

Aviation Legislation Amendment Act (No. 1) 1998

No. 95, 1998



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An Act to amend various Acts relating to aviation, and for related purposes

| Contents | S | | |
|-------------|------|--|----|
| | 1 | Short title | 1 |
| | 2 | Commencement | 1 |
| | 3 | Schedule(s) | 2 |
| Schedule 1– | –Ame | endment of the Air Navigation Act 1920 | 3 |
| Schedule 2– | –Ame | endment of the Airports Act 1996 | 14 |
| Schedule 3– | –Ame | endment of the Air Services Act 1995 | 18 |
| Schedule 4 | –Ame | endment of the Civil Aviation (Carriers' | |
| | Liab | pility) Act 1959 | 19 |
| Schedule 5– | –Ame | endment of the International Air Services | |
| | Con | nmission Act 1992 | 20 |
| Schedule 6– | –Ame | endment of the Airports (Transitional) Act | |
| | 1996 | 5 | 25 |



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An Act to amend various Acts relating to aviation, and for related purposes

[Assented to 23 July 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Aviation Legislation Amendment Act (No. 1) 1998.

2 Commencement

(1) Subject to subsections (2) and (3), Schedule 1 (other than items 9, 10 and 11) and Schedule 5 commence on a day or days to be fixed by Proclamation.

- (2) If an item of Schedule 1 does not commence under subsection (1) within 12 months after the day on which this Act receives the Royal Assent, the item commences on the first day after the end of that period.
- (3) If Schedule 5 does not commence under subsection (1) within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (4) Schedule 6 is taken to have commenced on 9 October 1996, immediately after the commencement of the *Airports* (*Transitional*) *Act* 1996.
- (5) The remaining provisions of this Act (including items 9, 10 and 11 of Schedule 1) commence on the day on which this Act receives the Royal Assent.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Air Navigation Act 1920

1 Subsection 3(1)

Insert:

screening authority means a person appointed under section 21A to be a screening authority.

2 Subsection 3(1)

Insert:

screening officer means a person authorised or required to screen people, vehicles or goods under this Act.

3 Subsection 3(1) (definition of screening point)

Repeal the definition, substitute:

screening point means a place (whether in an airport or not) where screening and clearance of people, vehicles or goods for the purposes of this Act are conducted.

4 Subsection 3(1) (definition of sterile area)

Repeal the definition, substitute:

sterile area means a place designated under section 21 as a sterile area.

5 Subsection 3(1)

Insert:

terminal facility means an area at an airport that is used to facilitate the movement of passengers onto or from an aircraft.

6 Subsection 3(1)

Insert:

terminal operator or *operator*, in relation to a terminal facility, means a person who is responsible (whether alone or jointly with

another person) for the day-to-day management of the whole, or a part, of the terminal facility.

7 Subsection 3AD(1)

Omit "an aircraft operator", substitute "a screening officer".

8 Paragraph 3AD(2)(b)

Omit "aircraft operator", substitute "screening officer".

9 Subsection 11A(4)

Insert:

another country includes any region:

- (a) that is part of a foreign country; or
- (b) that is under the protection of a foreign country; or
- (c) for whose international relations a foreign country is responsible.

10 Subsection 11A(4) (definition of bilateral arrangement)

Repeal the definition, substitute:

bilateral arrangement means an agreement or arrangement between:

- (a) Australia, or an entity or organisation nominated or otherwise similarly authorised by Australia to enter into the agreement or arrangement; and
- (b) another country;

under which the carriage by air of passengers or freight (or both) is permitted.

11 Subsection 11A(4) (definition of country)

Repeal the definition.

12 After subsection 20(2)

Insert:

(2A) A passenger must not intentionally or recklessly board an aircraft unless the passenger has been screened and cleared by the operator of the aircraft to board the aircraft.

Penalty: 80 penalty units.

13 Subsection 20(3)

Omit "subsection (2)", substitute "subsections (2) and (2A)".

14 Subparagraph 20(3)(c)(i)

Omit "section", substitute "Division".

15 After subsection 20(3)

Insert:

- (3A) For the purposes of subsections (2) and (2A), if a person boards an aircraft after leaving a sterile area at which the person has been screened and cleared, the person is taken to have been screened and cleared by the aircraft operator to board the aircraft if, between leaving the sterile area and boarding the aircraft, the person has not had an opportunity to make physical contact with another person who:
 - (a) is required by this Division to be screened but has not been screened; or
 - (b) having been screened, has afterwards had an opportunity to make physical contact with a person of a kind referred to in paragraph (a) or this paragraph.

16 Subsection 20(4)

Omit "Subsection (2) does", substitute "Subsections (2) and (2A) do".

17 Subsection 20(7)

Omit "this section", substitute "subsection (2) or (5)".

18 After section 20

Insert:

20A Screening by aircraft operators

- (1) An aircraft operator screening people, vehicles or goods, other than at a sterile area, must do so:
 - (a) in the manner and on the occasions that the Secretary directs in writing; and

- (b) by the use of people who meet any requirements in relation to qualification, training, experience or appropriate physical attributes that are determined by the Secretary in writing; and
- (c) by the use of equipment that conforms to, and is operated in accordance with, specifications determined by the Secretary in writing; and
- (d) by the use of areas, buildings or rooms reserved for the purposes of screening and clearance.
- (2) An aircraft operator must not, without reasonable excuse, contravene subsection (1).

Penalty: 200 penalty units.

- (3) An aircraft operator must not permit a person, a vehicle or goods to pass a screening point that is not at a sterile area in order to enter an aircraft, if the screening equipment detects a metal or unidentified object that is on the person, or in the vehicle or goods, unless:
 - (a) the operator is satisfied that the object is not a danger to aviation security; or
 - (b) the object is surrendered to the operator.
- (4) An aircraft operator must not, without reasonable excuse, contravene subsection (3).

Penalty: 200 penalty units.

- (5) Subject to subsections (6) and (7), an aircraft operator must ensure that passengers or intending passengers of the aircraft do not have an opportunity to make physical contact with another person who:
 - (a) is required by this Division to be screened but has not been screened; or
 - (b) having been screened, has afterwards had an opportunity to make physical contact with a person of a kind referred to in paragraph (a) or this paragraph.
- (6) The requirement in subsection (5) applies in relation to a passenger or intending passenger who leaves a sterile area, having been screened and cleared at the sterile area, for the period beginning immediately after the passenger or intending passenger leaves the

sterile area and ending when the passenger or intending passenger boards the aircraft.

- (7) The requirement in subsection (5) applies in relation to a passenger or intending passenger who is not covered by subsection (6) for the period beginning immediately after the passenger or intending passenger is screened and cleared and ending when the passenger or intending passenger boards the aircraft.
- (8) In spite of subsection (5), an aircraft operator is not required to ensure that passengers, or intending passengers, do not make physical contact with:
 - (a) a person, vehicle or goods authorised in writing by the Secretary to be in an area used by those passengers or intending passengers; and
 - (b) a person, vehicle or goods in a class of people, vehicles or goods that are authorised in writing by the Secretary to be in an area used by those passengers or intending passengers.
- (9) An aircraft operator must not, without reasonable excuse, contravene subsection (5).

Penalty: 200 penalty units.

(10) An offence constituted by a contravention of subsection (1), (3) or (5) is an offence of strict liability.

Note:

If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

19 Section 21

Repeal the section, substitute:

21 Designation of sterile areas

- (1) The Secretary may, in writing, designate a place used to process passengers or intending passengers of aircraft to which section 20 applies as a sterile area.
- (2) The place may be wholly or partly within or outside a terminal building.

- (3) The Secretary may designate the place:
 - (a) as a full-time sterile area; or
 - (b) as a sterile area only during the period or periods specified in the designation (for example, during specified hours of each day).
- (4) If the Secretary designates a place as a sterile area only during a particular period or periods, a reference in this Act to a sterile area is a reference to the place during the period or periods, as the case may be.
- (5) The Secretary may designate the place subject to such conditions (if any) as are specified in the designation.

21A Appointment of screening authorities

- (1) If the Secretary designates a place as a sterile area, the Secretary may, in writing, appoint a person, or 2 or more persons jointly, to be the screening authority in respect of the area, or the part or parts of the area (including its perimeter or any part of its perimeter) specified in the appointment.
- (2) The Secretary must make sufficient appointments under subsection (1) to ensure that at all times:
 - (a) there is at least one screening authority in respect of the whole of the sterile area; or
 - (b) if one or more screening authorities are appointed in relation to a part or parts of the area—there is at least one screening authority in respect of the remainder of the area.
- (3) If a sterile area is wholly outside a terminal facility, the Secretary must not appoint a person to be a screening authority in respect of the area, or any part of it, unless:
 - (a) the person is an operator of aircraft whose passengers or intending passengers are to use the area, or the part of the area; or
 - (b) the person is an operator of a terminal facility that is contiguous to, or operationally connected with, the sterile area; or
 - (c) if neither paragraph (a) nor (b) applies—the person has consented in writing to the appointment.

- (4) If a sterile area is wholly or partly inside a terminal facility, the Secretary must not appoint a person to be a screening authority in respect of the area, or any part of it, unless:
 - (a) the person is an operator of the terminal facility; or
 - (b) the person is an operator of aircraft whose passengers or intending passengers are to use the area, or the part of the area; or
 - (c) if neither paragraph (a) nor (b) applies—the person has consented in writing to the appointment.

21B Maintenance of sterile areas

- (1) The Secretary may give a screening authority written directions relating to the proper maintenance of the sterile area, or part of the sterile area, in respect of which the screening authority is appointed.
- (2) A screening authority must not, without reasonable excuse, contravene a direction given to the authority under subsection (1).

Penalty: 200 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note:

If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

21C Screening at sterile areas

- (1) A screening authority in respect of a sterile area, or part of a sterile area, must ensure that people, vehicles and goods do not enter the area or part of the area unless they:
 - (a) have been screened and cleared for the purpose of entering the area; or
 - (b) are exempted by the Secretary in writing from screening and clearance; or
 - (c) are in a class of people, vehicles or goods exempted by the Secretary in writing from screening and clearance.

- (2) A screening authority in respect of a sterile area, or part of a sterile area, must ensure that people, vehicles and goods do not remain in the area, or part of the area, unless they:
 - (a) have been screened and cleared for the purpose of entering the area; or
 - (b) are exempted by the Secretary in writing from screening and clearance; or
 - (c) are in a class of people, vehicles or goods exempted by the Secretary in writing from screening and clearance.
- (3) A screening authority must not, without reasonable excuse, contravene subsection (1) or (2).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the

Crimes Act 1914 allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(4) An offence constituted by a contravention of subsection (1) or (2) is an offence of strict liability.

20 Paragraph 22A(1)(a)

Omit "by an aircraft operator in respect of the sterile area", substitute "for the purpose of entering the area".

21 Subparagraph 22A(2)(a)(i)

Omit "by an aircraft operator in respect of", substitute "for the purpose of entering".

22 Subparagraph 22A(2)(b)(i)

Omit "by an aircraft operator in respect of", substitute "for the purpose of entering".

23 Subparagraph 22A(3)(a)(i)

Omit "by an aircraft operator in respect of", substitute "for the purpose of entering".

24 Subparagraph 22A(4)(c)(i)

Omit "section", substitute "Division".

25 Subparagraph 22A(3)(b)(i)

Omit "by an aircraft operator in respect of", substitute "for the purpose of entering".

26 Subsection 22A(5)

Omit "An aircraft operator", substitute "A screening authority".

27 Subsection 22A(6)

Omit "An aircraft operator", substitute "A screening authority".

28 After subsection 22A(6):

Insert:

- (6A) A screening authority in respect of a sterile area, or a part of a sterile area that includes a screening point, must not permit a person, a vehicle or goods to pass the screening point to enter the sterile area if the screening equipment detects a metal or unidentified object that is on the person, or in the vehicle or goods, unless:
 - (a) the screening authority is satisfied that the object is not a danger to aviation security; or
 - (b) the object is surrendered to the screening authority.

29 Subsection 22A(7):

Repeal the subsection, substitute:

- (7) If a screening authority is an aircraft operator, the operator must not permit a person, a vehicle or goods to enter an aircraft of the operator if the screening equipment detects a metal or unidentified object that is on the person, or in the vehicle or goods, unless:
 - (a) the operator is satisfied that the object is not a danger to aviation security; or
 - (b) the object is surrendered to the operator.

30 Subsection 22A(8)

Repeal the subsection and penalty, substitute:

(8) A screening authority must not, without reasonable excuse, contravene subsection (6A) or (7).

Penalty: 200 penalty units.

31 Subsection 22A(9)

Repeal the subsection, substitute:

- (9) Subject to subsection (11), a screening authority in respect of a sterile area, or part of a sterile area, must ensure that persons who are in the area or part of the area do not have an opportunity to make physical contact with another person who:
 - (a) is required by this Division to be screened but has not been screened; or
 - (b) having been screened, has afterwards had an opportunity to make physical contact with a person of a kind referred to in paragraph (a) or this paragraph.

32 Subsection 22A(10)

Repeal the subsection.

33 Subsection 22A(11)

Omit "an aircraft operator", substitute "a screening authority".

34 Subsection 22A(12)

Omit "An aircraft operator", substitute "A screening authority".

35 Subsection 22A(13)

After "(5),", insert "(6A),".

36 Subsection 22B(1)

Omit "An aircraft operator", substitute "A screening officer".

37 Paragraph 22B(2)(b)

Omit "operator", substitute "screening officer".

38 Subsection 22B(2)

Omit all the words from and including "the operator may refuse", substitute "the screening officer may refuse to permit the person to enter a sterile area and, if the screening officer is an aircraft operator, may refuse to permit the person to enter an aircraft of the operator".

39 Subsection 22B(3)

Omit "An aircraft operator", substitute "A screening officer".

40 Subsection 22B(4)

Omit "An aircraft operator", substitute "A screening officer".

41 Paragraphs 23A(1)(f) and (g)

Repeal the paragraphs.

Schedule 2—Amendment of the Airports Act 1996

1 Section 5 (definition of joint-user airport)

Repeal the definition, substitute:

joint-user airport has the meaning given by section 7B.

2 After section 7A

Insert:

7B Meaning of joint-user airport

- (1) For the purposes of this Act, each of the following airports is a *joint-user airport*:
 - (a) Darwin Airport;
 - (b) Townsville Airport;
 - (c) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of this Act, Canberra Airport is a *joint-user airport*. However, the regulations may declare that, for the purposes of this Act, Canberra Airport ceases to be a joint-user airport at a specified time.
- (3) For the purposes of paragraph (1)(c), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

3 Section 11

Omit "have one airport lease", substitute "lease one airport".

4 Subsections 16(1) and (2)

Repeal the subsections, substitute:

(1) The Commonwealth must not grant a lease of the whole or a part of an airport site to a person who already holds an airport lease or an interest in an airport lease, unless each of those leases relates to the same airport site. (2) The Minister must not approve the transfer of a lease of the whole or a part of an airport site to a person who already holds an airport lease or an interest in an airport lease, unless each of those leases relates to the same airport site.

Note: The heading to section 16 is altered by omitting "only one airport lease" and substituting "airport leases for only one airport site".

5 At the end of subsection 17(1)

Add ", unless those leases relate to the same airport site".

Note: The heading to section 17 is replaced by the heading "Simultaneous grant of leases to the same person must relate to the same airport".

6 Subsection 19(1)

Omit "if there is already", substitute "to a person if another person already holds".

Note: The heading to section 19 is altered by omitting "lease per" and substituting "person to hold airport leases for an".

7 After subsection 19(1)

Insert:

(1A) If there are 2 or more airport leases for the same airport site, the Minister must not approve the transfer of any of those leases unless the Minister is satisfied that, immediately after the transfer of that lease, all of those leases will be held by the same person.

8 Subsection 19(2)

After "grant", insert "or approval".

9 At the end of subsection 20(1)

Add ", unless those grants are to the same person".

Note: The heading to section 20 is replaced by the heading "Simultaneous grant of leases relating to the same airport site to be to the same person".

10 After section 20

Insert:

20A Airport leases for an airport site to expire on the same day

If there are, or are to be, 2 or more airport leases for the same airport site, the Commonwealth must ensure that the term of each of those leases expires on the same day.

11 After paragraph 24(3)(d)

Insert:

(da) on the grounds set out in subsection 19(1A); or

12 Subsection 32(4)

After "airport-lessee company", insert "for an airport".

13 Subsection 32(4)

After "lease", insert "or airport leases".

14 Section 73

After "lease", insert "or airport leases".

15 Section 74

Omit "lease is", substitute "lease or airport leases are".

16 Section 118

After "lease", insert "or airport leases".

17 Section 119

Omit "lease is", substitute "lease or airport leases are".

18 After subsection 132(3A)

Insert:

(3B) Regulations made for the purposes of subsection (1) may make provision for or in relation to fees in respect of applications made in relation to any matter under the regulations.

19 After subsection 133(3B)

Insert:

(3C) Regulations made for the purposes of subsection (1) may make provision for or in relation to fees in respect of applications made in relation to any matter under the regulations.

20 At the end of subsection 192(2)

Add:

Note: For the meaning of *airport service*, see subsections (4A), (4B) and (5).

21 After subsection 192(4)

Insert:

(4A) The ACCC may make a written determination providing that a specified service, or a specified use of a specified facility, at an airport is taken to be an airport service for the purposes of this section.

Note: A service, use or facility may be specified by name, by inclusion in a specified class or in any other way.

(4B) The ACCC may make a written determination providing that a specified service, or a specified use of a specified facility, at an airport is taken not to be an airport service for the purposes of this section.

Note: A service, use or facility may be specified by name, by inclusion in a specified class or in any other way.

- (4C) A determination under subsection (4A) or (4B) has effect accordingly.
- (4D) A determination under subsection (4A) or (4B) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

22 Subsection 192(5)

After "this section", insert ", unless the contrary intention appears".

23 Subparagraph 251(4)(b)(iii)

Omit "the airport lease", substitute "an airport lease".

Schedule 3—Amendment of the Air Services Act 1995

1 After paragraph 8(1)(a)

Insert:

(aa) promoting and fostering civil aviation in Australia;

Schedule 4—Amendment of the Civil Aviation (Carriers' Liability) Act 1959

1 Subsections 12(5) and 35(5)

After "husband,", insert "de facto spouse,".

2 Subsections 11A(2) and 21A(2) (paragraph (b) of the definition of *Australian International Carrier*)

Omit "13A", substitute "15D".

Schedule 5—Amendment of the International Air Services Commission Act 1992

1 Subsection 4(1) (definition of bilateral arrangement)

Repeal the definition, substitute:

bilateral arrangement means an agreement or arrangement between:

- (a) Australia, or an entity or organisation nominated or otherwise similarly authorised by Australia to enter into the agreement or arrangement; and
- (b) another country;

under which the carriage by air of passengers or freight (or both) is permitted.

2 Subsection 4(1)

Insert:

blocked space arrangements means arrangements under which capacity is acquired by a carrier for the carriage of passengers or freight on an aircraft of another carrier.

3 Subsection 4(1) (definition of capacity)

Repeal the definition, substitute:

capacity means an amount of space (however worked out or described) for the carriage of passengers or freight (or both) by persons designated, nominated or otherwise similarly authorised by Australia, being carriage permitted under a bilateral arrangement, or a combination of bilateral arrangements.

4 Subsection 4(1)

Insert:

code sharing means an arrangement under which a carrier sells capacity under its own designator code on a flight operated by another airline.

5 Subsection 4(1)

Insert:

joint international air services includes, but is not limited to, the provision of international air services by an Australian carrier involving code sharing, blocked space arrangements, joint pricing, revenue and cost sharing, revenue and cost pooling, or the sale of capacity to another airline.

6 Subsection 4(1) (definition of new capacity)

Repeal the definition.

7 Subsection 4(1) (definition of shelf capacity)

Repeal the definition.

8 Subsection 4(5)

Repeal the subsection.

9 Subsections 5(3) and (4)

Repeal the subsections.

Note: The heading to section 5 is replaced by the heading "Available capacity".

10 Subsection 6(2A)

Repeal the subsection, substitute:

(2A) To remove any doubt, it is declared that the Commission may, at the same time, consider and decide more than one matter in relation to particular capacity.

11 After paragraph 7(2)(a)

Insert:

(aa) must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates; and

12 Subsection 12(1)

Omit "new", substitute "available".

Note: The heading to section 12 is altered by omitting "new" and substituting "available".

13 Subparagraph 12(2)(c)(i)

Omit "new", substitute "available".

14 Section 13

Repeal the section.

15 Paragraph 14(1)(c)

Repeal the paragraph, substitute:

(c) must be so delivered within the period referred to in paragraph 12(2)(b); and

16 Paragraph 15(2)(e)

Omit "international air services jointly", substitute "joint international air services".

17 Paragraph 27(b)

Omit ", in any manner that it thinks appropriate,".

18 At the end of Part 3

Add:

Division 4—Surrender of allocated capacity

27AA Surrender of allocated capacity

- (1) An Australian carrier to whom a determination allocates capacity may at any time request the Commission to revoke the determination.
- (2) The request must:
 - (a) be in writing and contain the prescribed particulars; and
 - (b) be delivered at the address specified in the regulations as the Commission's address for receiving applications.
- (3) On receipt of a request in relation to a determination, the Commission must make a decision revoking the determination.

- (4) As soon as practicable after making a decision revoking a determination under this section, the Commission must:
 - (a) make copies of the decision available to the public; and
 - (b) publish a notice stating that the decision has been made and where copies of it may be obtained.

19 Subsection 49(2)

Repeal the subsection.

20 Section 52

Omit "or 13(2)".

21 Section 52

Omit "or section 27", substitute ", section 27 or 27AA".

22 After section 54A

Insert:

54B Pre-existing capacity

(1) In this section:

pre-existing capacity means capacity that came into existence before the commencement of this section, other than pre-existing capacity to which section 54 or 54A applies.

- (2) The Minister may, by instrument in writing, declare that this Act applies to the pre-existing capacity specified in the instrument as if, immediately after the commencement of this section, the Commission had made a determination in the terms set out in the instrument.
- (3) This Act (other than section 7 and Division 1 of Part 3) has effect in relation to that capacity as if the Commission had made a determination accordingly.
- (4) The terms set out in the instrument as the terms and conditions of the determination must state that the determination is to be in force for the period of 5 years starting on the date of commencement of this section.

(5) Instruments under subsection (2) are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

Schedule 6—Amendment of the Airports (Transitional) Act 1996

1 Paragraphs 20(a), (b), (c), (d) and (e)

Repeal the paragraphs, substitute:

- (a) a core regulated airport (within the meaning of the *Airports Act 1996*);
- (b) Mt. Isa Airport;
- (c) Tennant Creek Airport;
- (d) Archerfield Airport;
- (e) Essendon Airport;
- (ea) Jandakot Airport;
- (eb) Moorabbin Airport;
- (ec) Parafield Airport;
- (ed) Bankstown Airport;
- (ee) Camden Airport;
- (ef) Hoxton Park Airport;

[Minister's second reading speech made in— House of Representatives on 18 June 1997 Senate on 25 June 1997]

(80/97)