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Aviation Transport Security (Consequential
Amendments and Transitional Provisions) Bill
2003

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Aviation Transport Security (Consequential Amendments
and Transitional Provisions) Bill 2003

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13 October 2003

Contents

Purpose.	1
Background.	1
Main Provisions	1
Schedule 1 – Amendment of the <i>Air Navigation Act 1920</i>	1
Schedule 2 – Amendment of other Legislation	2
Schedule 3 – Transitional Provisions	3
Concluding Comments.	4
Endnotes.	4

Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003

Date Introduced: 27 March 2003

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: Sections 1-3 of the Bill commence on Royal Assent. The operational provisions (schedules 1-3) commence on the day that the Aviation Transport Security Bill 2003 receives Royal Assent.

Purpose

To amend various aviation security-related legislation to take account of the new regime proposed by the Aviation Transport Security Bill 2003 and make various transitional arrangements.

Background

Background to the proposed new aviation security regime is contained in the [Digest](#)¹ for the Aviation Transport Security Bill 2003.

Main Provisions

Schedule 1 – Amendment of the *Air Navigation Act 1920*

Items 1-27 repeal various definitions and concepts in existing subsection 3(1) and sections 3AA and 3AD-AF that deal with aviation security matters. With the transference of such matters to the proposed *Aviation Transport Security Act* (ie the Aviation Transport Security Bill 2003), these definitions will be redundant.

Warning:

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Items 28 and 29 expand the grounds on which may Minister to suspend or cancel an international airline licence to include where an airline or any of its aircraft fail to comply with the proposed *Aviation Transport Security Act* or associated regulations.

Items 30 and 31 repeal existing Part 3 and 3A respectively. These will be now redundant due to the transference of aviation security matters to the proposed *Aviation Transport Security Act*.

Items 32 and 33 amend section 23A. Section 23A lists what decisions made under the *Air Navigation Act 1920* are reviewable by the Administrative Appeals Tribunal. Some of the decisions are made under existing Part 3 and 3A. With their repeal under **items 30 and 31**, they are to be deleted from the section 23A list.

Item 34 repeals existing paragraph 26(2)(a) which currently enables the making of regulations under the *Air Navigation Act 1920* for the purposes of aviation security. This power will be now redundant as regulations will be made under the proposed *Aviation Transport Security Act*.

Item 35 repeals existing section 28, which provides instruments relating to aviation security under the *Air Navigation Act* or regulations are effectively exempt from the provisions of *Legislative Instruments Act 1995*. That Act was never enacted (ie it does not exist) and therefore section 28 plays no role.

Schedule 2 – Amendment of other Legislation

Existing subsection 8(1) of the *Air Services Act 1995* lists the various functions of Airservices Australia. Paragraph 8(1)(f) include those conferred on it under the *Air Navigation Act 1920*. **Item 1** amends paragraph 8(1)(f) to include functions conferred by the proposed *Aviation Transport Security Act*.

Item 2 inserts a new subparagraph into existing section 13 into the *Australian Protective Services Act 1987*. Section 13 details the powers of an Australian Protective Service Officers to arrest persons without a warrant for offences under various listed legislation. **Item 2** adds the proposed *Aviation Transport Security Act* and regulations made under the Act to the list. The *Explanatory Memorandum* comments that this ‘is in recognition of the special role which APS officers will have along with police officers acting as law enforcement officers under the Aviation Transport Security Act’.² It is notable that currently section 13 of the *Australian Protective Services Act 1987* does not allow for arrest without warrant for an offence *created by regulations* made under any of the listed legislation. Also, by including the proposed *Aviation Transport Security Act* and regulations under section 13, persons suspected of (say) being about to commit an offence under the Act or regulations potentially become subject to proposed expanded APS powers regarding requiring a person’s name and address, stopping and searching them etc.

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These expanded powers are proposed in the Australian Protective Service Amendment Bill 2003: see discussion in the relevant [Digest](#).³

Existing subsection 23(1) of the *Crimes (Aviation) Act 1991* creates offences of the carrying or placing ‘dangerous goods’ on some aircraft. Subsection 23(2) provides that the offence does not apply to certain situations, such as when it is done with authority under listed various legislation. **Item 3** adds the proposed *Aviation Transport Security Act* or, regulations made under that Act, to this list.

The *Sea Installations Act 1987* regulates the construction and operation of mainly tourism-related structures in Commonwealth (as opposed to State) waters. It also applies certain listed Commonwealth legislation to, amongst other things, the activities of aircraft that are operating in connection with such structures. **Item 4** adds the *Aviation Transport Security Act* to this list.

Schedule 3 – Transitional Provisions

Item 1 provides the usual general power to make regulations for the carrying out or giving effect to the Act. It also states that regulations may to be made to allow, amongst other things:

- ‘particular provisions’ of the *Air Navigation Act 1920* to continue to have affect even once these provisions have been replaced by the proposed *Air Transport Security Act*, and
- transport security programs approved under the *Air Navigation Act 1920* to continue in force as though these programs were approved under the proposed *Aviation Transport Security Act*.

Item 2 provides that new subsection 15(2) of the proposed *Aviation Transport Security Act* - which requires in certain cases that an aviation industry participant must comply with the transport security programs of other participants - does not apply to programs continuing in force by virtue of **item 1** above. The *Explanatory Memorandum* comments:

This clause has been included because under the new Aviation Transport Security Act certain persons will have responsibilities to comply with programs of other people where they have seen the part of the program which applies to them. It would be unreasonable if this were extended to persons who are covered under existing programs where they have not consulted⁴ with on the part of the program which will apply to them.⁵

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Concluding Comments

As mentioned earlier in this Digest, **item 2** of **schedule 2** is an expansion of Australian Protective Services officer's powers of arrest without warrant. **Item 2** also acts to import other significant new law enforcement powers proposed under the Australian Protective Service Amendment Bill 2003.

Endnotes

- 1 *Bills Digest* No. 23, 2003–04 <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd023.pdf>.
- 2 At: p. 3.
- 3 *Bills Digest* No.15, 2003-04 <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd015.pdf>.
- 4 Presumably this is supposed to read 'have not been consulted'.
- 5 At: p. 4.

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