



Aviation Transport Security Amendment (Air Cargo) Bill 2011

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Aviation Transport Security Amendment (Air Cargo) Bill 2011

Date introduced: 23 March 2011

House: House of Representatives

Portfolio: Infrastructure and Transport

Commencement: The Act commences on Royal Assent.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

The Aviation Transport Security Amendment (Air Cargo) Bill 2011 (the Bill) amends the *Aviation Transport Security Act 2004* (the Act) to:

- allow the air cargo industry to decide on the most appropriate regulatory scheme for their business and to streamline transition requirements where necessary, and
- make provision for security training requirements for employees of regulated air cargo agents (RACAs) to be prescribed by legislative instrument.

Background

This Bill implements certain matters identified in the Aviation White Paper.¹

The definition of *aviation industry participant* is amended to include accredited air cargo agents (AACAs). In effect this will mean that AACAs will be subject to a wider range of security requirements than at present. Currently AACAs are subject to security programs provided by the Secretary of the Department. As an *aviation industry participant* they will be required to have a transport security program. This will mean that special security directions and incident reporting will now apply to AACAs.

Currently the definition of *aviation industry participant* in section 9 of the Act includes the following categories:

- an airport operator

1. On 16 December 2009, the Government released its National Aviation Policy White Paper, entitled *Flight Path to the Future*, viewed 3 May 2011, http://www.infrastructure.gov.au/aviation/nap/files_white_paper/091215_Full.pdf

- an aircraft operator
- a regulated air cargo agent
- a person who occupies or controls an area of an airport (whether under a lease, sublease or other arrangement)
- a person (other than an aviation security inspector) appointed by the Secretary under this Act to perform a security function or
- Airservices Australia, or contractor who provides services to a person mentioned in paragraphs (a) to (ea) of the definition.²

A transport security program for a regulated air cargo agent must contain information as prescribed by the Aviation Transport Security Regulations 2005 relating to the following:

- cargo security measures
- procedures for managing security
- procedures for quality control
- details of the regulated air cargo agents' name and operations
- physical security and access control
- measures for heightened security alert
- personnel with particular security roles
- limit on persons covered
- regular customers, and
- informing consignors of certain matters.

In relation to measures for a heightened security alert, a transport security program must (according to the regulations) contain:

- procedures for responding to and investigating aviation security incidents, including threats and breaches of security
- procedures for reporting aviation security incidents or security breaches, including occurrences that threaten aviation security
- procedures for evacuation and emergency management in case of an aviation security incident, security threat or breach of security, including:
 - (i) a bomb threat; and
 - (ii) a failure of critical security equipment
- procedures for responding to any special security directions given by the Secretary
- procedures for raising the awareness and alertness of staff to security threats and their responsibility to report aviation security incidents and breaches, and
- details of any other security contingency procedures and plans.³

2. Definition of *aviation industry participant* in section 9, *Aviation Transport Security Act 2004*.

3. Regulation 2.57, *Aviation Transport Security Regulations 2005*.

The Bill will also extend transport security programs for regulated air cargo agents which expire before 31 December 2012 so as to allow *aviation industry participants* to adjust to 'new measures to help secure Australia's air cargo supply chain that were announced on 9 February 2010'.⁴

This Bill will also provide for training requirements to be prescribed for employees of regulated air cargo agents and accredited air cargo agents, primarily to 'ensure consistency in training outcomes and increase the security of air cargo across the industry'.⁵

New Air Cargo Security Initiatives

On 9 February 2010, a joint media statement on strengthening aviation security was released by the then Prime Minister, Kevin Rudd, the Minister for Infrastructure, Transport, Regional Development and Local Government, Anthony Albanese and the Minister for Home Affairs, Brendan O'Connor. The statement noted:

These measures are consistent with the security strategy set out in the Government's Aviation White Paper released in December last year, as well as the National Security Adviser's review of aviation security in light of the attempted terrorist attack on a United States-bound flight on Christmas Day.

The Christmas Day attempt showed that no nation can afford to be complacent when it comes to security.⁶

The Government announced that it will invest \$200 million on new and improved security technologies, increased policing at airports, enhanced security procedures, as well as strengthened international cooperation.⁷

Specifically in relation to securing the air cargo supply chain, the Government noted the following in its press release:

The Government will introduce a number of measures to help secure Australia's air cargo supply chain.

We will provide \$54.2 million to assist industry to install cargo x-ray screening and explosive trace detection technology at selected locations.

This funding will also establish a regulated shipper scheme, which will allow for the identification of high-risk cargo for technical examination.

4. Explanatory Memorandum, Aviation Transport Security Amendment (Air Cargo) Bill 2011, p. 4.

5. *Ibid.*, p. 4.

6. K Rudd (Prime Minister), A Albanese (Minister for Infrastructure, Transport, Regional Development and Local Government) and B O'Connor (Minister for Home Affairs), *Strengthening Aviation Security*, joint media release, 9 February 2010, viewed 2 May 2011, http://www.ministers.infrastructure.gov.au/aa/releases/2010/February/AA024_2010.htm

7. *Ibid.*

Recent events have shown that terrorists and terrorist organisations are trying new techniques and strategies in their efforts to target innocent people.

Although no single measure can prevent a terrorist attack, new technologies, better training and greater domestic and international cooperation can help us stay one step ahead of terrorist organisations.

As part of the process, we will work with the aviation industry and other stakeholders in order to improve the efficiency and quality of passenger screening and facilitation at domestic and international airports and ensure disruptions are minimised for travellers.

It is vital that we remain vigilant and take those steps that are necessary to protect Australian citizens and Australian interests.⁸

Aviation White Paper

As the joint media statement issued on 9 February 2010 notes, the measures are consistent with the Government's Aviation White Paper.⁹ The White Paper, as the Department's website notes is the first comprehensive aviation policy statement issued by an Australian Government.¹⁰

Australia needs a comprehensive aviation framework that brings together all aspects of aviation policy into a single, coherent and forward looking statement...

The Government's aim is to give industry the certainty and incentive to plan and invest for the long term, to maintain and improve aviation safety and security and to give clear commitments to travellers and airport users, and the community affected by aviation activity.¹¹

The chapter on Aviation Security in the White Paper sets out the policy in relation to aviation security generally. The chapter states that there are multiple layers of security which include the following matters:

- intelligence
- last ports of call
- aviation law enforcement and border security
- airport security measures

8. Ibid.

9. Australian Government, *Flight Path to the Future: National Aviation Policy White Paper*, December 2009, viewed 3 May 2011, http://www.infrastructure.gov.au/aviation/nap/files_white_paper/091215_Full.pdf

10. Department of Infrastructure and Transport, *A National Aviation Policy Statement- the Aviation White Paper*, website, viewed 3 May 2011, <http://www.infrastructure.gov.au/aviation/nap/>

11. A Albanese (Minister for Infrastructure, Transport, Regional Development and Local Government), *Launch of the Aviation White Paper – National Press Club*, speech, 16 December 2009, viewed 3 May 2011, http://www.minister.infrastructure.gov.au/aa/speeches/2009/AS25_2009.htm

- regulated aviation industry participants are required to have an approved transport security program in place
- staff working in secure areas of the airport and onboard aircraft must be background checked and an aviation security identification card
- upgrade closed circuit television capability at major airports
- people and goods entering the airside of airports are subjected to a comprehensive airside inspection regime
- screening what goes onboard aircraft
 - screening of regular public transport passengers and carry-on baggage, including x-ray of baggage and checked baggage, walk-through metal detection equipment, random and continuous explosive trace detection and physical searches as required for all regular public transport jet services
 - there must be appropriate air cargo security measures in place, including explosive trace detection equipment at designated airport cargo terminals, and security training regimes for Regulated Air Cargo Agents
 - passengers are restricted in the amount of liquids, aerosols and gels in carry-on baggage on international flights to and from Australia, and
- aircraft on-board physical security
 - hardened cockpit doors must be installed in aircraft with a seating capacity of 30 or more seats, where these planes are used for regular public transport or open charter operations.¹²

Committee consideration

On 25 March 2011, the Senate Selection of Bills Committee deferred consideration of this Bill until its next meeting.¹³

Financial implications

The Explanatory Memorandum states that the amendments have no significant financial impact on Government expenditure, and that therefore a financial impact statement is not required.¹⁴

12. Aviation White Paper, op. cit., p. 138.

13. Senate Selection of Bills Committee, *Report No. 4 of 2011*, 25 March 2011, viewed 14 April 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0411.pdf

14. Explanatory Memorandum, Aviation Transport Security Amendment (Air Cargo) Bill 2011, p. 1.

Key provisions

Part 1—Accredited air cargo agents

Item 1 amends **existing section 9** to insert *accredited air cargo agent (AACA)* into the definition of *aviation industry participant*. This will mean that accredited air cargo agents will need to comply with requirements that aviation industry participants are subject to under the Aviation Transport Security Regulations 2005. For example, the requirements that apply to regulated air cargo agents to have a transport security program and all of the procedures and requirements that follow from this.

Items 2–26 insert the term *accredited air cargo agent* where appropriate as a result of the re-defining of *aviation industry participant*. **Items 4–26** all relate to provisions imposing penalties for offences. **Note that there is a mistake in the Bill at item 26. It should amend paragraph 65(3)(c) and not paragraph 65(3)(b).**¹⁵

Item 27 amends **existing subsection 73(1)** to repeal and substitute the penalty provision to include an *accredited air cargo agent*.

Existing section 79 deals with the general powers of aviation security inspectors. Currently it distinguishes between the powers of aviation industry participants and those of accredited air cargo agents. However, given that the Bill includes accredited air cargo agents within the definition of *aviation industry participants*, the distinction is no longer required. **Item 28** repeals and substitutes a new version of **subsection 79(2)** to set out clearly the powers of aviation security inspectors in light of the revised definition of *aviation industry participants*.

Item 30 repeals and substitutes **subsection 79(3A)** to reflect the renumbering of subparagraphs by item 28 and the removal of the separate references to accredited air cargo agents (who now form part of the definition of *aviation industry participant*).

Item 31 amends the penalty provision in **subsection 102(1)**. Existing section 102 provides that a person with incident reporting responsibilities commits an offence if they become aware of an aviation security incident and fail to report the incident as required by section 106 as soon as possible. The penalty is amended to provide for two different penalties for the offence. If an aviation industry participant (other than an accredited air cargo agent) who has incident reporting responsibilities commits an offence, the penalty is 100 penalty units. If any other person with incident reporting responsibilities (including an accredited air cargo agent) commits an offence, the penalty is 50 penalty units.¹⁶

15. In this regard, the Explanatory Memorandum states (at p. 3) that penalties for accredited air cargo agents are to be maintained at 50 penalty units. This is the penalty mentioned in paragraph 65(3)(c) not paragraph 65(3)(b).

16. The term *penalty unit* is defined in section 4AA of the *Crimes Act 1914* as \$110. If the offender is a body corporate, the court may impose a penalty up to five times this amount: section 4B of the *Crimes Act 1914*.

Part 2—Extension of transport security programs

Item 32 amends section 20 by inserting **proposed subsection 20(4)**. Existing section 20 deals with the time when a transport security program is in force. Despite the operation of subsection 20(3) (which sets out the period when a program remains in force), **proposed subsection 20(4)** provides for an extension of the period for certain participants. If a regulated air cargo agent has a transport security program that ceases to be in force before 31 December 2012, the program will be taken to be in force until whichever is the earliest of the following:

- 31 December 2012
- the program is replaced or
- the approval of the program is cancelled under Division 5 of Part 2 of the Act.¹⁷

According to the Explanatory Memorandum, this will allow for aviation industry participants to:

... adjust to new measures to help secure Australia's air cargo supply chain that were announced on 9 February 2010. This included the establishment of a new air cargo security framework. The new framework will see the introduction of a Regulated Shipper Scheme and assistance to industry to procure appropriate technology such as X-ray and explosive trace detection equipment in order to provide an enhanced air cargo examination capability.¹⁸

Part 3 — Certification of cargo

Items 34–43 remove references to *certification* throughout the Act. The Explanatory Memorandum notes that:

... *certification* is an additional and unnecessary step in the cargo clearance process. Cargo should instead receive clearance if it has been prepared for clearance in accordance with the regulations. This item simplifies the cargo clearance process and more accurately reflects the operational procedures applied by industry whilst maintaining the same integrity of cargo security measures.¹⁹

Part 4—Training of employees of certain aviation industry participants

Item 44 amends **subsection 44C(1)** by inserting **proposed paragraph 44C(1)(g)**. Existing section 44C deals with the requirements for examining and clearing cargo. **Proposed paragraph 44C(1)(g)** provides that the regulations may prescribe the training requirements for employees of all RACAs or AACAs, or specified classes of RACAs or AACAs, or a specified RACA or AACAs. **Item 45** inserts

17. Part 2 of the Act deals with transport security programs. Division 5 deals specifically with approving, revising and cancelling programs.

18. Explanatory Memorandum, Aviation Transport Security Amendment (Air Cargo) Bill 2011, p. 4.

19. *Ibid.*, p.4.

proposed subsection 44C(1A) which provides that the Secretary may by legislative instrument provide for the matters concerned in paragraph 44C(1)(g). A legislative instrument is subject to parliamentary scrutiny and disallowance under Part 5 of the *Legislative Instruments Act 2003*.

Part 5—References to freight

Items 47 and 48 replace the term *freight* with the term *cargo* in the definitions of *Australian international carriage* and *bilateral arrangement* in section 134 of the Act. The term *cargo* is considered more relevant terminology for the industry and is already used throughout the Act.²⁰

20. Ibid., pp. 1 and 5.

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