



Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007

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Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007

Date introduced: 14 February 2007

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: Sections 1 to 3 commence on Royal Assent. The operative provisions (Schedule 1) commence on the later of Royal Assent or 31 March 2007.

Purpose

To enhance security measures designed to restrict the amount of liquids, aerosols and gels that can be taken through an international screening point at airports by persons who are flying to or from Australia. Specifically, the Bill will

- enable persons to be subject to a (voluntary) frisk search without having first undergone a screening procedure at an airport, and
- allow regulations to be made that will prohibit certain things passing through a airport screening point

Background

Australia's 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. The Principal Act has been amended a number of times since its enactment to improve its operation. Detailed background information on the legislative aspects of aviation security reform is available in the [Bills Digest](#) for the Principal Act.

Especially since the events of 11 September 2001, aviation security has assumed a high priority for the Australian government. It has therefore been subject to an ongoing assessment, so as to maintain the appropriate response capacity of the aviation regulatory framework regime in relation to new and changing security threats to the industry.¹

Following months of investigation and undercover work, on 9 August 2006 United Kingdom security services thwarted a terrorist plan to destroy several aircraft in mid-flight from the United Kingdom to the United States. The terrorist plot was to be carried out using liquid explosives taken onboard as part of the suspect's hand luggage.

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The *New York Times* reported that the plotters intended to use humble bottles of the sports drink Lucozade to house the liquid explosives. The alleged plan was to leave the bottle sealed and intact with its actual beverage, but to add a false bottom which would contain the liquid explosive coloured to make it indistinguishable from the actual beverage.²

The unsuccessful terrorist plan exposed the limited technical capability of aviation security screening points in relation to liquid explosive detection. The United States, Canada and the European Union immediately responded by introducing restrictions on the amount of liquids, aerosols and gels that could be carried on board international outbound and domestic flights.

The International Civil Aviation Organization (ICAO) acted swiftly and in mid August 2006, it released security guidelines for screening aerosol products, gels and liquids to be carried on aircrafts as hand luggage. The ICAO recommended that member states implement these measures no later than 1 March 2007.³

On 8 December 2006, the Deputy Prime Minister and Minister for Transport and Regional Services announced that Australia would be introducing enhanced security measures to ‘limit the amount of liquids, aerosols and gels that can be taken through the screening point at airports’⁴ – though only in relation to international inbound and outbound flights.

Financial implications

The Explanatory Memorandum states that the cost of implementing these measures will be \$3.1 million, but provides no details.⁵ For example, it is not clear whether this figure is a ‘one-off’ or an ongoing cost. Nor is it clear whether the cost will mainly be borne by industry or government.

Main provisions

Schedule 1 – Amendments Relating to Screening

As mentioned above, the stated intention of the Bill is to amend the Principal Act in order to permit security measures to be applied to liquids, aerosols and gels at screening points. However, these measures could equally be applied to any other ‘thing’ that is deemed to be a security risk.

Item 1 – Subsection 44(2) requirements for screening and clearing)

Division 2 of the Principal Act is concerned with restricting access to aircraft, areas and zones at an airport, to persons, goods and vehicles that have received a clearance. Section 44 (which is contained in Division 2 of the Act) deals with the requirements for screening

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and clearing. Item 1 of the Bill amends subsection 44(2) of the Act. It adds a **new paragraph 44(2)(aa)** to the list of matters that may be dealt with by regulations. This addition will enable regulations to be written to deal with ‘things that must not pass through a screening point’. The Explanatory Memorandum states that regulations will deal, in particular with aerosols, gels and liquids.

Item 2 – Subsection 44(3) (requirements for screening and clearing)

Subsection 44(3) lists matters which may be covered by regulations and or written notices made by the Secretary. Under the **Principal Act**, a written notice made by the Secretary may provide that the notice is only to be given to the persons, or classes of persons, specified in the notice.

The Explanatory Memorandum explains that the matters listed are treated in this way to provide flexibility (if the Secretary proceeds to cover some matters in a notice). Where a matter involves lists which need to be updated in a timely manner or if the matters covered in the notice are technical ones, then notices may be considered a more appropriate and relevant way of dealing with them.

The proposed amendment to subsection 44(3) allows regulations to be made that would enable the inclusion of new paragraph 44(2)(aa) (see item 1 above) as one of the matters which may be covered by written notices.

Items 3 and 4 – Paragraphs 95B(3)(a) and (b) (screening powers – frisk search as an additional screening procedure)

Taken together, **existing paragraphs 95B(1)(a) and (b)** provide that if a person undergoes a screening procedure and the results of that procedure indicate that additional screening procedures are necessary in order to screen a person properly; a screening officer may ask the person to undergo a frisk search. However, **paragraphs 95(3)(a) and (b)** state that a screening officer must not require a person to undergo a frisk search or conduct a frisk search without the person’s consent.

Items 3 and 4 insert the wording ‘under this section’ into paragraphs 95(3)(a) and (b) so as to clarify that the operation of paragraphs 95(3)(a) and (b) apply to a request for a frisk search by an officer under **paragraph 95B(1)(b)**.

Item 5 – new Section 95C (screening powers – frisk search general power)

The introduction of **section 95C** is designed to provide general powers for frisk searches.

New subsection 95C(1) states that ‘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’. It is noteworthy that unlike section 95B, this new section does not require that a

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person have first undergone a screening procedure with the results of that procedure revealing or indicating a need for additional screening. There is no requirement for the officer to have a reasonable belief of the necessity for the frisk search in order to request the search.

Like Section 95B, the **proposed section 95C(1)** states that a screening officer must not require a person to undergo a frisk search under this section; or conduct a frisk search without the person's consent, although this does not apply if the officer has a 'reasonable excuse'. This reasonable excuse provision is also contained in existing section 95B.

Concluding comments

This measures proposed in this bill will basically bring Australia's airport security screening measures into line with international guidelines recommended by the International Civil Aviation Organization, and adopted by Canada, the European Union and the United States.

Endnotes

1. De-Anne Kelly, MP, Second Reading Security Amendment (Additional Screening Measures) Bill 2007, 14 February 2007.
2. Van Natta Jr., Don, Elaine Sciolino, Stephen Grey. "[In Tapes, Receipts and a Diary, Details of the British Terror Case](#)", *New York Times*, 2006-08-27. Accessed 25 February 2007.
3. [ICAO Journal](#) Volume 61, Number 6, 2006, p. 31.
4. Mark Vaile, MP, '[New Air Security Regulations for Carry on Baggage](#)' Media Release, 8 December 2006
5. Explanatory Memorandum, p. 2.

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