



## Aviation Transport Security Amendment Bill 2006

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## Aviation Transport Security Amendment Bill 2006

**Date introduced:** 29 March 2006

**House:** House of Representatives

**Portfolio:** Transport and Regional Services

**Commencement:** The formal provisions commence on Royal Assent. Commencement of the other provisions is set out under the Main Provisions below.

### Purpose

To amend the *Aviation Transport Security Act 2004* in order to change the regulatory arrangements for aviation security by:

- creating ‘event zones’ that may be used for handling special events at an airport
- regulating the security and clearance processes for domestic and international cargo before it is taken on board an aircraft, and
- allowing the Secretary of the Department of Transport and Regional Services to approve alterations to an existing Transport Security Program.

### Background

The current aviation security framework came into effect in March 2005 following the commencement of the *Aviation Transport Security Act 2004* (Principal Act) and the subsequent making of the Aviation Transport Security Regulations. Detailed background information on the legislative aspects of aviation security reform can be found in the [Bills Digest](#) for the Principal Act.<sup>1</sup>

### Wheeler Review of airport security

In June 2005, the Government asked Sir John Wheeler, the former Head of the UK Parliament’s Select Committee on Home Affairs and Security Minister for Northern Ireland, to conduct a wide-ranging review of Australia’s airport security. Sir John had previously carried out a review of security at the UK’s principal airports. In Australia, Sir John was asked to examine the threat from serious and organised crime at airports, the integration of ground-based security and law enforcement arrangements, and the adequacy of the existing security requirements. He was supported in his review by the former

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Director-General of the UK National Crime Intelligence Service, John Abbott, and an Australian security expert, Neil Fergus, who was the former security chief for the 2000 Sydney Olympic Games.<sup>2</sup>

The [Wheeler Review](#)<sup>3</sup> was presented to Government in September 2005. The report focused on responses to the threat of terrorism at airports and the related threat from serious crime. It drew attention to serious deficiencies in coordination among security agencies and a lack of security awareness among airport workers. It found that '[p]olicing at major airports in Australia is often inadequate and dysfunctional and security systems are typically uncoordinated. The roots of this include bureaucratic turf protection and unresolved Commonwealth/State conflicts over resources.'<sup>4</sup> It saw a need for more intensive intelligence sharing among agencies, especially on aviation and airport specific topics.<sup>5</sup> The report emphasised the potential overlap between terrorism and crime, and the consequent need for airport staff to be thoroughly vetted and subject to random searches.<sup>6</sup> It recommended a permanent police presence at eleven major airports under a single Airport Police Commander, at a staffing level based on threat and risk assessment.<sup>7</sup>

The review also found that security infrastructure at airports was lacking. It recommended an increase in CCTV coverage of all international airports,<sup>8</sup> and a tightening up of the Aviation Security Identification Card system (ASIC), including amalgamation and streamlining of its numerous databases.<sup>9</sup> The report stated that '[t]he present system has a number of weaknesses, and there is confusion as to what airport access an ASIC enables. ... Some casual or contract workers, such as security screeners and cleaners, do not initially hold ASICs and may not always be accompanied on the job by an ASIC holder as required under current legislation'.<sup>10</sup>

The review also drew attention to a major deficiency in cargo screening which could allow the undetected loading of explosives. The report stated that '[w]hile 80 per cent of Australia's air cargo is carried on passenger aircraft, it is not all screened. It is clearly inconsistent for one category of aircraft user to be treated differently from another, thereby putting the safety of the aircraft in jeopardy.'<sup>11</sup> The review recommended:

that the Australian Government require that the screening of cargo be expanded and include mandatory screening of all cargo on passenger aircraft where passengers' checked baggage is screened.<sup>12</sup>

The Wheeler Review acknowledged that the Commonwealth, state and territory governments and the private sector had made many positive security changes and dedicated significant resources to security, especially since the attacks in the United States on September 11, 2001. It described the *Aviation Transport Security Act 2004* as providing 'a solid basis for security regulation at airports and associated activities'.<sup>13</sup> However, the report commented that '[t]he Act and the Aviation Transport Security Regulations 2005 were ... developed with less than optimal consultation in order to be operative from 10 March 2005 and would benefit from a review with the aim of clarification and simplification'.<sup>14</sup> The first recommendation of the review is:

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that a thorough examination of legislation and regulations on the sharing of information, both among government agencies and between government and the private sector, be carried out by the Attorney-General's Department, in collaboration with the States and Territories and the private sector, with the aim of identifying and removing elements which prohibit or inhibit the flow of information needed to counter crime and terrorism which threaten the aviation sector.<sup>15</sup>

A key point of the review is a warning that, after enhanced measures are in place, the system could degenerate into 'ticking the boxes' instead of a proactive process of ongoing assessment of threat and risk. The review recommends that:

the *Aviation Transport Security Act 2004* and the 2005 Regulations be reviewed by the Department of Transport and Regional Services to ensure that they encourage a culture of proactive and ongoing threat and risk assessment and mitigation and not a passive culture of compliance.<sup>16</sup>

On 21 September 2005, the Prime Minister and the Minister for Transport and Regional Services announced the Government's in principal acceptance of the recommendations made by the Wheeler review and announced additional expenditure of almost \$200 million to further tighten security at Australia's major airports.<sup>17</sup>

### Joint Committee review of aviation security in Australia

On 25 May 2005, the Joint Committee of Public Accounts and Audit resolved to review the developments in aviation security since its earlier report on the subject was tabled in Parliament in June 2004. The Committee was concerned by public reports of security breaches at Australian airports, including allegations that baggage handlers had been involved in a syndicate smuggling drugs through Sydney airport.<sup>18</sup> The Committee tabled an interim report in November 2005 in which it identified two areas of aviation security that were the subject of recommendations made by the Wheeler review where, it believed, further specific requirements should be put forward.<sup>19</sup> These two areas are:

- the proposed review of the *Aviation Transport Security Act 2004* and Regulations 2005, and
- the proposed changes to background checking processes of applications for Aviation Security Identification Cards (ASICs)

The Committee unanimously supported the recommendations of the Wheeler Review. In a press release, the Committee said that its own current inquiry had confirmed the need for a review of the arrangements for issuing and managing ASICs, a need to improve information-sharing across airports, and the need for a single policing authority for all category one and major airports. The Committee highlighted other issues examined in the Wheeler report and said that it was particularly concerned about procedures in relation to baggage handling.<sup>20</sup>

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## The Bill

In introducing this bill, the Minister for Transport and Regional Services, Hon. Warren Truss, described it as ‘a first step in the review of aviation security legislation that was recommended in the 2005 Wheeler review’.<sup>21</sup> The bill addresses two operational concerns at airports.

The first is the regulatory arrangements that would apply when a ‘security controlled airport’<sup>22</sup> conducts activities that are not part of its usual transport business. The Explanatory Memorandum to the bill gives as examples of special events, receiving and farewelling dignitaries attending the 2007 APEC Meeting, and managing the Australian International Air Show at Avalon Airport in March 2007.<sup>23</sup> For the purposes of the proposed amendments, an event will be an activity that can sensibly be subjected to specialised rules and that can be managed within a precise area that has been specified on a map of the airport.<sup>24</sup>

The second operational matter addressed by this bill is better management of the process for handling domestic and international cargo before it is taken onto an aircraft. The proposed amendments introduce a framework for a layered approach to security within the existing Regulated Agent scheme. The Minister said in his Second reading speech that the bill ‘will allow for different but complementary security measures to be prescribed for different parts of the supply chain. These differing requirements will be based on criteria such as the size, scope and security risk posed by a participant’s operations.’<sup>25</sup>

## Financial implications

The Explanatory Memorandum states that there will be no significant financial impact for the Government from this bill.

## Main provisions

### Schedule 1

The changes in **Schedule 1** are designed to introduce more flexibility into the security procedures of the Act when airport operators and other parties are dealing with ‘out-of-the-ordinary’ events. Details of the operational substance of the Schedule 1 will be implemented through new regulations. According to the Explanatory Memorandum, any given type of event zone will be managed by a combination of regulations that apply to that particular type of event zone, and by specific provisions that the airport operator may have included in its Transport Security Program (TSP).<sup>26</sup>

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**Items 2 to 5** insert definitions of terms associated with the new event zones. The proposed system for prescribing different kinds of event zones has been modelled on the existing provisions in the Act that allow regulations to be made to prescribe different kinds of security zone (subsection 31(1) of the Act). **Item 10** inserts **new section 31A** which provides for the new airside event zones. An airside event zone is established by means of a notice that the Secretary gives to the operator of a security controlled airport. There can be more than one event zone for managing a single complex event, such as an air show, or when a large airport has more than one special event in progress at the same time but in different event zones. The principal difference between the proposed airside event zones and the existing airside security zones is that an airside event zone may sometimes be managed at a lower level of security than that which applies generally to the airside area (**new subsection 31A(7)**), while an airside security zone is always managed at a stricter level of security. A lower level of security may be possible if the event is being staged within an enclosed area so that the only access from the event zone to airside (and thus to runways and aircraft) is through a screening point. **New section 31B** provides that regulations may prescribe different types of airside event zones, such as event zones for managing the arrival or departure of dignitaries, an event zone for managing large air shows, and an event zone for managing low risk community events that use the infrastructure of regional airports. According to the Explanatory Memorandum,<sup>27</sup> this approach manages risks by allowing different event zones to be managed by means of regulations that have been specifically designed to deal with a particular event. **Item 14** adds **new sections 33A** and **33B** that make similar changes to deal with landside event zones.

#### Commencement of Schedule 1

**Items 1 to 19** and **items 21 to 35** of **Schedule 1** commence on a day to be fixed by proclamation, or on a day six months after the day on which the Act receives Royal Assent. Item 20 of Schedule 1 will commence at the same time as items 1 to 19. However, the provision in item 20 will never commence if item 27 of Schedule 2 (which amends the same provision of the Principal Act) has commenced on or before that time.

#### Schedule 2

**Schedule 2** amends the Principal Act to create a legal environment that will enable regulations to be made dealing specifically with the security process to be applied to domestic and international cargo prior to being taken onto an aircraft. A Regulation Impact Statement is provided in the Explanatory Memorandum and gives detailed information about the proposed legislative changes and the alternative approaches that the Government has considered.

The idea of the Principal Act is to ensure that commercial air cargo is subject to appropriate secure handling and screening processes along the supply chain from initial

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packing to eventual loading on the relevant aircraft. One of the main players in this process are Regulated Air Cargo agents (RACAs). RACAs must have in place a Transport Security Program (TSP) approved by the DOTARS Secretary. According to the Explanatory Memorandum to the bill:

It has become clear through operational experience, DOTARS experience, industry complaints, and industry consultation, that while the TSP model is appropriate for some RACAs, it is not appropriate for all air cargo industry participants. However the existing Act does not provide scope for introduction of a layered and scalable cargo regulatory regime that takes into account relative size of businesses and their proximity in the supply chain to the actual carriage of cargo by air.<sup>28</sup>

So the bill creates a new category called accredited air cargo agents (AACAs). It appears these will have less onerous security obligations than RACAs, although the Government is of the view that this category will bring more cargo operators into the Principal Act's regulatory net.<sup>29</sup>

An associated change in **Schedule 2** is to separate cargo security/screening requirements out from its existing place in the Act and Regulations under passenger screening. The idea is that it will be easier to adopt new security/screening requirements that are particularly suited to air cargo operations rather than passenger services.

It should be emphasised that much of the operational substance of the proposed changes will be done by regulations, which are still to be developed.

**Item 3** adds a definition for the new term 'accredited air cargo agent'. **Item 31** inserts **new Division 2A** of **Part 4** into the Principal Act to deal exclusively with how cargo is to be examined so as to ensure that it is safe to be carried by aircraft, and how cargo is to be cleared for air carriage. Much of the detail will be set out in regulations (**new section 44C**). The Secretary is given the power to permit that certain air cargo be certified as cleared without going through the normal examination process (**new subsection 44B(2)**). The exemption mirrors an existing paragraph 42(2)(b) that allows the Secretary to specify that certain people, goods and vehicles can pass through security points without being screened.

Regulations may also be made to specify the methods, techniques and equipment to be used for the examination of cargo (**new subsection 44C(3)**). The Explanatory Memorandum comments:

One power that is not present in the [Principal Act] is that of directing Cargo Terminal Operators (CTOs) to use explosive trace detection (ETD) on cargo ... This amendment will strengthen security outcomes through enhanced use of technology.<sup>30</sup>

The regulations may also provide for breaches of screening and clearance requirements, with maximum penalties ranging from 200 penalty units for an airport operator, down to

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50 penalty units for other persons, including accredited air cargo agents (**new subsection 44C(4)**).

### Commencement of Schedule 2

The following matter was brought to the attention of Senators by the Senate Scrutiny of Bills *Alert Digest* 4/06. Items 5 and 7 in the table to subclause 2(1) of this bill provide for the amendments proposed in **items 1 to 33 of Schedule 2**, and those in **Part 2 of Schedule 2**, to commence up to 12 months after Royal Assent. The Explanatory Memorandum states, on page 11, that the justification for this delay in commencement ‘is to allow sufficient time for consultation with [those involved in the aviation transport] industry to occur’.<sup>31</sup>

### Schedule 3

**Schedule 3** makes amendments relating to a Transport Security Program (TSP) that are expected to play an important role in managing both complex and high-risk events. Section 12 of the Principal Act sets out who must have a TSP. These include the operator of an airport declared by the DOTARS Secretary to be a ‘security controlled airport’, the operator of an air service prescribed in regulations, and any other ‘aviation industry participant’ prescribed in regulations. An aviation industry participant can include persons who lease sections of the airports, and contractors, including contractors who carry out baggage, security and any support functions. A TSP is normally valid for a period of five years. Section 22 of the Principal Act permits an aviation industry participant to apply to the Secretary to approve a revision of an existing TSP. A revised TSP will be in force for a period of five years from the time when the revision is approved.

**Item 1 of Schedule 3** inserts **new section 23A** to provide an alternative way of making simple changes to a TSP without increasing the life of the TSP by a further five years. An aviation industry participant may make a written request to the Secretary to approve the proposed alterations (**new subsection 23A(1)**). The Secretary is required to decide whether it is appropriate to deal with the request under section 23A. According to the Explanatory Memorandum, section 23A will only be appropriate if both the Secretary and the aviation industry participant are in agreement that the proposed alteration is relatively simple and that the change should not have the effect of extending the life of the TSP for a further five years. **New paragraphs 23A(2)(b) and 23A(3)(b)** require the Secretary to be satisfied that a TSP as altered will satisfy the requirements of Part 2 Division 4 of the Principal Act which deals with the content and form of TSPs. **New subsection 23A(4)** authorises the Secretary, when considering whether to approve alterations to a TSP, to take into account existing circumstances related to aviation security. According to the Explanatory Memorandum, this ensures that the Secretary is authorised to take into account any relevant security matters that extend beyond the immediate operation of the TSP that is being considered. **Item 2 of Schedule 3** provides that the Secretary’s decision

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under **new section 23A** to refuse to approve an alteration to a TSP is reviewable by the Administrative Appeals Tribunal.

Commencement of Schedule 3

Schedule 3 commences on Royal Assent.

## Endnotes

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1. Angus Martyn, Aviation Transport Security Bill 2003, *Bills Digest* No. 23, 2003-04.
2. Hon John Anderson, Minister for Transport and Regional Services, 'Securing and policing Australia's airports', *Media Release*, 7 June 2005, Available at [http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressrel&Criteria=CITATION\\_ID:HZ9G6%3B](http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressrel&Criteria=CITATION_ID:HZ9G6%3B) (Site visited 1/6/2006).
3. Sir John Wheeler, *An independent review of airport security and policing for the Government of Australia*, September 2005.
4. Wheeler, op. cit., p. xi, para. 12.
5. *ibid.*, p. xii, paras. 15, 16, 17.
6. *ibid.*, p. ix, para. 4.
7. *ibid.*, p. xii, para. 14.
8. *ibid.*, p. xiii, para. 20.
9. *ibid.*, p. xiii, paras. 18, 19.
10. *ibid.*, p. xiii, para. 18.
11. *ibid.*, p. xv, para. 25.
12. *ibid.*, p. xix, Recommendation XIV.
13. *ibid.*, p. x, paras. 7,8 and p. xiv, para. 24.
14. *ibid.*, p. xiv, para. 24.
15. *ibid.*, p. xvii, Recommendation I.
16. *ibid.*, p. xix, Recommendation IX.
17. Hon John Howard, Prime Minister, 'Securing and policing Australia's airports', [*Media Release*], 21 September 2005. Available at [http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressrel&Criteria=CITATION\\_ID:55DH6%3B](http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressrel&Criteria=CITATION_ID:55DH6%3B) (site visited 1/6/2006)
18. Joint Committee of Public Accounts and Audit, 'Review of aviation security in Australia', *Media Release*, 26 May 2005. Available at

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- [http://www.aph.gov.au/house/committee/jpaa/aviation\\_security2/media/media01.pdf](http://www.aph.gov.au/house/committee/jpaa/aviation_security2/media/media01.pdf) (site visited 31/5/2006)
19. Joint Committee of Public Accounts and Audit, *Developments in aviation security since the Committee's June 2004 Report 400 ... an interim report*, November 2005. Available at [http://www.aph.gov.au/house/committee/jpaa/aviation\\_security2/interim\\_report.htm](http://www.aph.gov.au/house/committee/jpaa/aviation_security2/interim_report.htm) (site visited 31/5/2006)
  20. Joint Committee of Public Accounts and Audit, 'Committee welcomes Wheeler review, continues own inquiry', *Media Release*, 21 September 2005. Available at [http://www.aph.gov.au/house/committee/jpaa/aviation\\_security2/media/media05.pdf](http://www.aph.gov.au/house/committee/jpaa/aviation_security2/media/media05.pdf) (site visited 31/5/2006)
  21. Hon. Warren Truss, Minister for Transport and Regional Services, 'Second reading speech, Aviation Transport Security Amendment Bill 2006', House of Representatives, *Debates*, 29 March 2006, p. 13.
  22. A 'security controlled airport' is defined in [section 28](#) of the Principal Act. This section allows the Secretary to declare, by a notice published in the Commonwealth *Gazette*, that any airport, or part of an airport, is a 'security controlled airport'. This may include any area 'controlled by the airport operator' that is contiguous with the land or water area forming the airport. Any airport area that is exclusively controlled by the Australian Defence Force cannot be declared.
  23. *Explanatory Memorandum*, Aviation Transport Security Amendment Bill 2006, p. 2.
  24. *ibid.*, p. 12.
  25. Hon. Warren Truss, *op. cit.*, p. 13.
  26. *Explanatory Memorandum*, *op. cit.*, p. 12.
  27. *ibid.*, p. 16.
  28. *ibid.*, p. 5.
  29. Hon. Warren Truss, *op. cit.*, p. 13.
  30. *Explanatory Memorandum*, *op. cit.*, p. 5.
  31. Senate Selection of Bills Committee, *Alert Digest* 4/06, p. 17–18.

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