunctions and a demerit points system.

Part 9 provides for the review of certain decisions by the Administrative Appeals Tribunal.

Part 10 deals with miscellaneous matters.

## **Division 3—Application**

### **5 Extension to Territories**

This Act extends to every external Territory.

### **6 Geographical jurisdiction**

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this Act.

### **7 Act to bind Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown in right of the Commonwealth liable to be prosecuted for an offence.

### **8 Act not to apply to state aircraft etc.**

- (1) Unless the contrary intention appears, this Act does not apply to, or in relation to:
  - (a) a state aircraft; or
  - (b) an aircraft that is leased to or chartered by, or is otherwise under the operational control of, the Australian Defence Force.
- (2) A reference in this Act to an aviation industry participant does not include a reference to:
  - (a) the Australian Defence Force; or
  - (b) the Australian Federal Police; or
  - (c) the Australian Protective Service; or
  - (d) the police force of a State or Territory; or
  - (e) an Agency of the Commonwealth prescribed in the regulations.

## Division 4—Definitions

### 9 Definitions

In this Act, unless the contrary intention appears:

**accredited air cargo agent** means a person accredited as an accredited air cargo agent in accordance with regulations made under section 44C.

**acquisition of property** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**Agency** has the same meaning as in the *Public Service Act 1999*.

**aircraft** has the same meaning as in the *Civil Aviation Act 1988*.

**aircraft operator** means a person who conducts, or offers to conduct, an air service.

**airport** has the meaning given by subsection 28(1).

**airport operator** means the operator of an airport.

**airport security guard** has the meaning given by subsection 91(1).

**air service** means a service of providing air transportation of people or goods, or both people and goods.

**Airservices Australia** means the body established by subsection 7(1) of the *Air Services Act 1995*.

**airside area** means an airside area established under subsection 29(1) and includes any airside security zone, and any airside event zone, established within the airside area.

**airside event zone** means an airside event zone established under subsection 31A(1).

**airside security zone** means an airside security zone established under subsection 30(1).

**Australian aircraft** has the same meaning as in the *Air Services Act 1995*.

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***Australian territory*** means:

- (a) the territory of Australia and of every external Territory; and
- (b) the territorial sea of Australia and of every external Territory;  
and
- (c) the air space over any such territory or sea.

***aviation industry participant*** means:

- (a) an airport operator; or
- (b) an aircraft operator; or
- (c) a regulated air cargo agent; or
- (d) a person who occupies or controls an area of an airport  
(whether under a lease, sublease or other arrangement); or
- (e) a person (other than an aviation security inspector) appointed  
by the Secretary under this Act to perform a security  
function; or
- (ea) Airservices Australia; or
- (f) a contractor who provides services to a person mentioned in  
paragraphs (a) to (ea).

Note: The Australian Defence Force cannot be an aviation industry  
participant: see subsection 8(2).

***aviation security incident*** has the meaning given by section 99.

***aviation security inspector*** means a person appointed under  
subsection 77(1).

***baggage*** means any article or possession of a passenger of an  
aircraft, or crew member of an aircraft, that is to be carried on  
board that aircraft.

***cargo*** means goods, other than baggage or stores, that are  
transported, or intended to be transported, by aircraft.

***CASA*** has the same meaning as in the *Civil Aviation Act 1988*.

***certified***, in relation to cargo, means certified by an aircraft  
operator for transport by aircraft in accordance with regulations  
made under section 44C.

***cleared***:

- (a) in relation to a person, has the meaning given by subsection  
41(3); and

- (b) in relation to goods (other than cargo), has the meaning given by subsection 42(3); and
- (c) in relation to a vehicle, has the meaning given by subsection 43(3); and
- (d) in relation to cargo, has the meaning given by subsection 44B(3).

***cleared aircraft***: an aircraft is a ***cleared aircraft*** if, under regulations made under Division 2 of Part 4, the only passengers who are allowed to board the aircraft are passengers who are cleared.

***cleared area*** means an area that, under regulations made under Part 3 or 4, may be entered only by persons who have received clearance.

***cleared zone*** means a zone that, under regulations made under Part 3 or 4, may be entered only by persons who have received clearance.

***compliance control direction*** has the meaning given by subsection 74B(2).

***confidentiality requirements*** has the meaning given by subsection 68(2).

***critical facility*** has the meaning given by subsection 31(3).

***critical structure*** has the meaning given by subsection 31(4).

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

***Director of CASA*** means the Director of Aviation Safety appointed under section 84 of the *Civil Aviation Act 1988*.

***eligible customs officer*** has the meaning given by subsection 89B(1).

***employee*** means:

- (a) in relation to an aviation industry participant—an individual:
  - (i) employed by the aviation industry participant; or
  - (ii) engaged under a contract for services between the individual and the aviation industry participant; and

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- (b) in relation to an accredited air cargo agent—an individual:
  - (i) employed by the accredited air cargo agent; or
  - (ii) engaged under a contract for services between the individual and the accredited air cargo agent.

**enforcement order** means an order made under section 119.

**engage in conduct** has the same meaning as in the *Criminal Code*.

**examined**, in relation to cargo, has the meaning given by subsection 44B(1).

**Federal Court** means the Federal Court of Australia.

**frisk search** has the same meaning as in the *Crimes Act 1914*.

**incident control direction** has the meaning given by subsection 74D(3).

**in flight** has the same meaning as in the *Crimes (Aviation) Act 1991*.

**in service**, in relation to an aircraft, has the same meaning as in Article 2 of the Montreal Convention.

**joint-user area** has the meaning given by subsection 28(5).

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**landside area** has the meaning given by subsection 29(3) and includes any landside security zone, and any landside event zone, established within the landside area.

**landside event zone** means a landside event zone established under subsection 33A(1).

**landside security zone** means a landside security zone established under subsection 32(1).

**law enforcement officer** has the meaning given by section 82.

**Montreal Convention** has the same meaning as in the *Crimes (Aviation) Act 1991*.

***optical surveillance device*** has the same meaning as in the *Surveillance Devices Act 2004*.

***ordinary search*** has the same meaning as in the *Crimes Act 1914*.

***passenger*** includes an intending passenger.

***person in custody*** has the meaning given by section 64.

***person with incident reporting responsibilities*** has the meaning given by subsection 102(4).

***pilot in command***, in relation to an aircraft, means the pilot responsible for the operation and safety of the aircraft during the flight of the aircraft.

***prescribed aircraft*** means an aircraft that:

- (a) is being used for a prescribed air service; or
- (b) is regularly used for prescribed air services.

***prescribed air service*** means an air service prescribed in the regulations for the purposes of this definition.

***prohibited item*** means an item that:

- (a) could be used for unlawful interference with aviation; and
- (b) is prescribed in the regulations for the purposes of this definition.

***receive clearance***:

- (a) in relation to a person, has the meaning given by subsection 41(2); and
- (b) in relation to goods (other than cargo), has the meaning given by subsection 42(2); and
- (c) in relation to a vehicle, has the meaning given by subsection 43(2); and
- (d) in relation to cargo, has the meaning given by subsection 44B(2).

***regulated air cargo agent*** means a person designated as a regulated air cargo agent in accordance with regulations made under section 44C.

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***screened:***

- (a) in relation to a person, has the meaning given by subsection 41(1); and
- (b) in relation to goods (other than cargo), has the meaning given by subsection 42(1); and
- (c) in relation to a vehicle, has the meaning given by subsection 43(1).

***screening officer*** has the meaning given by subsection 94(1).

***screening point*** means a place where screening occurs.

***Secretary*** means the Secretary of the Department.

***security compliance information*** has the meaning given by subsection 109(1).

***security controlled airport*** has the meaning given by subsection 28(2).

***security designated authorisation*** has the meaning given by the regulations.

***special security direction*** has the meaning given by subsection 67(2).

***state aircraft*** has the same meaning as in the *Air Navigation Act 1920*.

***stores*** means items that are to be carried on board an aircraft for use, sale or consumption on the aircraft.

***this Act*** includes the regulations.

***threaten:*** a person is taken to ***threaten*** to do an act if the person makes a statement, or does anything else, showing, or from which it could reasonably be inferred, that it is his or her intention to do the act.

***transport security program*** means a program prepared for the purposes of Part 2.

***unlawful interference with aviation*** has the meaning given by section 10.

***vehicle*** does not include an aircraft.

***weapon*** means:

- (a) a firearm of any kind; or
- (b) a thing prescribed by the regulations to be a weapon; or
- (c) a device that, except for the absence of, or a defect in, a part of the device, would be a weapon of a kind mentioned in paragraph (a) or (b); or
- (d) a device that is reasonably capable of being converted into a weapon of a kind mentioned in paragraph (a) or (b).

## Division 5—Unlawful interference with aviation

### 10 Meaning of *unlawful interference with aviation*

- (1) Any of the following done, or attempted to be done, without lawful authority is an *unlawful interference with aviation*:
- (a) taking control of an aircraft by force, or threat of force, or any other form of intimidation or by any trick or false pretence;
  - (b) destroying an aircraft that is in service;
  - (c) causing damage to an aircraft that is in service that puts the safety of the aircraft, or any person on board or outside the aircraft, at risk;
  - (d) doing anything on board an aircraft that is in service that puts the safety of the aircraft, or any person on board or outside the aircraft, at risk;
  - (e) placing, or causing to be placed, on board an aircraft that is in service anything that puts the safety of the aircraft, or any person on board or outside the aircraft, at risk;
  - (f) putting the safety of aircraft at risk by interfering with, damaging or destroying air navigation facilities;
  - (g) putting the safety of an aircraft at risk by communicating false or misleading information;
  - (h) committing an act at an airport, or causing any interference or damage, that puts the safe operation of the airport, or the safety of any person at the airport, at risk.
- (2) However, *unlawful interference with aviation* does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action of a kind mentioned in paragraphs (1)(a) to (h).

## **Division 6—General defences**

### **10A General defences**

#### *Decisions of pilot in command*

- (1) A person does not commit an offence against this Act if:
- (a) a physical element of the offence exists (whether directly or indirectly) because the pilot in command of an aircraft engaged in conduct in the operation or control of the aircraft; and
  - (b) without the existence of that physical element the person would not commit the offence; and
  - (c) the pilot engaged in the conduct to protect the safety or security of:
    - (i) the aircraft; or
    - (ii) the aircraft's cargo; or
    - (iii) a person (whether on board the aircraft or not); or
    - (iv) another aircraft; or
    - (v) an airport, or an airport facility or other installation within an airport; and
  - (d) the conduct was reasonable in the circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

#### *Special security directions*

- (2) If:
- (a) a person is required to comply with a special security direction; and
  - (b) compliance with the direction would mean that the person commits an offence against, or otherwise contravenes a requirement of, this Act;
- the person, in complying with the security direction, is taken not to have committed the offence or contravened the requirement.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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*Control directions*

- (3) If:
- (a) a person is required to comply with a compliance control direction or an incident control direction; and
  - (b) compliance with the direction would mean that the person commits an offence against, or otherwise contravenes a requirement of, this Act;

the person, in complying with the control direction, is taken not to have committed the offence or contravened the requirement.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

## **Part 2—Transport security programs**

### **Division 1—Simplified overview of Part**

#### **11 Simplified overview of Part**

Various aviation industry participants are required to have, and comply with, transport security programs. This is dealt with in Division 2.

Various other persons are required to comply with the transport security programs of aviation industry participants. This is dealt with in Division 3.

The content and form of transport security programs is dealt with in Division 4.

The approval of transport security programs by the Secretary is dealt with in Division 5. That Division also deals with the variation and revision of programs, and with the cancellation of the approval of programs.

## **Division 2—Aviation industry participants required to have programs**

### **12 Who must have a program**

The following aviation industry participants are required to have a transport security program:

- (a) an operator of a security controlled airport;
- (b) an operator of a prescribed air service;
- (c) a participant of a kind prescribed in the regulations.

### **13 Participants required to have programs to operate**

- (1) An aviation industry participant commits an offence if:
  - (a) the participant is required under section 12 to have a transport security program; and
  - (b) the participant operates as a participant of that kind; and
  - (c) there is no transport security program in force for the participant.

Penalty: For an airport operator or an aircraft operator—200 penalty units.

For an aviation industry participant, other than an airport operator or an aircraft operator—100 penalty units.

- (2) Subsection (1) does not apply if the participant has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

### **14 Participants must comply with programs**

- (1) An aviation industry participant commits an offence if:
  - (a) there is a transport security program for the participant in force; and
  - (b) the participant fails to comply with the program.

Penalty: For an airport operator or an aircraft operator—200 penalty units.

For an aviation industry participant, other than an airport operator or an aircraft operator—100 penalty units.

- (2) Subsection (1) does not apply if the participant has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

**Division 3—Complying with programs of other participants**

**15 Complying with transport security programs of other participants**

- (1) An aviation industry participant must not engage in conduct that hinders or obstructs compliance with the transport security program of another aviation industry participant.
- (2) If:
  - (a) a transport security program for an aviation industry participant covers the activities of another aviation industry participant; and
  - (b) the other participant has been given the relevant parts of the program;the other aviation industry participant must take all reasonable steps to comply with the program.
- (3) If an aviation industry participant contravenes subsection (1) or (2), the participant does not commit an offence but may be subject to an enforcement order (see section 119) or an injunction under section 124.

## **Division 4—Content and form of programs**

### **16 Content of programs**

- (1) A transport security program for an aviation industry participant must demonstrate that the participant:
  - (a) is aware of the participant's general responsibility to contribute to the maintenance of aviation security; and
  - (b) has developed an integrated, responsible and proactive approach to managing aviation security; and
  - (c) is aware of, and has the capacity to meet, the specific obligations imposed on the participant under this Act; and
  - (d) has taken into account relevant features of the participant's operation in developing activities and strategies for managing aviation security.
  
- (2) A transport security program for an aviation industry participant must set out the following:
  - (a) how the participant will manage and co-ordinate aviation security activities within the participant's operation;
  - (b) how the participant will co-ordinate the management of aviation security with other parties (including Commonwealth agencies) who have responsibilities for, or are connected with, aviation;
  - (c) the technology, equipment and procedures to be used by the participant to maintain aviation security;
  - (d) how the participant will respond to aviation security incidents;
  - (e) the practices and procedures to be used by the participant to protect security compliance information;
  - (f) the other aviation industry participants who are covered by, or operating under, the program;
  - (g) the consultation that was undertaken, in preparing the program, by the participant with the other aviation industry participants who are covered by, or operating under, the program.

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- (3) The regulations may prescribe other matters that are to be dealt with in one or more of the following:
  - (a) each transport security program;
  - (b) each transport security program for a particular kind of aviation industry participant;
  - (c) each transport security program for a particular class of a particular kind of aviation industry participant.

**17 Form of programs etc.**

- (1) A transport security program must be:
  - (a) in writing; and
  - (b) prepared in accordance with any requirements set out in the regulations.
- (2) A transport security program for an airport operator must be accompanied by:
  - (a) a map that shows the airside and landside areas, and any airside security zones and landside security zones, for the airport; and
  - (b) if the operator proposes changes to the areas or zones for the airport—a map that shows the proposed changes.

## **Division 5—Approving, revising and cancelling programs**

### **18 Providing programs for approval**

An aviation industry participant may give the Secretary a transport security program for the participant and request the Secretary to approve the program.

### **19 Approval**

- (1) If the Secretary is satisfied that the program adequately addresses the relevant requirements under Division 4, the Secretary must:
  - (a) approve the program; and
  - (b) give the participant written notice of the approval.
- (2) If the Secretary is not satisfied that the program adequately addresses the relevant requirements under Division 4, the Secretary must:
  - (a) refuse to approve the program; and
  - (b) give the participant written notice of the refusal.
- (3) In determining whether the program adequately addresses the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to aviation security.

#### *Failure to approve program within consideration period*

- (4) If:
  - (a) an aviation industry participant gives the Secretary a transport security program; and
  - (b) the Secretary does not approve, or refuse to approve, the program within the consideration period;the Secretary is taken to have refused to approve the program at the end of that period.

Note: An aviation industry participant may apply to the Administrative Appeals Tribunal for review of a decision to refuse to approve a transport security program under subsection (2) or (4): see section 126.

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*Secretary may request further information*

- (5) The Secretary may, by written notice given to the participant within the consideration period, request the participant to give the Secretary specified information relevant to the approval of the program.
- (6) The notice must specify a period of not more than 45 days within which the information must be given. However, if more than one notice is given to the participant under subsection (5), the total of the periods specified in the notices must not exceed 45 days.

*Consideration period*

- (7) The **consideration period** is the period of 60 days starting on the day on which the Secretary received the program, extended, for each notice given under subsection (5), by the number of days falling within the period:
  - (a) starting on the day on which the notice was given; and
  - (b) ending on:
    - (i) the day on which the information requested in that notice was received by the Secretary; or
    - (ii) if the information was not given within the period specified in that notice—the last day of that period.

**20 When a program is in force**

- (1) If the Secretary approves the transport security program, the program comes into force at the time specified in the notice of approval.
- (2) However, if:
  - (a) the time specified in the notice is earlier than the time at which the notice was given; or
  - (b) no time is specified in the notice as the time when the program comes into force;the program comes into force when the notice is given.
- (3) The program remains in force for a period of 5 years or such lesser period as the Secretary specifies in the notice of approval (which must be at least 12 months), unless before the end of that period:
  - (a) the program is replaced under subsection 22(2); or

(b) the approval of the program is cancelled under this Division.

## **21 Secretary may direct participants to vary programs**

(1) If:

- (a) a transport security program for an aviation industry participant is in force; and
- (b) the Secretary is no longer satisfied that the program adequately addresses the relevant requirements under Division 4;

the Secretary may, by written notice given to the participant, direct the participant to vary the program.

(2) However, the Secretary must not give a direction under subsection (1) unless the Secretary is satisfied that the program, as varied, would adequately address the relevant requirements under Division 4.

(3) In the notice, the Secretary must:

- (a) set out the variation; and
- (b) specify the period within which the participant must give the Secretary the program as varied.

(3A) If the participant gives the Secretary the program:

- (a) varied in accordance with the direction; and
- (b) within the specified period, or within any further period allowed by the Secretary;

the Secretary must, by written notice given to the participant, approve the variation. The variation comes into force when the notice is given.

**Note:** As the program is not replaced, the variation does not affect the period for which the program is in force. Subsection 20(3) deals with the period a transport security program is in force.

**Example:** A transport security program is approved on 1 January 2008. The Secretary does not specify in the notice of approval the period it is to be in force.

On 1 March 2011 a variation to the program comes into force.

The program (as now varied) will cease to be in force at the end of 31 December 2012 unless it is replaced or cancelled before then.

(4) If the participant does not give the Secretary the program:

- (a) varied in accordance with the direction; and

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(b) within the specified period, or within any further period allowed by the Secretary;  
the Secretary must, by written notice given to the participant, cancel the approval of the program.

**22 Participants may revise programs**

- (1) If:
- (a) an aviation industry participant has given the Secretary a transport security program; and
  - (b) the participant gives the Secretary another transport security program (the *revised program*);
- sections 19 and 20 apply in relation to the revised program.
- (2) If a revised program for an aviation industry participant comes into force, it replaces any other program for the participant in force at that time.
- (3) Paragraph (1)(b) does not apply to a varied program given to the Secretary under section 21.

**23 Secretary may direct participants to revise programs**

- (1) If:
- (a) a transport security program for an aviation industry participant (the *existing program*) is in force; and
  - (b) the Secretary is no longer satisfied that the program adequately addresses the relevant requirements under Division 4:
    - (i) because there is a change in the circumstances that relate to aviation security; or
    - (ii) because there is a change in circumstances that could impact on aviation security; or
    - (iii) for some other reason;
- the Secretary may, by written notice given to the participant, direct the participant to give the Secretary a revised program under section 22.
- (2) The notice must specify the period within which the revised program must be given.

- (3) If the participant does not give the Secretary the revised program within the specified period, or within any further period allowed by the Secretary, the Secretary must, by written notice given to the participant, cancel the approval of the existing program.

### **23A Secretary may approve alterations of programs**

- (1) An aviation industry participant may, in writing, request the Secretary to approve proposed alterations of a transport security program. The request must set out the proposed alterations.
- (2) If the Secretary is satisfied:
- (a) that it is appropriate to deal with all the proposed alterations under this section; and
  - (b) that the program as proposed to be altered adequately addresses the relevant requirements under Division 4;
- the Secretary must:
- (c) approve the alterations; and
  - (d) give the participant written notice of the approval.
- (3) If the Secretary is not satisfied:
- (a) that it is appropriate to deal with all the proposed alterations under this section; or
  - (b) that the program as proposed to be altered adequately addresses the relevant requirements under Division 4;
- the Secretary must:
- (c) refuse to approve the alterations; and
  - (d) give the participant written notice of the refusal.
- (4) In determining whether the program as proposed to be altered adequately addresses the relevant requirements under Division 4, the Secretary may take account of existing circumstances as they relate to aviation security.
- (5) If the Secretary approves alterations of a program, the alterations come into force at the time specified in the notice of approval.

Note: As the program is not replaced, the alterations do not affect the period for which the program is in force. Subsection 20(3) deals with the period a transport security program is in force.

Example: A transport security program is approved on 1 January 2008. The Secretary does not specify in the notice of approval the period it is to be in force.

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On 1 March 2011 alterations to the program come into force.

The program (as now altered) will cease to be in force at the end of 31 December 2012 unless it is replaced or cancelled before then.

- (6) However, the alterations come into force when the notice is given if:
- (a) the time specified in the notice is earlier than the time at which the notice was given; or
  - (b) no time is specified in the notice as the time when the alterations come into force.
- (7) If:
- (a) an aviation industry participant requests the Secretary to approve alterations of a transport security program; and
  - (b) the Secretary does not approve, or refuse to approve, the alterations within the period of 60 days after the request was given;
- the Secretary is taken to have refused to approve the alterations.

**25 Cancelling inadequate programs**

If:

- (a) a transport security program for an aviation industry participant is in force; and
  - (b) the Secretary is no longer satisfied that the program adequately addresses the relevant requirements under Division 4; and
  - (c) the Secretary is satisfied that it is not appropriate to direct the participant to:
    - (i) vary the program under section 21; or
    - (ii) revise the program under section 23;
- the Secretary must, by written notice given to the participant, cancel the approval of the program.

**26 Cancelling for failure to comply**

- (1) If:
- (a) a transport security program for an aviation industry participant is in force; and

(b) the participant has accumulated the number of demerit points prescribed by the regulations as the number necessary for the Secretary to be able to cancel the approval of the program; the Secretary may, by written notice given to the participant, cancel the approval of the program.

Note: For the demerit points system, see Division 5 of Part 8.

(2) Before cancelling the approval of a program under subsection (1), the Secretary may, by written notice given to the participant, request the participant to show cause why the approval of the program should not be cancelled.

### **26A Cancelling transport security programs on request**

If:

- (a) a transport security program for an aviation industry participant is in force; and
  - (b) the participant makes a written request to the Secretary for the approval of the program to be cancelled;
- the Secretary must, by written notice given to the participant, cancel the approval of the program.

## **Part 3—Airport areas and zones**

### **Division 1—Simplified overview of Part**

#### **27 Simplified overview of Part**

The Secretary may designate an airport as a security controlled airport. A security controlled airport has an airside area and a landside area.

Airside security zones and airside event zones may be established within an airside area, and landside security zones and landside event zones within a landside area.

Regulations under Division 3 will detail the requirements applying to airside areas, airside security zones and airside event zones.

Regulations under Division 4 will detail the requirements applying to landside areas, landside security zones and landside event zones.

Regulations under Division 5 may create offences for causing disruption or interference in relation to security controlled airports.

## Division 2—Establishment of areas and zones

### 28 Airports and security controlled airports

- (1) An *airport* is an area of land or water (including any buildings, installations or equipment situated in the area) intended for use either wholly or partly in connection with the arrival, departure or movement of aircraft. It also includes any area that is controlled by the airport operator that is contiguous with such an area of land or water.
- (2) The Secretary may, by notice published in the *Gazette*, declare that a particular airport, or a part of a particular airport, is a *security controlled airport*.
- (3) The notice must include a map of the airport that shows the boundaries of the security controlled airport.
- (4) However, the Secretary must not:
  - (a) include any area that is controlled exclusively by the Australian Defence Force within the boundaries of a security controlled airport; or
  - (b) include a joint-user area within the boundaries of a security controlled airport without the agreement of the Secretary of the Department of Defence.
- (5) A *joint-user area* is an area that is controlled jointly by the Australian Defence Force and one or more aviation industry participants.

### 29 Airport areas—airside and landside

#### *Airside*

- (1) A notice published in the *Gazette* under section 28 must establish an *airside area* for the security controlled airport and show the boundaries of the airside area.
- (2) The purpose of an airside area is to control access to operational areas of a security controlled airport.

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*Landside*

- (3) Any other area within the boundaries of the security controlled airport (as shown on the map published under subsection 28(3)) is the ***landside area*** of the security controlled airport.

**30 Airside security zones**

- (1) The Secretary may, by written notice given to the operator of a security controlled airport, establish one or more ***airside security zones*** within the airside area of the airport. Each zone must be of a type prescribed under section 31.
- (2) The notice must include a map of the airport that shows the boundaries of the airside security zones.
- (2A) A notice commences:
  - (a) when the Secretary gives the notice to the airport operator; or
  - (b) if a time is specified in the notice—at that time.The time specified must not be earlier than the time the notice is given.
- (2B) Each airport security zone is in force from the commencement of the notice that establishes it.
- (3) The purpose of airside security zones is to subject those zones, within the airside area of a security controlled airport, to stricter or more specialised controls than those applying generally to the airside area.

**31 Types of airside security zones**

- (1) The regulations may prescribe different types of airside security zones.
- (2) The purposes for which different types of airside security zones may be prescribed include, but are not limited to, the following:
  - (a) controlling the movement of people, vehicles and goods within airside areas;
  - (b) restricting access to airside security zones within airside areas;
  - (c) providing cleared zones;

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- (d) preventing interference with aircraft (including unattended aircraft);
  - (e) ensuring the security of the following:
    - (i) air traffic control facilities;
    - (ii) fuel storage areas;
    - (iii) general aviation areas;
    - (iv) cargo and baggage handling facilities;
    - (v) navigational aids;
    - (va) fire stations and other emergency service facilities;
    - (vi) critical facilities and critical structures.
- (3) A facility is a **critical facility** if interference with, or damage to, the facility could put the safe operation of an airport or an aircraft at risk.
- (4) A structure is a **critical structure** if interference with, or damage to, the structure could put the safe operation of an airport or an aircraft at risk.

### 31A Airside event zones

*Establishing airside event zones*

- (1) The Secretary may, by written notice given to the operator of a security controlled airport, establish one or more **airside event zones** within the airside area of the airport. Each zone must be of a type prescribed under section 31B.
- (2) The notice must include a map of the airport that shows the boundaries of each airside event zone.
- (3) For each airside event zone, the notice may specify the period (or periods) during which the zone is in force. If no period is specified, the zone is in force from the commencement of the notice.
- (4) A notice commences:
  - (a) when the Secretary gives the notice to the airport operator; or
  - (b) if a time is specified in the notice—at that time.The time specified must not be earlier than the time the notice is given.

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*Purpose of airside event zones*

- (5) Subject to subsection (6), the purpose of airside event zones is to subject those zones, within the airside area of a security controlled airport, to controls some or all of which are different from those applying generally to the airside area.
- (6) If the whole or a part of an airside event zone is within an airside security zone, the purpose of the airside event zone is to subject the zone to controls some or all of which are different from:
  - (a) controls applying generally to the airside security zone; and
  - (b) controls applying generally to the airside area.

*Requirements applying in airside event zones*

- (7) The following requirements do not apply in relation to an airside event zone while the zone is in force:
  - (a) the requirements prescribed in relation to the airside area;
  - (b) if the whole or a part of the zone is within an airside security zone—the requirements prescribed in relation to the airside security zone.
- (8) To avoid doubt, if an airside event zone ceases to be in force at a particular time, the area previously within the airside event zone is, from that time, subject to controls that apply generally to that area.

**31B Types of airside event zones**

- (1) The regulations may prescribe different types of airside event zones.
- (2) The purposes for which different types of airside event zones may be prescribed include, but are not limited to, the following:
  - (a) managing different types of events within airside areas;
  - (b) controlling the movement of people, vehicles and goods within airside areas;
  - (c) restricting access to airside event zones within airside areas;
  - (d) providing cleared zones;
  - (e) preventing interference with aircraft (including unattended aircraft);
  - (f) ensuring the security of the following:
    - (i) air traffic control facilities;

- (ii) fuel storage areas;
- (iii) general aviation areas;
- (iv) cargo and baggage handling facilities;
- (v) navigational aids;
- (vi) fire stations and other emergency service facilities;
- (vii) critical facilities and critical structures.

### **32 Landside security zones**

- (1) The Secretary may, by written notice given to the operator of a security controlled airport, establish one or more *landside security zones* within the landside area of the airport. Each zone must be of a type prescribed under section 33.
- (2) The notice must include a map of the airport that shows the boundaries of the landside security zones.
- (2A) A notice commences:
  - (a) when the Secretary gives the notice to the airport operator; or
  - (b) at the time specified in the notice.The time specified in the notice must not be earlier than the time the notice is given.
- (2B) Each landside security zone is in force from the commencement of the notice that establishes it.
- (3) The purpose of landside security zones is to subject those zones, within the landside area of a security controlled airport, to stricter or more specialised controls than those applying generally to the landside area.

### **33 Types of landside security zones**

- (1) The regulations may prescribe different types of landside security zones.
- (2) The purposes for which different types of landside security zones may be prescribed include, but are not limited to, the following:
  - (a) controlling the movement of people, vehicles and goods within landside areas;
  - (b) restricting access to landside security zones within landside areas;

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- (c) providing cleared zones;
- (d) preventing interference with aircraft (including unattended aircraft);
- (e) ensuring the security of the following:
  - (i) air traffic control facilities;
  - (ii) fuel storage areas;
  - (iii) general aviation areas;
  - (iv) cargo and baggage handling facilities;
  - (v) navigational aids;
  - (va) fire stations and other emergency service facilities;
  - (vi) critical facilities and critical structures.

**33A Landside event zones**

*Establishing landside event zones*

- (1) The Secretary may, by written notice given to the operator of a security controlled airport, establish one or more **landside event zones** within the landside area of the airport. Each zone must be of a type prescribed under section 33B.
- (2) The notice must include a map of the airport that shows the boundaries of the landside event zones.
- (3) For each landside event zone, the notice may specify the period (or periods) during which the zone is in force. If no period is specified, the zone is in force from the commencement of the notice.
- (4) A notice commences:
  - (a) when the Secretary gives the notice to the airport operator; or
  - (b) if a time is specified in the notice—at that time.The time specified must not be earlier than the time the notice is given.

*Purpose of landside event zones*

- (5) Subject to subsection (6), the purpose of landside event zones is to subject those zones, within the landside area of a security controlled airport, to controls some or all of which are different from those applying generally to the landside area.

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- (6) If the whole or a part of a landside event zone is within a landside security zone, the purpose of the landside event zone is to subject the zone to controls some or all of which are different from:
- (a) controls applying generally to the landside security zone; and
  - (b) controls applying generally to the landside area.

*Requirements applying in landside event zones*

- (7) The following requirements do not apply in relation to a landside event zone while the zone is in force:
- (a) the requirements prescribed in relation to the landside area;
  - (b) if the whole or a part of the zone is within a landside security zone—the requirements prescribed in relation to the landside security zone.
- (8) To avoid doubt, if a landside event zone ceases to be in force at a particular time, the area previously within the landside event zone is, from that time, subject to controls that apply generally to that area.

### **33B Types of landside event zones**

- (1) The regulations may prescribe different types of landside event zones.
- (2) The purposes for which different types of landside event zones may be prescribed include, but are not limited to, the following:
- (a) managing different types of events within landside areas;
  - (b) controlling the movement of people, vehicles and goods within landside areas;
  - (c) restricting access to landside event zones within landside areas;
  - (d) providing cleared zones;
  - (e) preventing interference with aircraft (including unattended aircraft);
  - (f) ensuring the security of the following:
    - (i) air traffic control facilities;
    - (ii) fuel storage areas;
    - (iii) general aviation areas;
    - (iv) cargo and baggage handling facilities;
    - (v) navigational aids;

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- (vi) fire stations and other emergency service facilities;
- (vii) critical facilities and critical structures.

**34 Matters to be considered in establishing areas and zones**

In establishing an airside area, an airside security zone or a landside security zone within a security controlled airport, the Secretary must have regard to the purpose of the area or zone, and take into account:

- (a) the views of the airport operator; and
- (b) the existing physical features of the airport (including buildings); and
- (c) the existing operational features of the airport.

## **Division 3—Control of airside areas and zones**

### **35 Requirements for airside areas**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to the airside area of a security controlled airport.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) access to the airside area (including conditions of entry, the issue and use of security passes and other identification systems);
  - (b) the patrolling of the airside area;
  - (c) the provision of lighting, fencing and storage facilities;
  - (d) the identification or marking of the airside area;
  - (e) the approval of building works within, or adjacent to, the airside area;
  - (f) the screening of people, vehicles or goods (other than cargo) for entry to the airside area;
  - (fa) requirements relating to the entry of cargo to the airside area;
  - (g) the security checking (including background checking) of persons who have access to the airside area;
  - (h) the movement, management or operation of aircraft, vehicles and other machinery in the airside area;
  - (i) the maintenance of the integrity of the airside area;
  - (j) access to aircraft (including unattended aircraft) from the airside area;
  - (k) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in the airside area;
  - (l) the management (including the sale or disposal) of vehicles or goods abandoned in the airside area.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
  - (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or

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- (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
- (c) for an offence committed by any other person—50 penalty units.

**36 Requirements for airside security zones**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to each type of airside security zone.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) access to airside security zones (including conditions of entry, the issue and use of security passes and other identification systems);
  - (b) the patrolling of airside security zones;
  - (c) the provision of lighting, fencing and storage facilities;
  - (d) the identification or marking of airside security zones;
  - (e) the approval of building works within, or adjacent to, airside security zones;
  - (f) the screening of people, vehicles or goods (other than cargo) for entry to airside security zones;
  - (fa) requirements relating to the entry of cargo to airside security zones;
  - (g) the security checking (including background checking) of persons who have access to airside security zones;
  - (h) the movement, management or operation of aircraft, vehicles and other machinery in airside security zones;
  - (i) the maintenance of the integrity of airside security zones;
  - (j) access to aircraft (including unattended aircraft) from airside security zones;
  - (k) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in airside security zones;
  - (l) the management (including the sale or disposal) of vehicles or goods abandoned in airside security zones.

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- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

### **36A Requirements for airside event zones**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to each type of airside event zone.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) access to airside event zones (including conditions of entry, the issue and use of security passes and other identification systems);
  - (b) the patrolling of airside event zones;
  - (c) the provision of lighting, fencing and storage facilities;
  - (d) the identification or marking of airside event zones;
  - (e) the approval of building works within, or adjacent to, airside event zones;
  - (f) the screening of people, vehicles or goods (other than cargo) for entry to airside event zones;
  - (fa) requirements relating to the entry of cargo to airside event zones;
  - (g) the security checking (including background checking) of persons who have access to airside event zones;
  - (h) the movement, management or operation of aircraft, vehicles and other machinery in airside event zones;
  - (i) the maintenance of the integrity of airside event zones;

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- (j) access to aircraft (including unattended aircraft) from airside event zones;
  - (k) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in airside event zones;
  - (l) the management (including the sale or disposal) of vehicles or goods abandoned in airside event zones.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## **Division 4—Control of landside areas and zones**

### **37 Requirements for landside areas**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to the landside area of a security controlled airport.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) access to the landside area (including conditions of entry, the issue and use of security passes and other identification systems);
  - (b) the patrolling of the landside area;
  - (c) the provision of lighting, fencing and storage facilities;
  - (d) the identification or marking of the landside area;
  - (e) the approval of building works within, or adjacent to, the landside area;
  - (f) the screening of people, vehicles or goods (other than cargo) for entry to the landside area;
  - (fa) requirements relating to the entry of cargo to the landside area;
  - (g) the security checking (including background checking) of persons who have access to the landside area;
  - (h) the movement, management or operation of aircraft, vehicles and other machinery in the landside area;
  - (i) the maintenance of the integrity of the landside area;
  - (j) access to aircraft (including unattended aircraft) from the landside area;
  - (k) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in the landside area;
  - (l) the management (including the sale or disposal) of vehicles or goods abandoned in the landside area.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:

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- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
- (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
- (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

**38 Requirements for landside security zones**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to each type of landside security zone.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) access to landside security zones (including conditions of entry, the issue and use of security passes and other identification systems);
  - (b) the patrolling of landside security zones;
  - (c) the provision of lighting, fencing and storage facilities;
  - (d) the identification or marking of landside security zones;
  - (e) the approval of building works within, or adjacent to, landside security zones;
  - (f) the screening of people, vehicles or goods (other than cargo) for entry to landside security zones;
  - (fa) requirements relating to the entry of cargo to landside security zones;
  - (g) the security checking (including background checking) of persons who have access to landside security zones;
  - (h) the movement, management or operation of aircraft, vehicles and other machinery in landside security zones;
  - (i) the maintenance of the integrity of landside security zones;
  - (j) access to aircraft (including unattended aircraft) from landside security zones;

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- (k) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in landside security zones;
  - (l) the management (including the sale or disposal) of vehicles or goods abandoned in landside security zones.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

### **38A Requirements for landside event zones**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to each type of landside event zone.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) access to landside event zones (including conditions of entry, the issue and use of security passes and other identification systems);
  - (b) the patrolling of landside event zones;
  - (c) the provision of lighting, fencing and storage facilities;
  - (d) the identification or marking of landside event zones;
  - (e) the approval of building works within, or adjacent to, landside event zones;
  - (f) the screening of people, vehicles or goods (other than cargo) for entry to landside event zones;
  - (fa) requirements relating to the entry of cargo to landside event zones;

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- (g) the security checking (including background checking) of persons who have access to landside event zones;
  - (h) the movement, management or operation of aircraft, vehicles and other machinery in landside event zones;
  - (i) the maintenance of the integrity of landside event zones;
  - (j) access to aircraft (including unattended aircraft) from landside event zones;
  - (k) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in landside event zones;
  - (l) the management (including the sale or disposal) of vehicles or goods abandoned in landside event zones.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## **Division 5—Offences for causing disruption or interference in relation to security controlled airports**

### **38B Offences for causing disruption or interference in relation to security controlled airports**

- (1) The regulations may prescribe offences in relation to the disruption to or interference with the activities of an airport operator of a security controlled airport, or the activities of an aircraft operator at a security controlled airport, if:
  - (a) that airport is located in a Commonwealth place or in a Territory; or
  - (b) that operator is a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (c) those activities take place in the course of, or in relation to, trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories.

The penalties prescribed by the regulations for the offences must not exceed 50 penalty units.

- (2) The offences prescribed by the regulations may relate to conduct that occurs outside the boundaries of a security controlled airport.
- (3) Subsection (2) does not limit subsection (1).

## **Part 4—Other security measures**

### **Division 1—Simplified overview of Part**

#### **39 Simplified overview of Part**

In addition to the requirements relating to areas and zones covered in Part 3, specific requirements are imposed in relation to a range of other matters. These are covered by this Part.

The matters (and the relevant Divisions) are as follows:

- (a) screening and clearing (Division 2);
- (aa) examining, certifying and clearing (Division 2A);
- (b) weapons (Division 3);
- (c) prohibited items (Division 4);
- (d) on-board security (Division 5);
- (e) persons in custody (Division 6);
- (f) special security directions (Division 7);
- (g) control directions (Division 8);
- (h) security status checking (Division 9).

## Division 2—Screening and clearing

### 40 Simplified overview of Division

Access to aircraft, areas and zones at an airport may be restricted to persons, goods (other than cargo) and vehicles that have received clearance. Where access is restricted in this way, the aircraft, area or zone is said to be cleared.

In most cases, receiving clearance will require going through a screening process.

This Division deals with:

- (a) requirements for receiving clearance; and
- (b) requirements and procedures for screening.

This Division does not deal with cargo. Cargo is dealt with in Division 2A.

### 41 Screening and clearing people

- (1) A person is *screened* when the person undergoes screening in accordance with regulations made under section 44 in preparation for:
  - (a) boarding an aircraft; or
  - (b) entering an area or zone within a security controlled airport.
- (2) A person *receives clearance* if:
  - (a) after being screened, the person is allowed, by a screening officer, to pass through the screening point; or
  - (b) the person passes through the screening point and the regulations provide, or the Secretary by written notice provides, that the person may pass through that screening point without being screened; or
  - (c) the person enters a cleared area, a cleared zone or a cleared aircraft other than through a screening point and the regulations provide, or the Secretary by written notice

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provides, that the person may enter the area, zone or aircraft that way.

- (3) A person is *cleared* at a particular time if:
  - (a) the person has received clearance; and
  - (b) since receiving clearance, the person has at all times been in a cleared area, a cleared zone or a cleared aircraft.
- (4) For the purposes of paragraph (3)(b), a person is taken to be in a cleared area or cleared zone if the person is under the supervision or control prescribed in the regulations.
- (5) To avoid doubt:
  - (a) a notice under paragraph (2)(b) may provide that a class of persons may pass through a screening point without being screened; and
  - (b) a notice under paragraph (2)(c) may provide that a class of persons may enter a cleared area, a cleared zone or a cleared aircraft other than through a screening point.

**42 Screening and clearing goods (other than cargo)**

- (1) Goods are *screened* when the goods undergo screening in accordance with regulations made under section 44 in preparation for:
  - (a) being taken on board an aircraft; or
  - (b) being taken into an area or zone within a security controlled airport.
- (2) Goods *receive clearance* if:
  - (a) after being screened, the goods are allowed, by a screening officer, to pass through the screening point; or
  - (b) the goods pass through the screening point and the regulations provide, or the Secretary by written notice provides, that the goods may pass through that screening point without being screened; or
  - (c) the goods enter a cleared area, a cleared zone or a cleared aircraft other than through a screening point and the regulations provide, or the Secretary by written notice provides, that the goods may enter the area, zone or aircraft that way.

- (3) Goods are **cleared** at a particular time if:
- (a) the goods have received clearance; and
  - (b) since receiving clearance, the goods have at all times been in a cleared area, a cleared zone or a cleared aircraft.
- (4) For the purposes of paragraph (3)(b), goods are taken to be in a cleared area or cleared zone if the goods are under the supervision or control prescribed in the regulations.
- (5) To avoid doubt:
- (a) a notice under paragraph (2)(b) may provide that a class of goods may pass through a screening point without being screened; and
  - (b) a notice under paragraph (2)(c) may provide that a class of goods may enter a cleared area, a cleared zone or a cleared aircraft other than through a screening point.
- (6) In this section:
- goods** includes baggage but does not include cargo.

Note: Division 2A deals with the examination and clearance of cargo.

### **43 Screening and clearing vehicles**

- (1) A vehicle is **screened** when the vehicle undergoes screening in accordance with regulations made under section 44 in preparation for:
- (a) being taken on board an aircraft; or
  - (b) entering an area or zone within a security controlled airport.
- (2) A vehicle **receives clearance** if:
- (a) after being screened, the vehicle is allowed, by a screening officer, to pass through the screening point; or
  - (b) the vehicle passes through the screening point and the regulations provide, or the Secretary by written notice provides, that the vehicle may pass through that screening point without being screened; or
  - (c) the vehicle enters a cleared area, a cleared zone or a cleared aircraft other than through a screening point and the regulations provide, or the Secretary by written notice provides, that the vehicle may enter the area, zone or aircraft that way.

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- (3) A vehicle is *cleared* at a particular time if:
  - (a) the vehicle has received clearance; and
  - (b) since receiving clearance, the vehicle has at all times been in a cleared area, a cleared zone or a cleared aircraft.
- (4) For the purposes of paragraph (3)(b), a vehicle is taken to be in a cleared area or cleared zone if the vehicle is under the supervision or control prescribed in the regulations.
- (5) To avoid doubt:
  - (a) a notice under paragraph (2)(b) may provide that a class of vehicles may pass through a screening point without being screened; and
  - (b) a notice under paragraph (2)(c) may provide that a class of vehicles may enter a cleared area, a cleared zone or a cleared aircraft other than through a screening point.

#### **44 Requirements for screening and clearing**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to one or more of the following:
  - (a) screening;
  - (b) receiving clearance;
  - (c) the circumstances in which persons, goods (other than cargo) or vehicles are required to be cleared;
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) the persons who are authorised or required to conduct screening;
  - (aa) things that must not pass through a screening point;
  - (b) the things to be detected by screening;
  - (c) the procedures for dealing with things detected by screening;
  - (d) the circumstances in which persons must be cleared in order to:
    - (i) board an aircraft; or
    - (ii) enter a landside security zone, a landside event zone, an airside area, an airside security zone or an airside event zone;

- (e) the circumstances in which goods, other than baggage and cargo, must be cleared in order to be taken:
  - (i) onto an aircraft; or
  - (ii) into a landside security zone, a landside event zone, an airside area, an airside security zone or an airside event zone;
- (f) the circumstances in which baggage must be cleared in order to be taken:
  - (i) onto an aircraft; or
  - (ii) into a landside security zone, a landside event zone, an airside area, an airside security zone or an airside event zone;
- (h) the circumstances in which vehicles must be cleared in order to be taken;
  - (i) onto an aircraft; or
  - (ii) into a landside security zone, a landside event zone, an airside area, an airside security zone or an airside event zone;
- (i) the places where screening is to be conducted;
- (j) the methods, techniques and equipment to be used for screening;
- (k) the notices that are to be displayed in places where screening is to be conducted;
- (l) the supervision and control measures for ensuring that persons, goods (other than cargo) and vehicles that have received clearance remain cleared in areas or zones that are not cleared areas or cleared zones;

Note: Regulations made under subsection 94(2) must prescribe training and qualification requirements for screening officers and set out requirements in relation to the form, issue and use of identity cards.

- (3) Regulations made under paragraph (2)(a), (2)(aa) or (2)(j) may provide that some or all of the matters set out in that paragraph are to be specified in written notices made by the Secretary. Such a notice may provide that the notice is only to be given to the persons, or classes of persons, specified in the notice.
- (4) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
  - (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or

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- (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
- (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## **Division 2A—Examining, certifying and clearing cargo**

### **44A Simplified overview of Division**

The transport of cargo by aircraft may be restricted to cargo that has received clearance.

In most cases, cargo must be examined and certified to receive clearance.

The regulations may provide for cargo to be examined by regulated air cargo agents, accredited air cargo agents and aircraft operators.

This Division deals with:

- (a) requirements for receiving clearance; and
- (b) requirements and procedures for examination; and
- (c) requirements for certification; and
- (d) requirements in relation to regulated air cargo agents, accredited air cargo agents and aircraft operators.

### **44B Examining, certifying and clearing cargo**

- (1) Cargo is *examined* when the cargo undergoes examination, before being taken onto an aircraft, in accordance with regulations made under section 44C.
- (2) Cargo *receives clearance* if:
  - (a) after being examined, the cargo is certified; or
  - (b) the cargo is certified and the regulations provide, or the Secretary by written notice provides, that the cargo may be certified without being examined.
- (3) Cargo is *cleared* at a particular time if:
  - (a) the cargo has received clearance; and

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- (b) since receiving clearance, the cargo has at all times been dealt with as required by regulations made under section 44C.
- (4) To avoid doubt, a notice under paragraph (2)(b) may provide that a class of cargo may be certified.

**44C Requirements for examining, certifying and clearing cargo**

- (1) For the purposes of safeguarding against unlawful interference with aviation, the regulations may:
  - (a) prescribe requirements in relation to one or more of the following:
    - (i) examining cargo;
    - (ii) certifying cargo;
    - (iii) receiving clearance;
    - (iv) the circumstances in which cargo is required to be cleared; and
  - (b) establish a scheme under which certain persons that carry on a business that includes the handling, or making arrangements for the transport, of cargo are designated as regulated air cargo agents; and
  - (c) establish a scheme under which certain persons that carry on a business that includes the handling, or making arrangements for the transport, of cargo are accredited as accredited air cargo agents; and
  - (d) prescribe conditions that must be complied with by:
    - (i) all regulated air cargo agents, all accredited air cargo agents or all aircraft operators; or
    - (ii) one or more specified classes of regulated air cargo agents, accredited air cargo agents or aircraft operators; or
    - (iii) one or more specified regulated air cargo agents, accredited air cargo agents or aircraft operators; and
  - (e) require the following persons to report aviation security incidents of which they become aware:
    - (i) all accredited air cargo agents;
    - (ii) one or more specified classes of accredited air cargo agents;
    - (iii) one or more specified accredited air cargo agents; and

- (f) prohibit a person from carrying on a business to the extent that it consists of:
  - (i) handling cargo; or
  - (ii) making arrangements for the transport of cargo;unless the person is a regulated air cargo agent, an accredited air cargo agent or an aircraft operator.
- (2) Without limiting subsection (1), the following matters may be dealt with by regulations made under that subsection:
  - (a) the examination of cargo by:
    - (i) all regulated air cargo agents, all accredited air cargo agents or all aircraft operators; or
    - (ii) one or more specified classes of regulated air cargo agents, accredited air cargo agents or aircraft operators; or
    - (iii) one or more specified regulated air cargo agents, accredited air cargo agents or aircraft operators;
  - (b) the procedures for dealing with cargo examined as mentioned in paragraph (a);
  - (c) the places where examination is to be conducted;
  - (d) the methods, techniques and equipment to be used for examination;
  - (e) the things to be detected by examination;
  - (f) the procedures for dealing with things detected by examination;
  - (g) the circumstances in which cargo may be certified by:
    - (i) all aircraft operators; or
    - (ii) one or more specified classes of aircraft operators; or
    - (iii) one or more specified aircraft operators;
  - (h) the supervision and control measures for dealing with cargo that has received clearance;
  - (i) the method for designating a person as a regulated air cargo agent;
  - (j) the method of applying for accreditation as an accredited air cargo agent and how such applications are to be dealt with.
- (3) Regulations made under paragraph (2)(a), (b) or (d) may provide that some or all of the matters set out in that paragraph are to be specified in written notices made by the Secretary. Such a notice

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may provide that the notice is only to be given to the persons, or classes of persons, specified in the notice.

- (4) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## **Division 3—Weapons**

### **45 Simplified overview of Division**

The control of weapons is an important aspect of preventing unlawful interference with aviation.

The possession or carriage of weapons is controlled:

- (a) in airside areas, landside security zones and landside event zones;
- (b) through screening points;
- (c) on aircraft.

A person who has been authorised or permitted to have a weapon in his or her possession or under his or her control must comply with any conditions that have been imposed.

The regulations can also prescribe requirements in relation to the carriage and use of weapons.

### **46 Weapons in airside areas, landside security zones and landside event zones**

#### *Strict liability*

- (1) A person commits an offence if:
  - (a) the person is in an airside area, a landside security zone or a landside event zone; and
  - (b) the person has a weapon in his or her possession; and
  - (c) the person is not:
    - (i) a law enforcement officer; or
    - (ii) a member of the Australian Defence Force who is on duty; or
    - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the weapon in his or her

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possession in the airside area, landside security zone or landside event zone.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

*General*

- (3) A person commits an offence if:
- (a) the person is in an airside area, a landside security zone or a landside event zone; and
  - (b) the person has a weapon in his or her possession; and
  - (c) the person is not:
    - (i) a law enforcement officer; or
    - (ii) a member of the Australian Defence Force who is on duty; or
    - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the weapon in his or her possession in the airside area, landside security zone or landside event zone.

Penalty: Imprisonment for 7 years.

**47 Carrying weapons through a screening point**

*Strict liability*

- (1) A person commits an offence if:
- (a) the person passes through a screening point; and
  - (b) the person has a weapon in his or her possession when he or she passes through the screening point; and
  - (c) the person is not:
    - (i) a law enforcement officer; or
    - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the weapon in his or her possession.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

*General*

- (3) A person commits an offence if:
- (a) the person passes through a screening point; and
  - (b) the person has a weapon in his or her possession when he or she passes through the screening point; and
  - (c) the person is not:
    - (i) a law enforcement officer; or
    - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the weapon in his or her possession.

Penalty: Imprisonment for 7 years.

**48 Weapons on board an aircraft—strict liability**

- (1) A person commits an offence if:
- (a) the person is on board a prescribed aircraft; and
  - (b) the person:
    - (i) carries a weapon; or
    - (ii) otherwise has in his or her possession a weapon that is located at a place that is accessible to the person; and
  - (c) the person is not a law enforcement officer; and
  - (d) the carriage or possession of the weapon is not authorised by the regulations or permitted in writing by the Secretary; and
  - (e) neither of the following apply:
    - (i) the weapon is under the control of the pilot in command of the aircraft because the weapon forms part of the equipment of the aircraft in accordance with the operations manual for the aircraft;
    - (ii) the weapon is under the control of the pilot in command of the aircraft because an animal that could endanger the safety of the aircraft, or the safety of people on board the aircraft, is being carried on board the aircraft.

Penalty: 100 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: Carriage of weapons on an aircraft is also subject to provisions in the *Civil Aviation Act 1988* and the *Crimes (Aviation) Act 1991*.

#### 49 Weapons on board an aircraft—general

A person commits an offence if:

- (a) the person is on board a prescribed aircraft; and
- (b) the person:
  - (i) carries a weapon; or
  - (ii) otherwise has in his or her possession a weapon that is located at a place that is accessible to the person; and
- (c) the person is not a law enforcement officer; and
- (d) the carriage or possession of the weapon is not authorised by the regulations or permitted in writing by the Secretary; and
- (e) neither of the following apply:
  - (i) the weapon is under the control of the pilot in command of the aircraft because the weapon forms part of the equipment of the aircraft in accordance with the operations manual for the aircraft;
  - (ii) the weapon is under the control of the pilot in command of the aircraft because an animal that could endanger the safety of the aircraft, or the safety of people on board the aircraft, is being carried on board the aircraft.

Penalty: Imprisonment for 7 years.

Note: Carriage of weapons on an aircraft is also subject to provisions in the *Civil Aviation Act 1988* and the *Crimes (Aviation) Act 1991*.

#### 50 Failure to comply with conditions

- (1) A person commits an offence if:
  - (a) the person is on a prescribed aircraft or at a security controlled airport; and
  - (b) the person is authorised or permitted to have a weapon in his or her possession or under his or her control; and
  - (c) the person fails to comply with any conditions relating to the authorisation or permission.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

### **51 Secretary may permit by class**

To avoid doubt, for the purposes of this Division, the Secretary may give permission in relation to particular conduct by giving permission to a class of persons.

### **52 Other weapons requirements**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to the carriage and use of weapons on a prescribed aircraft or at a security controlled airport.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
- (a) authorising the carriage of weapons on board a prescribed aircraft or in an airside security zone, an airside event zone, a landside security zone or a landside event zone;
  - (b) dealing with a person on a prescribed aircraft or at a security controlled airport who carries or uses a weapon, or is suspected of carrying or using a weapon, unlawfully;
  - (c) dealing with a weapon surrendered by a person on a prescribed aircraft or at a security controlled airport.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## Division 4—Prohibited items

### 53 Simplified overview of Division

Things other than weapons may be used to interfere with aviation unlawfully.

This Division:

- (a) allows regulations to prescribe such things as prohibited items; and
- (b) establishes restrictions in relation to prohibited items that are similar to the restrictions which apply to weapons under Division 3 of this Part.

### 54 Prohibited items in airside security zones, airside event zones, landside security zones and landside event zones

*Strict liability*

- (1) A person commits an offence if:
- (a) the person is in an airside security zone, an airside event zone, a landside security zone or a landside event zone; and
  - (aa) the airside security zone, airside event zone, landside security zone or landside event zone is of a kind prescribed in the regulations for the purposes of this paragraph; and
  - (b) the person has a prohibited item in his or her possession; and
  - (c) the person is not:
    - (i) a law enforcement officer, an airport security guard or an aviation security inspector; or
    - (ii) a member of the Australian Defence Force who is on duty; or
    - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the prohibited item in his or her possession in the airside security zone, airside event zone, landside security zone or landside event zone.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

*General*

- (3) A person commits an offence if:
- (a) the person is in an airside security zone, an airside event zone, a landside security zone or a landside event zone; and
  - (aa) the airside security zone, airside event zone, landside security zone or landside event zone is of a kind prescribed in the regulations for the purposes of this paragraph; and
  - (b) the person has a prohibited item in his or her possession; and
  - (c) the person is not:
    - (i) a law enforcement officer, an airport security guard or an aviation security inspector; or
    - (ii) a member of the Australian Defence Force who is on duty; or
    - (iii) authorised by the regulations, or permitted in writing by the Secretary, to have the prohibited item in his or her possession in the airside security zone, airside event zone, landside security zone or landside event zone.

Penalty: Imprisonment for 2 years.

## **55 Carrying prohibited items through a screening point**

*Strict liability*

- (1) A person commits an offence if:
- (a) the person passes through a screening point; and
  - (b) the person has a prohibited item in his or her possession when he or she passes through the screening point; and
  - (c) the person is not:
    - (i) a law enforcement officer, an airport security guard or an aviation security inspector; or
    - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the prohibited item in his or her possession.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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*General*

- (3) A person commits an offence if:
- (a) the person passes through a screening point; and
  - (b) the person has a prohibited item in his or her possession when he or she passes through the screening point; and
  - (c) the person is not;
    - (i) a law enforcement officer, an airport security guard or an aviation security inspector; or
    - (ii) authorised by the regulations, or permitted in writing by the Secretary, to pass through the screening point with the prohibited item in his or her possession.

Penalty: Imprisonment for 2 years.

**56 Prohibited items on board an aircraft—strict liability**

- (1) A person commits an offence if:
- (a) the person is on board a prescribed aircraft; and
  - (b) the person:
    - (i) carries a prohibited item; or
    - (ii) otherwise has in his or her possession a prohibited item that is located at a place that is accessible to the person; and
  - (c) the person is not a law enforcement officer, an airport security guard or an aviation security inspector; and
  - (d) the carriage or possession of the prohibited item is not authorised by the regulations or permitted in writing by the Secretary; and
  - (e) neither of the following apply:
    - (i) the prohibited item is under the control of the pilot in command of the aircraft because the prohibited item forms part of the equipment of the aircraft in accordance with the operations manual for the aircraft;
    - (ii) the prohibited item is under the control of the pilot in command of the aircraft because an animal that could endanger the safety of the aircraft, or the safety of people on board the aircraft, is being carried on board the aircraft.

Penalty: 20 penalty units.

(2) Subsection (1) is an offence of strict liability.

### **57 Prohibited items on board an aircraft—general**

A person commits an offence if:

- (a) the person is on board a prescribed aircraft; and
- (b) the person:
  - (i) carries a prohibited item; or
  - (ii) otherwise has in his or her possession a prohibited item that is located at a place that is accessible to the person; and
- (c) the person is not a law enforcement officer, an airport security guard or an aviation security inspector; and
- (d) the carriage or possession of the prohibited item is not authorised by the regulations or permitted in writing by the Secretary; and
- (e) neither of the following apply:
  - (i) the prohibited item is under the control of the pilot in command of the aircraft because the prohibited item forms part of the equipment of the aircraft in accordance with the operations manual for the aircraft;
  - (ii) the prohibited item is under the control of the pilot in command of the aircraft because an animal that could endanger the safety of the aircraft, or the safety of people on board the aircraft, is being carried on board the aircraft.

Penalty: Imprisonment for 2 years.

### **58 Failure to comply with conditions**

(1) A person commits an offence if:

- (a) the person is on a prescribed aircraft or at a security controlled airport; and
- (b) the person is authorised or permitted to have a prohibited item in his or her possession or under his or her control; and
- (c) the person fails to comply with any conditions relating to the authorisation or permission.

Penalty: 50 penalty units.

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- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

**59 Secretary may permit by class**

To avoid doubt, for the purposes of this Division, the Secretary may give permission in relation to particular conduct by giving permission to a class of persons.

**60 Other prohibited items requirements**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to the carriage and use of prohibited items on a prescribed aircraft or at a security controlled airport.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
- (a) authorising the carriage of prohibited items on a prescribed aircraft or in an airside security zone, an airside event zone, a landside security zone or a landside event zone;
  - (b) dealing with a person on a prescribed aircraft or at a security controlled airport who carries or uses a prohibited item, or is suspected of carrying or using a prohibited item, unlawfully;
  - (c) dealing with a prohibited item surrendered by a person on a prescribed aircraft or at a security controlled airport.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

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Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## **Division 5—On-board security**

### **61 Simplified overview of Division**

This Division provides for regulations dealing with aircraft security, including control of passengers on board aircraft and management of baggage.

### **62 On-board security**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to the following:
  - (a) the management and control of passengers (including persons in custody) on board an aircraft;
  - (aa) the security features on an aircraft;
  - (b) pre-flight checks of aircraft cabins and other parts of an aircraft;
  - (c) procedures to be used and measures to be taken in relation to baggage that is loaded, or is intended to be loaded, onto a prescribed aircraft;
  - (d) unattended aircraft.
- (2) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
  - (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

Note: If a body corporate is convicted of an offence against regulations made under this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose fines of up to 5 times the penalties stated above.

## **Division 6—Persons in custody**

### **63 Simplified overview of Division**

This Division provides for regulations dealing with persons who are in custody under another Act and who are at airports or on aircraft. The regulations may include security arrangements in relation to such persons and the circumstances in which the pilot in command of an aircraft may refuse to allow such persons on board.

### **64 Meaning of *person in custody***

- (1) A person on a prescribed aircraft or at a security controlled airport is a *person in custody* if he or she is in custody under another Act.
- (2) The reference in subsection (1) to another Act includes a reference to a law of a State or Territory.

### **65 Requirements relating to persons in custody**

- (1) The regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to persons in custody on a prescribed aircraft or at a security controlled airport.
- (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following:
  - (a) the circumstances in which a person who is in custody may be on a prescribed aircraft or at a security controlled airport;
  - (b) the security arrangements, including escort arrangements, that must be implemented in relation to persons in custody on a prescribed aircraft, or at a security controlled airport, and the persons who must implement those arrangements;
  - (c) information about a person in custody that must be provided to the operator of the relevant prescribed aircraft or security controlled airport;

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- (d) information about a person in custody who is to be on a prescribed aircraft that must be provided to the pilot in command of the aircraft;
  - (e) the circumstances in which the operator of a prescribed aircraft, or the pilot in command of a prescribed aircraft, may refuse to allow a person in custody to be on the aircraft;
  - (f) the circumstances in which the operator of a security controlled airport may refuse to allow a person in custody to be at the airport;
  - (g) the number of persons in custody that may be on a prescribed aircraft, or at a security controlled airport, at any one time.
- (3) Regulations made under this section may prescribe penalties for offences against those regulations. The penalties must not exceed:
- (a) for an offence committed by an airport operator or an aircraft operator—200 penalty units; or
  - (b) for an offence committed by an aviation industry participant, other than a participant covered by paragraph (a)—100 penalty units; or
  - (c) for an offence committed by any other person—50 penalty units.

## Division 7—Special security directions

### 66 Simplified overview of Division

Special circumstances may arise that require additional security measures beyond those otherwise required under this Act.

This Division allows the Secretary to address such circumstances by issuing special security directions. The Division establishes time limits for such special security directions. As a general rule, a special security direction ceases to have effect after it has been in force for 3 months.

Failing to comply with a special security direction is an offence.

In addition, disclosing such a direction in certain circumstances is also an offence.

### 67 Secretary may give special security directions

- (1) If:
  - (a) a specific threat of unlawful interference with aviation is made or exists; or
  - (b) there is a change in the nature of an existing general threat of unlawful interference with aviation;the Secretary may, in writing, direct that additional security measures be taken or complied with.
- (2) A direction under subsection (1) is a *special security direction*.

### 68 Confidentiality requirements

- (1) A special security direction may set out restrictions in relation to the disclosure of the direction.
- (2) Such restrictions are *confidentiality requirements*.

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**69 Persons to whom special security directions may be given**

- (1) A special security direction may be given to one or more of the following:
  - (a) an APS employee in the Department;
  - (b) a member of the staff of CASA;
  - (c) a member of the staff of Airservices Australia;
  - (d) an aviation industry participant or an employee of an aviation industry participant;
  - (e) passengers;
  - (f) persons, other than persons mentioned in paragraphs (a) to (e), who are within the boundaries of a security controlled airport.
- (2) For the purposes of giving a special security direction to persons mentioned in paragraph (1)(e) or (f), the Secretary is taken to have given a written direction to the persons if the direction is clearly displayed at a place where the direction is to be complied with by those persons.

**70 When a special security direction is in force**

- (1) A special security direction comes into force at the time specified in the direction.
- (2) However:
  - (a) if:
    - (i) there is no time specified; or
    - (ii) the specified time is before the time when the direction is given;the direction comes into force 24 hours after it is given; or
  - (b) if the specified time is later than the beginning of the seventh day after the direction is given, the direction comes into force at the start of that day.
- (3) A special security direction remains in force until:
  - (a) it is revoked in writing by the Secretary; or
  - (b) it ceases to have effect under subsection (6) of this section or subsection 71(2).

- (4) If the Secretary has displayed a special security direction under subsection 69(2) and either:
  - (a) the Secretary revokes the direction; or
  - (b) the direction ceases to have effect under subsection (6) of this section or subsection 71(2);the Secretary must remove the displayed direction.
- (5) A special security direction made under paragraph 67(1)(a) must be revoked when the specific threat no longer exists.
- (6) If not revoked earlier, a special security direction ceases to be in force when it has been in force for a continuous period of 3 months.

### **71 Secretary may extend direction for further 3 months**

- (1) Despite subsection 70(6), a special security direction that has been in force for a continuous period of 3 months does not cease to be in force if, before the period ends, the Secretary:
  - (a) consults with the person to whom the direction has been given; and
  - (b) gives the person written notice that the direction is to remain in force.
- (2) If not revoked earlier, a special security direction that remains in force under subsection (1) ceases to be in force when it has been in force for a continuous period of 6 months.
- (3) Paragraph (1)(a) of this section does not apply in relation to a direction that has been given to a person covered by paragraph 69(1)(e) or (f).

### **72 Certain directions not to be re-made for 6 months**

If:

- (a) a special security direction (the *original direction*) has been given to a person; and
- (b) the original direction ceases to be in force because it has been in force for a continuous period of 6 months (see subsection 71(2));

the Secretary must not give a special security direction to the person that is the same as, or substantially similar to, the original

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direction during the period of 6 months after the original direction ceases to be in force.

**73 Failure to comply with special security directions**

- (1) A person commits an offence if:
- (a) a special security direction is given to the person; and
  - (b) the direction is in force; and
  - (c) the person fails to comply with the direction; and
  - (d) the failure is not a failure to comply with confidentiality requirements.

Penalty: For an airport operator or an aircraft operator—200 penalty units.

For an aviation industry participant, other than an airport operator or an aircraft operator—100 penalty units.

For any other person—50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

**74 Failure to comply with confidentiality requirements**

- (1) A person commits an offence if:
- (a) a special security direction is given to the person; and
  - (b) the direction is in force; and
  - (c) the person fails to comply with confidentiality requirements in the direction; and
  - (d) the failure is not due to a disclosure made to a court or a tribunal, or to an authority or person that has the power to require the production of documents or the answering of questions.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

## Division 8—Control directions

### 74A Simplified overview of Division

Control directions can be used to control the movement of aircraft, and may be given to pilots in command or aircraft operators.

Compliance control directions, given by aviation security inspectors, are used to ensure compliance with this Act. They may only be given in relation to aircraft that are not in flight.

Incident control directions, given by the Secretary, may only be given in response to aviation security incidents.

Failing to comply with a control direction is an offence.

### 74B Compliance control directions

- (1) An aviation security inspector may direct the aircraft operator for, or the pilot in command of, a prescribed aircraft that:
  - (a) is in Australian territory; and
  - (b) is not in flight;to take specified action in relation to the aircraft.
- (2) A direction under subsection (1) is a ***compliance control direction***.
- (3) However, an aviation security inspector must not give a compliance control direction unless the direction is necessary for ensuring compliance with this Act.
- (4) The action that an aircraft operator or pilot in command may be directed to take under subsection (1) includes, but is not limited to, the following:
  - (a) holding the aircraft in a particular position until specified actions are taken or until a specified event occurs;
  - (b) taking particular actions, or ensuring that particular actions are taken, on or in relation to the aircraft;

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- (c) taking particular actions, or ensuring that particular actions are taken, in relation to a person or thing on, or to be carried by, the aircraft;
  - (d) allowing an aviation security inspector to inspect the aircraft.
- (5) The regulations may prescribe requirements for, or in relation to, the giving of compliance control directions.

**74C Failure to comply with compliance control directions**

- (1) A person commits an offence if:
- (a) a compliance control direction is given to the person; and
  - (b) the person fails to comply with the direction.

Penalty: For an aircraft operator—200 penalty units.

For a pilot in command—50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**74D Incident control directions**

*Australian aircraft*

- (1) The Secretary may direct the aircraft operator for, or the pilot in command of, an Australian aircraft to take specified action in relation to the aircraft.

*Foreign aircraft*

- (2) The Secretary may direct the aircraft operator for, or the pilot in command of, an aircraft that:
- (a) is not an Australian aircraft; and
  - (b) is in Australian territory;
- to take specified action in relation to the aircraft.
- (3) A direction under subsection (1) or (2) is an ***incident control direction***.

- (4) However, the Secretary must not give an incident control direction unless the Secretary reasonably believes that the direction is an appropriate or necessary response to an aviation security incident.
- (5) The action that an aircraft operator or pilot in command may be directed to take under subsection (1) or (2) includes, but is not limited to, the following:
  - (a) taking particular actions, or ensuring that particular actions are taken, on or in relation to the aircraft;
  - (b) taking particular actions, or ensuring that particular actions are taken, in relation to a person or thing on, or to be carried by, the aircraft;
  - (c) holding the aircraft in a particular position or within a particular area until specified actions are taken or until a specified event occurs;
  - (d) ensuring that the aircraft leaves a particular place or a particular area;
  - (e) ensuring that the aircraft lands at a particular place or within a particular area;
  - (f) ensuring that the aircraft lands outside a particular area.
- (6) The regulations may prescribe requirements for, or in relation to, the giving of incident control directions.

#### **74E Failure to comply with incident control directions**

- (1) A person commits an offence if:
  - (a) an incident control direction is given to the person; and
  - (b) the person fails to comply with the direction.

Penalty: For an aircraft operator—1,000 penalty units.

For a pilot in command—100 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## **Division 9—Security status checking**

### **74F Simplified overview of Division**

This Division will facilitate the security status checking of applicants for, and holders of, certain authorisations.

The Division enables an adverse security status determination to be made in respect of a person. If a determination is made, any such authorisation that the person has applied for will be refused, and any such authorisation that the person holds will be cancelled or suspended.

The regulations will prescribe details relating to security status checking and the making of adverse security status determinations.

### **74G Secretary may determine that a person has an adverse aviation security status**

- (1) The Secretary may determine in writing that a person has an adverse aviation security status.
- (2) If the Secretary makes such a determination, the Secretary must give a copy of the determination to the following:
  - (a) the person;
  - (b) CASA.
- (3) As soon as reasonably practicable after such a determination is made, CASA must:
  - (a) if the person is an applicant for a security designated authorisation—refuse the application under this paragraph; or
  - (b) if the person is the holder of a security designated authorisation—suspend or cancel the authorisation under this paragraph.
- (4) The exercise of the power to determine that a person has an adverse aviation security status is taken to be prescribed administrative action in respect of the person for the purposes of Part IV of the *Australian Security Intelligence Organisation Act 1979*.

## 74H Regulations

- (1) Regulations may be made:
  - (a) providing for matters to which the Secretary must have regard for the purposes of deciding whether or not to determine that a person has an adverse aviation security status; and
  - (b) specifying circumstances in which the Secretary must determine that a person has an adverse aviation security status; and
  - (c) specifying circumstances in which the Secretary may determine that a person has an adverse aviation security status; and
  - (d) providing for matters relating to the carrying out of security status checking; and
  - (e) authorising the use or disclosure of information (including personal information within the meaning of the *Privacy Act 1988*) for the purposes of, or in relation to, security status checking; and
  - (f) specifying procedures and other matters relating to the determination of applications for security designated authorisations, including, but not limited to, delaying the determination of such applications pending the outcome of security status checking; and
  - (g) specifying procedures and other matters relating to the issue, suspension or cancellation by CASA of security designated authorisations or the refusal by CASA to issue security designated authorisations; and
  - (h) providing that applicants for, or holders of, security designated authorisations may request security status checking to be undertaken; and
  - (i) specifying the consequences of a failure to make a request of a kind mentioned in regulations under paragraph (h); and
  - (j) providing for the collection of fees by CASA on behalf of the Commonwealth, being fees prescribed by the regulations for the purposes of this Division; and
  - (k) conferring the function of determining under subsection 74G(1) that a person has an adverse security status upon CASA (in addition to, but not instead of, the Secretary); and

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- (l) empowering the Director of CASA to delegate all or any of CASA's functions and powers under this Division to a person holding, or performing the duties of, an office or position within CASA that is at a level equivalent to that of an SES employee; and
  - (m) in relation to any other matter related to the operation of this Division.
- (2) If regulations under paragraph (1)(k) are in force:
- (a) references in section 74G and in this section to the Secretary are to be taken to include references to CASA; and
  - (b) paragraph 74G(2)(b) does not apply to a determination by CASA under subsection 74G(1); and
  - (c) paragraph 126(1)(f) has effect as if the reference in subsection 126(1) to the Secretary included a reference to CASA.

**74I Division operates despite the *Civil Aviation Act 1988***

This Division has effect despite anything in the *Civil Aviation Act 1988* or regulations under that Act.

## **Division 10—Optical surveillance devices**

### **74J Purposes of this Division**

In addition to the purposes of this Act, the purposes of this Division include the following:

- (a) preventing and detecting contraventions of, or offences against:
  - (i) this Act; or
  - (ii) any other law of the Commonwealth;  
at airports or on board aircraft;
- (b) safeguarding Commonwealth interests.

### **74K Minister may determine code**

- (1) For the purposes of this Division, the Minister may, by legislative instrument, determine a code that regulates and authorises, despite any law of a State or a Territory, the use of optical surveillance devices by aviation industry participants:
  - (a) at a security controlled airport; or
  - (b) on board an aircraft that:
    - (i) is at a security controlled airport; or
    - (ii) is a prescribed aircraft; or
  - (c) in a vehicle that:
    - (i) is on board an aircraft covered by paragraph (b); or
    - (ii) is at a security controlled airport.
- (2) The code may also regulate and authorise the use or disclosure of a signal, image or other information obtained by the use of the optical surveillance devices.
- (3) Regulations made for the purposes of this section may prescribe penalties for offences against the code. The penalties must not exceed 50 penalty units.

## **Part 5—Powers of officials**

### **Division 1—Simplified overview of Part**

#### **75 Simplified overview of Part**

Certain persons are given particular powers and responsibilities under this Act. Some of these people are required to have specific qualifications and meet other requirements. This is to ensure that only appropriate people have these powers.

The types of persons (and the relevant Divisions) are as follows:

- (a) aviation security inspectors (Division 2);
- (b) law enforcement officers (Division 3);
- (ba) eligible customs officers (Division 3A);
- (c) airport security guards (Division 4);
- (d) screening officers (Division 5).

## **Division 2—Aviation security inspectors**

### **76 Simplified overview of Division**

Employees in the Department and law enforcement officers can be appointed as aviation security inspectors.

Aviation security inspectors are given a range of powers that they can exercise to determine whether a person is complying with this Act.

Each aviation security inspector is to be issued with an identity card. The regulations may provide for the form, issue and use of those cards.

### **77 Appointment**

- (1) The Secretary may appoint an APS employee in the Department or a law enforcement officer to be an aviation security inspector.
- (2) The appointment must be in writing.

### **78 Identity cards**

- (1) The Secretary must issue each aviation security inspector with an identity card.
- (2) The regulations may set out requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may provide that the identity card may be combined with another identity card.

### **79 Powers of aviation security inspectors—general**

- (1) An aviation security inspector may exercise the powers set out in subsection (2) for the following purposes:
  - (a) determining whether a person is complying with this Act;
  - (b) investigating a possible contravention of this Act.

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- (2) For the purposes set out in subsection (1), an aviation security inspector may:
- (a) enter and inspect a security controlled airport; or
  - (b) enter and inspect:
    - (i) any area, building (other than a residence) or vehicle under the control of an aviation industry participant; or
    - (ii) if an aviation industry participant operates from a residence or a part of a residence—the residence or the part of the residence from which the participant operates; or
  - (c) enter and inspect:
    - (i) any area, building (other than a residence) or vehicle under the control of an accredited air cargo agent; or
    - (ii) if an accredited air cargo agent operates from a residence or a part of a residence—the residence or the part of the residence from which the agent operates; or
  - (d) inspect equipment in a place or vehicle mentioned in paragraph (a), (b) or (c); or
  - (e) observe the operating procedures of an aviation industry participant; or
  - (f) discuss those procedures with an employee of the aviation industry participant or with another aviation industry participant or an accredited air cargo agent; or
  - (g) observe the operating procedures of an accredited air cargo agent; or
  - (h) discuss those procedures with an employee of the accredited air cargo agent or with another accredited air cargo agent or an aviation industry participant; or
  - (i) inspect, photograph or copy a document or record made or kept by an aviation industry participant or an accredited air cargo agent; or
  - (j) operate equipment at a place mentioned in paragraph (a), (b) or (c) for the purposes of gaining access to a document or record made or kept by an aviation industry participant; or
  - (k) operate equipment at a place mentioned in paragraph (a), (b) or (c) for the purposes of gaining access to a document or record made or kept by an accredited air cargo agent.
- (3) An aviation security inspector may exercise a power mentioned in subsection (2):

- (a) if the power is exercised within the boundaries of a security controlled airport—at any time and without notice; or
  - (b) otherwise—after giving the aviation industry participant or accredited air cargo agent concerned (or both) reasonable notice.
- (4) However, in exercising a power under this section, an aviation security inspector must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.
- (5) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct hinders or obstructs an aviation security inspector in the exercise of a power under this section.

Penalty: 50 penalty units.

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (5) is an offence of strict liability.

## **80 Powers of aviation security inspectors—aircraft**

- (1) An aviation security inspector may exercise the powers set out in subsection (2) for the following purposes:
- (a) determining whether a person is complying with this Act;
  - (b) investigating a possible contravention of this Act.

Note: Aviation security inspectors are also able to give compliance control directions: see section 74B.

- (2) For the purposes set out in subsection (1), an aviation security inspector may:
- (a) enter and inspect an aircraft operator's aircraft at a security controlled airport; or
  - (b) inspect equipment in the aircraft; or
  - (c) observe operating procedures for the aircraft (whether carried out by the crew or some other person); or
  - (d) discuss those procedures with a person carrying them out or with another aviation industry participant; or

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- (e) inspect, photograph or copy a document or record held in the aircraft that relates to a passenger or an item of cargo.
- (3) An aviation security inspector may exercise a power mentioned in subsection (2) after giving the aircraft operator reasonable notice.
- (4) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct hinders or obstructs an aviation security inspector in the exercise of a power under this section.

Penalty: 50 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (4) is an offence of strict liability.

## Division 3—Law enforcement officers

### 81 Simplified overview of Division

This Division provides police and protective service officers with special authority to:

- (a) stop and search people and vehicles at airports;
- (b) remove people from an aircraft or an airport, or from an area or zone of an airport, if they do not leave when requested to do so;
- (c) remove vehicles from an airport, or from an area or zone of an airport, if the officer is unable to have the vehicle removed by the person in control of it.

The Division establishes restrictions on this authority, such as requiring the officer to explain why a search is to be made and limiting the amount of force that may be used.

A person who does not leave when requested to do so by a law enforcement officer commits an offence, as does a person who hinders or obstructs an officer exercising powers under this Division.

### 82 Law enforcement officers

Each of the following who is on duty at a security controlled airport is a **law enforcement officer**:

- (a) a member of:
  - (i) the Australian Federal Police; or
  - (ii) the police force of a State or a Territory;
- (b) a protective service officer (within the meaning of the *Australian Federal Police Act 1979*);
- (c) a special protective service officer (within the meaning of the *Australian Federal Police Act 1979*) who has the same powers as a protective service officer.

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**83 Access to airports by law enforcement officers**

A law enforcement officer may enter, and remain in, any part of a security controlled airport at any time.

**84 Stopping and searching people**

- (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation, the law enforcement officer may stop a person who is in an airside area and conduct an ordinary search or a frisk search of the person.
- (1A) An ordinary search or a frisk search of a person under subsection (1) must, if practicable, be conducted by a person of the same sex as the person being searched.
- (2) If a law enforcement officer stops a person under subsection (1), the officer must:
  - (a) identify himself or herself as a law enforcement officer to the person; and
  - (b) tell the person why the person has been stopped; and
  - (c) if the person is to be searched—tell the person why the person is to be searched.
- (3) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct hinders or obstructs a law enforcement officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection:      Imprisonment  
for 2 years.

**85 Stopping and searching vehicles**

- (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation, the law enforcement officer may do either or both of the following in an airside area:
  - (a) require the driver of a vehicle to stop the vehicle;
  - (b) search the vehicle.

- (2) If a law enforcement officer stops a vehicle under subsection (1), the law enforcement officer must:
- (a) identify himself or herself as a law enforcement officer to the driver of the vehicle; and
  - (b) tell the driver why the vehicle has been stopped; and
  - (c) if the vehicle is to be searched—tell the driver why the vehicle is to be searched.
- (3) Before a law enforcement officer searches a vehicle under subsection (1) that was not stopped by the officer, the officer must, if there is a driver or person in control of the vehicle present:
- (a) identify himself or herself as a law enforcement officer to the driver or person; and
  - (b) tell the driver or person why the vehicle is to be searched.
- (4) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct hinders or obstructs a law enforcement officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection:      Imprisonment  
for 2 years.

### **86 Requests to leave areas or zones**

- (1) If a law enforcement officer reasonably suspects that a person on a prescribed aircraft, or in an area or zone of a security controlled airport, is committing, or has committed, an offence against this Act, the officer may request the person to leave:
- (a) the aircraft; or
  - (b) the area or zone; or
  - (c) the airport.
- (2) A person commits an offence if:
- (a) a request has been made to the person under subsection (1); and
  - (b) the person fails to comply with the request.

Penalty for an offence against this subsection:      50 penalty  
units.

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**87 Removing people from aircraft, airports, areas or zones**

- (1) If:
  - (a) a request to leave an aircraft, an airport or an area or zone has been made to a person under section 86; and
  - (b) the person fails to comply with the request;a law enforcement officer may remove the person from the aircraft, the airport or the area or zone.
- (2) A law enforcement officer must not use more force, or subject the person to greater indignity, than is necessary and reasonable to remove the person from the aircraft, the airport or the area or zone.

**88 Removing vehicles from areas or zones**

- (1) If a law enforcement officer reasonably suspects that:
  - (a) a vehicle in or near an area or zone of a security controlled airport presents a risk to aviation security; or
  - (b) a vehicle is in an area or zone of a security controlled airport without proper authorisation;the law enforcement officer may remove the vehicle.
- (2) However, the law enforcement officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.
- (3) The law enforcement officer:
  - (a) must not use more force, or subject a person to greater indignity, than is necessary and reasonable to remove the vehicle from the area or zone; and
  - (b) must make reasonable efforts to avoid damaging the vehicle.

**89 Other law enforcement powers not affected**

This Act does not, by implication, limit the exercise of the powers a law enforcement officer has apart from this Act.

## **Division 3A—Eligible customs officers**

### **89A Simplified overview of Division**

This Division provides certain customs officers with powers to:

- (a) stop and search persons and vehicles at airports; and
- (b) request persons to leave an aircraft, an airport or an area or zone of an airport; and
- (c) restrain and detain persons until the persons can be dealt with by a law enforcement officer; and
- (d) remove vehicles from an airport, or from an area or zone of an airport, if the customs officer is unable to have the vehicle removed by the person in control of it.

This Division establishes restrictions on these powers, such as requiring the customs officer to explain why a search is to be made and limiting the amount of force that may be used.

A person who does not leave an aircraft or an airport, or an area or zone of an airport, when requested to do so by the customs officer commits an offence, as does a person who hinders or obstructs the officer exercising powers under this Division.

### **89B Eligible customs officers**

- (1) An *eligible customs officer* is a person who:
  - (a) is an officer of Customs within the meaning of subsection 4(1) of the *Customs Act 1901*; and
  - (b) is on duty at a security controlled airport; and
  - (c) satisfies the training and qualification requirements prescribed by the regulations for the purposes of this paragraph.

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- (2) The regulations may prescribe the following for eligible customs officers:
  - (a) requirements in relation to the form, issue and use of identity cards;
  - (b) requirements in relation to uniforms.

**89C Stopping and searching persons**

- (1) If an eligible customs officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation, the officer may stop a person who is in an airside area and conduct an ordinary search or a frisk search of the person.
- (2) An ordinary search or a frisk search of a person under subsection (1) must, if practicable, be conducted by a person of the same sex as the person being searched.
- (3) If an eligible customs officer stops a person under subsection (1), the officer must:
  - (a) identify himself or herself as an eligible customs officer to the person; and
  - (b) tell the person why the person has been stopped; and
  - (c) if the person is to be searched—tell the person why the person is to be searched.
- (4) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct hinders or obstructs an eligible customs officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection:      Imprisonment  
for 2 years.

**89D Stopping and searching vehicles**

- (1) If an eligible customs officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation, the officer may do either or both of the following in an airside area:
  - (a) require the driver of a vehicle to stop the vehicle;
  - (b) search the vehicle.

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- (2) If an eligible customs officer stops a vehicle under subsection (1), the officer must:
- (a) identify himself or herself as an eligible customs officer to the driver of the vehicle; and
  - (b) tell the driver why the vehicle has been stopped; and
  - (c) if the vehicle is to be searched—tell the driver why the vehicle is to be searched.
- (3) Before an eligible customs officer searches a vehicle under subsection (1) that was not stopped by the officer, the officer must, if there is a driver or person in control of the vehicle present:
- (a) identify himself or herself as an eligible customs officer to the driver or person; and
  - (b) tell the driver or person why the vehicle is to be searched.
- (4) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct hinders or obstructs an eligible customs officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection:      Imprisonment  
for 2 years.

**89E Requests to leave aircraft, airport or areas or zones**

- (1) If an eligible customs officer reasonably suspects that a person on a prescribed aircraft, or in an area or zone of a security controlled airport, is committing, or has committed, an offence against this Act, the officer may request the person to leave:
- (a) the aircraft; or
  - (b) the area or zone; or
  - (c) the airport.
- (2) A person commits an offence if:
- (a) a request has been made to the person under subsection (1); and
  - (b) the person fails to comply with the request.

Penalty for an offence against this subsection:      50 penalty  
units.

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**89F Power to physically restrain persons**

- (1) If an eligible customs officer reasonably suspects that a person in an area or zone of a security controlled airport is committing, or has committed, an offence against this Act, the officer may physically restrain the person.
- (2) If a person is restrained under subsection (1), the eligible customs officer may detain the person until the person can be dealt with by a law enforcement officer.
- (3) In exercising a power under subsection (1) or (2), an eligible customs officer must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

**89G Removing vehicles from areas or zones**

- (1) If an eligible customs officer reasonably suspects that:
  - (a) a vehicle in or near an area or zone of a security controlled airport presents a risk to aviation security; or
  - (b) a vehicle is in an area or zone of a security controlled airport without proper authorisation;the officer may remove the vehicle.
- (2) However, the eligible customs officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.
- (3) The eligible customs officer:
  - (a) must not use more force, or subject a person to greater indignity, than is necessary and reasonable to remove the vehicle from the area or zone; and
  - (b) must make reasonable efforts to avoid damaging the vehicle.

**89H Other powers not affected**

This Act does not, by implication, limit the exercise of the powers an eligible customs officer has apart from this Act.

## **Division 4—Airport security guards**

### **90 Simplified overview of Division**

This Division gives airport security guards a limited power to restrain and detain persons. Airport security guards may only detain a person until the person can be dealt with by a law enforcement officer and their ability to use force is restricted.

Regulations must establish requirements to be met before a person can become an airport security guard.

### **91 Airport security guards**

- (1) An *airport security guard* is a person who:
  - (a) satisfies the training and qualification requirements and any other requirements prescribed in the regulations for airport security guards; and
  - (b) is on duty at a security controlled airport; and
  - (c) is not a law enforcement officer; and
  - (d) is not an eligible customs officer.
- (2) The regulations must prescribe the following for airport security guards:
  - (a) training and qualification requirements;
  - (b) requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may prescribe the following for airport security guards:
  - (a) requirements in relation to uniforms;
  - (b) any other requirements.

### **92 Airport security guards' power to physically restrain persons**

- (1) An airport security guard may physically restrain a person if:
  - (a) the airport security guard reasonably suspects that the person is committing, or has committed, an offence against this Act; and

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- (b) the airport security guard reasonably believes it is necessary to do so in order to:
  - (i) ensure that a person who is not cleared is not in a cleared area or a cleared zone; or
  - (ii) maintain the integrity of a landside security zone, a landside event zone, an airside area, an airside security zone or an airside event zone.
- (2) If a person is restrained under subsection (1), the airport security guard may detain the person until the person can be dealt with by a law enforcement officer.
- (3) In exercising a power under subsection (1) or (2), an airport security guard must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

## **Division 5—Screening officers**

### **93 Simplified overview of Division**

A screening officer may request a person to remove items of clothing or undergo a frisk search for screening purposes—but may not require this. However, if a person refuses to comply with such a request and the screening officer is unable to screen the person properly, the screening officer must refuse to allow the person to pass the screening point.

To protect the integrity of cleared areas and zones, screening officers are provided with similar restraint and detention powers to those of airport security guards.

### **94 Screening officers**

- (1) A person who is authorised or required to conduct screening is a *screening officer*.
- (2) The regulations must prescribe the following for screening officers:
  - (a) training and qualification requirements;
  - (b) requirements in relation to the form, issue and use of identity cards.
- (3) The regulations may prescribe the following for screening officers:
  - (a) requirements in relation to uniforms;
  - (b) any other requirements.

### **95 Screening powers**

- (1) If a screening officer considers it necessary in order to screen a person properly, the screening officer may request the person to remove any item of the person's clothing.
- (2) The screening officer must not:
  - (a) require the person to remove any clothing; or
  - (b) remove or cause the removal of any of the person's clothing.

Penalty: 50 penalty units.

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- (3) Subsection (2) does not apply if the officer has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) is an offence of strict liability.

- (5) If:

- (a) a screening officer requests a person to remove an item of clothing under subsection (1); and
- (b) the person refuses to comply with the request; and
- (c) the person refuses:
  - (i) to be screened in a private room by a screening officer of the same sex as the person; or
  - (ii) to remove the item of clothing during that screening; and
- (d) the refusals mean that it is not possible to screen the person properly;

the screening officer must refuse to allow the person to pass through the screening point.

**95A Screening powers—frisk search as an alternative screening procedure**

If a person chooses to undergo a frisk search as an alternative to another screening procedure, a screening officer may frisk search the person to the extent necessary to screen the person properly.

**95B Screening powers—frisk search as an additional screening procedure**

- (1) If:

- (a) a person undergoes a screening procedure; and
- (b) the results of that procedure indicate that additional screening procedures are necessary in order to screen the person properly;

a screening officer may request the person to undergo a frisk search.

- (2) If a screening officer conducts a frisk search following a request under subsection (1), the screening officer may conduct the search

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only to the extent necessary to complete the proper screening of the person.

- (3) A screening officer must not:
- (a) require a person to undergo a frisk search under this section; or
  - (b) conduct a frisk search of a person under this section without the person's consent; or
  - (c) contravene subsection (2).

Penalty: 50 penalty units.

- (4) Subsection (3) does not apply if the officer has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

- (6) If:

- (a) a screening officer requests a person to undergo a frisk search under subsection (1); and
- (b) the person refuses to comply with the request; and
- (c) the person refuses:
  - (i) to be screened in a private room by a screening officer of the same sex as the person; or
  - (ii) to undergo a frisk search during that screening; and
- (d) the refusals mean that it is not possible to screen the person properly;

the screening officer must refuse to allow the person to pass through the screening point.

### **95C Screening powers—frisk search general power**

- (1) If a screening officer considers it necessary in order to screen a person properly, the screening officer may request the person to undergo a frisk search.
- (2) If a screening officer conducts a frisk search following a request under subsection (1), the screening officer may conduct the search only to the extent necessary to complete the proper screening of the person.

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- (3) A screening officer must not:
- (a) require a person to undergo a frisk search under this section; or
  - (b) conduct a frisk search of a person under this section without the person's consent; or
  - (c) contravene subsection (2).

Penalty: 50 penalty units.

- (4) Subsection (3) does not apply if the officer has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) If:

- (a) a screening officer requests a person to undergo a frisk search under subsection (1); and
- (b) the person refuses to comply with the request; and
- (c) the person refuses to undergo a frisk search in a private room by a screening officer of the same sex as the person; and
- (d) the refusals mean that it is not possible to screen the person properly;

the screening officer must refuse to allow the person to pass through the screening point.

**96 Screening officers' power to physically restrain persons**

- (1) A screening officer may physically restrain a person if:
- (a) the screening officer reasonably suspects that the person is committing, or has committed, an offence against this Act; and
  - (b) the screening officer reasonably believes it is necessary to do so in order to:
    - (i) ensure that a person who is not cleared is not in a cleared area or a cleared zone; or
    - (ii) maintain the integrity of a cleared area or a cleared zone.

- (2) If a person is restrained under subsection (1), the screening officer may detain the person until the person can be dealt with by a law enforcement officer.

**97 Exercise of powers by screening officers**

In exercising a power under this Division, a screening officer must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

**Part 6** Reporting aviation security incidents

**Division 1** Simplified overview of Part

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**Part 6—Reporting aviation security incidents**

**Division 1—Simplified overview of Part**

**98 Simplified overview of Part**

It is important, for aviation security, to ensure that all aviation security incidents are appropriately reported.

This Part establishes requirements to report aviation security incidents and provides for the form and content of such reports.

## **Division 2—Meaning of aviation security incident**

### **99 Meaning of *aviation security incident***

Each of the following is an *aviation security incident*:

- (a) a threat of unlawful interference with aviation;
- (b) an unlawful interference with aviation.

## **Division 3—Certain people must report incidents**

### **100 Airport operators**

- (1) An aviation industry participant who is an airport operator commits an offence if:
  - (a) the participant becomes aware of an aviation security incident; and
  - (b) the participant fails to report the incident as required by section 104 as soon as possible.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person if:
  - (a) the participant believes, on reasonable grounds, that the person is already aware of the incident; or
  - (b) the participant has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

### **101 Aircraft operators**

- (1) An aviation industry participant who is an aircraft operator commits an offence if:
  - (a) the participant becomes aware of an aviation security incident; and
  - (b) the participant fails to report the incident as required by section 105 as soon as possible.

Penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person if:
  - (a) the participant believes, on reasonable grounds, that the person is already aware of the incident; or
  - (b) the participant has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

## **102 Persons with incident reporting responsibilities**

- (1) A person with incident reporting responsibilities commits an offence if:
- (a) the person becomes aware of an aviation security incident; and
  - (b) the person fails to report the incident as required by section 106 as soon as possible.

Penalty: For a person with incident reporting responsibilities who is an aviation industry participant—100 penalty units.

For any other person with incident reporting responsibilities—50 penalty units.

- (2) Subsection (1) does not apply in relation to a report that must be made to a particular person (the *person to be notified*) if:
- (a) the person with incident reporting responsibilities believes, on reasonable grounds, that the person to be notified is already aware of the incident; or
  - (b) the person with incident reporting responsibilities has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.
- (4) Each of the following is a *person with incident reporting responsibilities*:
- (a) an aviation security inspector;
  - (b) an airport security guard;
  - (c) a screening officer;
  - (d) an aviation industry participant other than a participant who is:
    - (i) an airport operator; or
    - (ii) an aircraft operator; or
    - (iii) an employee (within the definition of *employee* in section 9) of another aviation industry participant.

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**103 Employees**

- (1) An employee of an aviation industry participant commits an offence if:
- (a) the employee becomes aware of an aviation security incident;  
and
  - (b) the employee fails to report the incident to the aviation industry participant as soon as possible.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the employee has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

## **Division 4—Reporting requirements**

### **104 Reporting by airport operators**

- (1) Aviation industry participants who are airport operators must report aviation security incidents in accordance with this section.
- (2) An incident that relates to the airport of another operator must be reported to that other operator.
- (3) An incident that relates to the aircraft of an aircraft operator must be reported to the aircraft operator.
- (4) An incident that relates to the airport of the airport operator must be reported to:
  - (a) the Secretary; and
  - (b) the Australian Federal Police or the police force of a State or a Territory; and
  - (c) if it relates to a part of an airport of the operator for which a lease or licence has been granted to another person—that other person.
- (5) However, the operator is not required to report under paragraph (4)(c) if the incident:
  - (a) relates to the airport in general; and
  - (b) is not specifically directed at the part of the airport for which the lease or licence has been granted.

### **105 Reporting by aircraft operators**

- (1) Aviation industry participants who are aircraft operators must report aviation security incidents in accordance with this section.
  - (2) An incident that relates to an airport must be reported to the operator of the airport.
  - (3) An incident that relates to the aircraft of another aircraft operator must be reported to that other operator.
  - (4) An incident that relates to an aircraft of the aircraft operator must be reported to:
    - (a) the Secretary; and
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- (b) the Australian Federal Police or the police force of a State or a Territory.
- (5) An incident that relates to an aircraft of the aircraft operator and is:
  - (a) an unlawful interference with aviation; or
  - (b) a threat of unlawful interference with aviation that is assessed by the operator as credible; or
  - (c) a threat of unlawful interference with aviation that the operator is unable to assess;must be reported to:
  - (d) if the aircraft is in flight—Airservices Australia; or
  - (e) if the aircraft is at an airport—the operator of the airport.

**106 Reporting by persons with incident reporting responsibilities**

- (1) A person with incident reporting responsibilities must report aviation security incidents in accordance with this section.
- (2) Each incident must be reported to the Secretary.
- (3) An incident that relates to the airport of an airport operator must be reported to the airport operator.
- (4) An incident that relates to the aircraft of an aircraft operator must be reported to the aircraft operator.

## **Division 5—Form and content of reports**

### **107 How reports are to be made**

- (1) The Secretary may, by legislative instrument, specify either or both of the following:
  - (a) information that must be included in a report required by this Part;
  - (b) the way in which the report must be made.
- (3) If:
  - (a) a person reports an aviation security incident; and
  - (b) the report does not comply with any requirements that are in force under subsection (1) when the report is made;the report is taken, for the purposes of this Part, not to have been made.

## **Part 7—Information-gathering**

### **Division 1—Simplified overview of Part**

#### **108 Simplified overview of Part**

It is important, for aviation security, for the Secretary to be able to collect certain information.

Division 2 gives the Secretary the power to require security compliance information but limits the use of the information in certain proceedings.

## **Division 2—Secretary may require security compliance information**

### **109 Secretary may require security compliance information**

- (1) Information that relates to compliance, or failure to comply, with this Act is *security compliance information*.
- (2) If the Secretary believes, on reasonable grounds, that an aviation industry participant has security compliance information, the Secretary may, by written notice given to the participant, require the participant to give the information to the Secretary.
- (3) The information must be given within the period and in the form and manner specified in the notice. The period must not be less than 14 days.
- (4) Without limiting subsection (3), the Secretary may specify in the notice any one or more of the following ways for the participant to give the information:
  - (a) orally;
  - (b) in writing;
  - (c) by electronic transmission.
- (5) A person commits an offence if the person fails to comply with a notice under subsection (2).

Penalty for an offence against this subsection: 45 penalty units.

### **110 Self-incrimination**

- (1) A person is not excused from giving security compliance information under section 109 on the ground that the information might tend to incriminate the person or expose the person to a penalty.
- (2) However, if the person is a natural person:
  - (a) the information; and
  - (b) the giving of the information; and

**Part 7** Information-gathering

**Division 2** Secretary may require security compliance information

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(c) any information, document or thing obtained as a direct or indirect consequence of giving the information; are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code* that relates to the giving of the information.

## **Part 8—Enforcement**

### **Division 1—Simplified overview of Part**

#### **116 Simplified overview of Part**

To ensure that persons comply with their obligations under this Act, many provisions throughout the Act provide for criminal offences. To provide flexibility in enforcing this Act, there is also a range of enforcement options that can be used as an alternative to, or in addition to, criminal prosecution. These enforcement options are covered by this Part.

The enforcement options (and the relevant Divisions) are as follows:

- (a) infringement notices (Division 2);
- (b) enforcement orders (Division 3);
- (c) injunctions (Division 4);
- (d) demerit points system (Division 5).

## **Division 2—Infringement notices**

### **117 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against this Act, other than an offence against subsection 13(1), 46(3) or 47(3) or section 49, to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

## **Division 3—Enforcement orders**

### **118 Simplified overview of Division**

The Secretary may make enforcement orders requiring specified people to take specified actions, where the Secretary is of the opinion that the person has contravened this Act.

A person who contravenes an enforcement order may be subject to an injunction.

### **119 Secretary may make enforcement orders**

- (1) The Secretary may make a written order (an *enforcement order*):
  - (a) prohibiting or restricting specified activities by the aviation industry participant named in the enforcement order; or
  - (b) requiring the aviation industry participant named in the enforcement order to take specified action.
- (2) The Secretary may only make an enforcement order if he or she reasonably believes that:
  - (a) the aviation industry participant named in the enforcement order has contravened this Act; and
  - (b) it is necessary to make the order to safeguard against unlawful interference with aviation.
- (3) The enforcement order must:
  - (a) bear a clear and direct relationship to the contravention; and
  - (b) be proportionate to the contravention.
- (4) The enforcement order must not require the payment of money to the Secretary (or any other person) other than an amount of money that is already recoverable at law.

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**120 Commencement and duration of enforcement orders**

- (1) An enforcement order comes into force:
  - (a) if a commencement time that is after the day on which the order is given to the aviation industry participant concerned is specified in the order—at that time; or
  - (b) otherwise—at the beginning of the seventh day after it is given to the aviation industry participant concerned.
- (2) The order remains in force:
  - (a) for the period (if any) specified in the order; or
  - (b) until it is revoked by the Secretary.

**121 Reviews of enforcement orders**

- (1) The Secretary must:
  - (a) at intervals of not more than 3 months, review the enforcement order; and
  - (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) The Secretary must revoke the order unless he or she is satisfied that the order is still needed to safeguard against unlawful interference with aviation.
- (3) The Secretary must not vary the order unless he or she is satisfied that the order as varied:
  - (a) adequately safeguards against unlawful interference with aviation; and
  - (b) meets the requirements set out in subsections 119(3) and (4).
- (4) If an order is varied, the order continues in force as varied.

**122 Notice of enforcement orders**

- (1) As soon as practicable after making or reviewing an enforcement order, the Secretary must cause the aviation industry participant named in the order to be informed of the making of the order, or the decision on the review, as the case requires.
- (2) Failure to comply with this section does not affect the validity of the order.

### **123 Complying with enforcement orders**

- (1) A person must not engage in conduct that contravenes an enforcement order.
- (2) If a person contravenes subsection (1), the person does not commit an offence but may be subject to an injunction under section 124.

## **Division 4—Injunctions**

### **124 Injunctions**

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act, the Federal Court may, on the application of the Secretary, grant an injunction:
  - (a) restraining the person from engaging in the conduct; or
  - (b) requiring the person to do an act or thing.
- (2) On an application, the court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act.
- (3) The court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.
- (4) The court is not to require the Secretary or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) The court may discharge or vary an injunction it has granted.
- (6) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in such conduct; and
  - (b) whether or not the person has previously engaged in such conduct.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent

danger of substantial damage to any person if the person  
refuses or fails to do that act or thing.

## **Division 5—Demerit points system**

### **125 Demerit points**

- (1) The regulations may establish a system (the *demerit points system*) under which the approval of the transport security program of an aviation industry participant who accrues a prescribed number of demerit points may be cancelled.

Note: Section 26 deals with the cancellation of the approval of programs under the demerit points system.

- (2) The demerit points system must only allow demerit points to be accrued if an aviation industry participant:
  - (a) is convicted or found guilty of an offence against this Act; or
  - (b) under a scheme established under regulations made under section 117, pays a penalty to the Commonwealth as an alternative to prosecution.
- (3) Without limiting the scheme that may be established under subsection (1), the scheme may provide that different provisions apply to different kinds of aviation industry participants or to different classes of participants within a kind of aviation industry participant.

## Part 9—Review of decisions

### 126 Review of decisions by Administrative Appeals Tribunal

- (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Secretary:
  - (a) to refuse to approve a transport security program under subsection 19(2) or (4); or
  - (b) to direct a participant to vary a program under section 21; or
  - (c) to direct a participant to revise a program under section 23; or
  - (ca) to refuse to approve alterations of a program under section 23A; or
  - (d) to cancel a transport security program under section 25 or 26; or
  - (e) to declare that a particular airport, or a part of a particular airport, is a security controlled airport under subsection 28(2); or
  - (f) to determine under subsection 74G(1) that a person has an adverse aviation security status.
- (2) To avoid doubt, paragraph (1)(f) does not permit the Administrative Appeals Tribunal to review an adverse security assessment or a qualified security assessment other than in accordance with the provisions of the *Australian Security Intelligence Organisation Act 1979* and the *Administrative Appeals Tribunal Act 1975*.
- (3) In subsection (2):

***adverse security assessment*** and ***qualified security assessment*** have the same meanings as in the *Australian Security Intelligence Organisation Act 1979*.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the decision reviewed. In so notifying, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

## Part 10—Miscellaneous

### 127 Delegation

- (1) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Act to an SES employee, or acting SES employee, in the Department.
- (2) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Act, other than powers or functions under:
  - (a) subsection 71(1); or
  - (b) Division 3 of Part 8;to an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.
- (2A) The Secretary may, by writing, delegate all or any of his or her powers and functions under Division 9 of Part 4 to a person holding, or performing the duties of, an office or position within CASA that is at a level equivalent to that of an SES employee.
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

### 128 Compensation for damage to electronic equipment

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in section 79:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.

- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.

### **129 Compensation for acquisition of property**

- (1) If:
  - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;then the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may take proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Compensation is payable out of money appropriated by the Parliament.

### **130 Part 11 of the *Airports Act 1996***

Part 11 of the *Airports Act 1996* has no effect to the extent to which it is inconsistent with this Act (including regulations under this Act).

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**131 Scope of immunities and privileges**

- (1) Subject to this section, this Act does not affect an immunity or privilege that is conferred by or under the *Consular Privileges and Immunities Act 1972*, the *Defence (Visiting Forces) Act 1963*, the *Diplomatic Privileges and Immunities Act 1967*, the *Foreign States Immunities Act 1985* or any other Act.

*Screening and clearing*

- (2) An immunity or privilege (other than one that is accorded to diplomatic bags) conferred by or under an Act referred to in subsection (1) does not limit the application of provisions of this Act which specify requirements for screening or for receiving clearance.

**132 Severability—additional effect of Act**

- (1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies.
- (3) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions that occur at Commonwealth places.
- (4) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in the course of, or in relation to, trade or commerce:
- (a) between Australia and places outside Australia; or
  - (b) among the States; or
  - (c) within a Territory, between a State and a Territory or between 2 Territories.
- (5) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in a Territory.
- (6) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place outside Australia.

- (7) This Act also has the effect that it would have if its operation were expressly confined to matters:
- (a) in relation to which the Commonwealth is under an obligation under an international agreement; or
  - (b) that are of international concern.

### **133 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
- (a) prescribe fees in respect of matters under this Act (including the regulations); and
  - (b) prescribe penalties of not more than 50 penalty units for offences against the regulations.
- (3) Paragraph (2)(b) does not limit any provision in this Act that provides for the regulations to prescribe penalties higher than 50 penalty units.



**Table of Acts****Notes to the *Aviation Transport Security Act 2004*****Note 1**

The *Aviation Transport Security Act 2004* as shown in this compilation comprises Act No. 8, 2004 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aviation Transport Security Act 2004</i>	8, 2004	10 Mar 2004	Ss. 3–133: 10 March 2005 Remainder: Royal Assent	
<i>Australian Federal Police and Other Legislation Amendment Act 2004</i>	64, 2004	22 June 2004	Schedule 2 (item 3): (a)	—
<i>Aviation Security Amendment Act 2004</i>	149, 2004	14 Dec 2004	Schedule 1 and Schedule 2 (items 1, 2): (b) Remainder: Royal Assent	Sch. 2 (item 3)
<i>Anti-Terrorism Act (No. 2) 2005</i>	144, 2005	14 Dec 2005	Schedule 8: 11 Jan 2006	—
<i>Aviation Transport Security Amendment Act 2006</i>	97, 2006	14 Sept 2006	Schedule 1 (items 1–19, 21–35): 4 Dec 2006 (see F2006L03915) Schedule 1 (item 20): 4 Dec 2006 Schedule 2 (items 1–33): 14 Sept 2007 Schedule 2 (items 35–38): (c) Remainder: Royal Assent	Sch. 1 (items 8, 12) and Sch. 2 (item 34)
<i>Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006</i>	109, 2006	27 Sept 2006	Schedule 2 (items 14, 15): Royal Assent	—

**Table of Acts**

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aviation Transport Security Amendment (Additional Screening Measures) Act 2007</i>	30, 2007	29 Mar 2007	Schedule 1: 31 Mar 2007 Remainder: Royal Assent	—
<i>Aviation Legislation Amendment (2007 Measures No. 1) Act 2007</i>	131, 2007	20 Aug 2007	21 Aug 2007	Sch. 1 (item 22)

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**Act Notes**

(a) Subsection 2(1) (item 8) of the *Australian Federal Police and Other Legislation Amendment Act 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 2, item 3	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	10 March 2005 (paragraph (b) applies)

(b) Subsection 2(1) (items 2 and 3) of the *Aviation Security Amendment Act 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> .	10 March 2005 (paragraph (b) applies)
3. Schedule 2, items 1 and 2	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> .	10 March 2005 (paragraph (b) applies)

(c) Subsection 2(1) (items 5 and 7) of the *Aviation Transport Security Amendment Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 2, items 1 to 33	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	14 September 2007
7. Schedule 2, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of the provision(s) covered by table item 5.	14 September 2007 (paragraph (b) applies)

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
Title.....	am. No. 144, 2005
<b>Part 1</b>	
<b>Division 2</b>	
S. 3.....	am. No. 97, 2006
Note to s. 3(1).....	ad. No. 144, 2005
S. 4.....	am. No. 144, 2005; No. 97, 2006
<b>Division 3</b>	
S. 7.....	am, No. 131, 2007
<b>Division 4</b>	
S. 9.....	am. No. 149, 2004; No. 144, 2005; No. 97, 2006; No. 131, 2007
<b>Division 5</b>	
S. 10.....	am. No. 131, 2007
<b>Part 2</b>	
<b>Division 5</b>	
Ss. 19–22.....	am. No. 131, 2007
S. 23A.....	ad. No. 97, 2006 am. No. 131, 2007
S. 24.....	rep. No. 131, 2007
S. 26A.....	ad. No. 131, 2007
<b>Part 3</b>	
<b>Division 1</b>	
S. 27.....	rs. No. 97, 2006 am. No. 131, 2007
<b>Division 2</b>	
Ss. 30, 31.....	am. No. 97, 2006
Ss. 31A, 31B.....	ad. No. 97, 2006
Ss. 32, 33.....	am. No. 97, 2006
Ss. 33A, 33B.....	ad. No. 97, 2006
<b>Division 3</b>	
Ss. 35, 36.....	am. No. 97, 2006
S. 36A.....	ad. No. 97, 2006 am. No. 97, 2006
<b>Division 4</b>	
Ss. 37, 38.....	am. No. 97, 2006
S. 38A.....	ad. No. 97, 2006 am. No. 97, 2006
<b>Division 5</b>	
Div. 5 of Part 3.....	ad. No. 131, 2007
S. 38B.....	ad. No. 131, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 4</b>	
<b>Division 1</b>	
S. 39 .....	am. No. 149, 2004; No. 97, 2006
<b>Division 2</b>	
S. 40 .....	rs. No. 97, 2006
Heading to s. 42 .....	am. No. 97, 2006
S. 42 .....	am. No. 97, 2006
S. 44 .....	am. No. 97, 2006; No. 30, 2007
<b>Division 2A</b>	
Div. 2A of Part 4 .....	ad. No. 97, 2006
Ss. 44A–44C .....	ad. No. 97, 2006
<b>Division 3</b>	
S. 45 .....	am. No. 97, 2006
Heading to s. 46 .....	am. No. 97, 2006
S. 46 .....	am. No. 97, 2006
S. 52 .....	am. No. 97, 2006
<b>Division 4</b>	
Heading to s. 54 .....	rs. No. 97, 2006
S. 54 .....	am. No. 97, 2006
S. 60 .....	am. No. 97, 2006
<b>Division 5</b>	
S. 62 .....	am. No. 131, 2007
<b>Division 9</b>	
Div. 9 of Part 4 .....	ad. No. 149, 2004
Ss. 74F–74I .....	ad. No. 149, 2004
<b>Division 10</b>	
Ss. 74J, 74K .....	ad. No. 144, 2005
<b>Part 5</b>	
<b>Division 1</b>	
S. 75 .....	am. No. 131, 2007
<b>Division 2</b>	
S. 79 .....	am. No. 97, 2006
<b>Division 3</b>	
S. 82 .....	am. No. 64, 2004
S. 84 .....	am. No. 131, 2007
<b>Division 3A</b>	
Div. 3A of Part 5 .....	ad. No. 131, 2007
Ss. 89A–89H .....	ad. No. 131, 2007
<b>Division 4</b>	
S. 91 .....	am. No. 131, 2007
S. 92 .....	am. No. 97, 2006

**Table of Amendments**

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected                      How affected

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**Division 5**

S. 95B..... am. No. 30, 2007

S. 95C ..... ad. No. 30, 2007

**Part 6**

**Division 5**

S. 107..... am. No. 109, 2006

**Part 9**

S. 126..... am. No. 149, 2004; No. 97, 2006; No. 131, 2007

**Part 10**

S. 127..... am. No. 149, 2004

S. 131..... rs. No. 131, 2007

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Aviation Security Amendment Act 2004* (No. 149, 2004)

**Schedule 2**

**3 Transitional provision**

The exercise or purported exercise (whether before, at or after the commencement of this item) of the power under regulation 5 of the *Air Navigation (Aviation Security Status Checking) Regulations 2004* to determine that a person has an adverse aviation security status is taken for all purposes to be, and is taken for all purposes always to have been, prescribed administrative action in respect of the person for the purposes of Part IV of the *Australian Security Intelligence Organisation Act 1979*.

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*Aviation Transport Security Amendment Act 2006* (No. 97, 2006)

**Schedule 1**

**8 Application**

An airside security zone established by a notice given under subsection 30(1) of the *Aviation Transport Security Act 2004* before the commencement of item 7 of this Schedule is taken to have been in force from the time the notice was given.

**12 Application**

A landside security zone established by a notice given under subsection 32(1) of the *Aviation Transport Security Act 2004* before the commencement of item 11 of this Schedule is taken to have been in force from the time the notice was given.

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## Schedule 2

### 34 Regulations

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Schedule to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) In particular, regulations may be made:
  - (a) providing for regulations made for the purposes of particular provisions of the unamended Act to continue to have effect (with any prescribed alterations) for the purposes of the amended Act; and
  - (b) for other transitional measures in relation to the transition from the unamended Act to the amended Act.
- (3) In this item:
 

***amended Act*** means the *Aviation Transport Security Act 2004* as in force immediately after the commencement of item 31 of this Schedule.

***unamended Act*** means the *Aviation Transport Security Act 2004* as in force immediately before the commencement of item 31 of this Schedule.

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*Aviation Legislation Amendment (2007 Measures No. 1) Act 2007*  
(No. 131, 2007)

## Schedule 1

### 22 Application—transport security programs

- (1) The amendment made by item 6 applies to transport security programs given under section 18 of the *Aviation Transport Security Act 2004* after the commencement of that item.
- (2) The amendment made by item 7 applies to transport security programs approved before or after the commencement of that item.