



# **Aviation Legislation Amendment Act 2002**

**No. 143, 2002**

**An Act to amend or repeal certain legislation  
relating to aviation, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## **An Act to amend or repeal certain legislation relating to aviation, and for related purposes**

*[Assented to 19 December 2002]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Aviation Legislation Amendment Act 2002*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	19 December 2002
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	19 June 2003
3. Schedule 2	The day on which this Act receives the Royal Assent	19 December 2002
4. Schedule 3	The day on which this Act receives the Royal Assent	19 December 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 International Air Services Commission Act 1992**

### **1 Section 3**

Repeal the section, substitute:

### **3 Object of Act**

The object of this Act is to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services, resulting in:

- (a) increased responsiveness by airlines to the needs of consumers, including an increased range of choices and benefits; and
- (b) growth in Australian tourism and trade; and
- (c) the maintenance of Australian carriers capable of competing effectively with airlines of foreign countries.

### **2 Section 4**

Insert:

*APS employee* has the same meaning as in the *Public Service Act 1999*.

### **3 Section 4**

Insert:

*Secretary* means the Secretary of the Department.

### **4 Paragraph 12(1)(b)**

Before “submissions”, insert “if the regulations so require—”.

### **5 Subsections 17(2) and (3)**

Repeal the subsections, substitute:

- (2) Sections 12 and 14 apply in relation to the renewal of a determination in the same way they apply in relation to the making of a determination allocating available capacity.

## **6 After Part 3**

Insert:

## **Part 3A—Delegation of Commission’s powers and functions**

### **27AB Delegation of powers and functions**

- (1) Subject to this section, the Commission may delegate, to an APS employee in the Department, the Commission’s powers or functions under any one or more of the following provisions:
- (a) section 7, 8, 16, 20, 27 or 27AA;
  - (b) subsection 10(2), 12(1), 14(3), 17(1) or (2), 18(1), (2) or (3) or 22(1).
- (2) The delegation must be in writing and may only be made with the written agreement of the Secretary.
- (3) The regulations may provide that the Commission may only delegate a power or a function in specified circumstances.
- (4) If a delegate conducts the review of a determination under subsection 10(2), sections 24, 25 and 26 apply to the delegate in relation to the review in the same way as those sections would have applied to the Commission if the Commission had conducted the review.
- (5) If a delegate conducting the review of a determination under subsection 10(2) requests the Commission to conduct the review, the Commission, instead of the delegate, must conduct the review.



**7 Application—paragraph 12(1)(b) of the *International Air Services Commission Act 1992***

The amendment made by item 4 of this Schedule applies to the making of determinations allocating capacity after the commencement of that item, except where applications for a determination allocating the capacity were invited before the commencement of that item.

**8 Application—section 17 of the *International Air Services Commission Act 1992***

The amendment made by item 5 of this Schedule applies to the renewal of determinations after the commencement of that item, except where the Commission has invited submissions about the renewal before the commencement of that item.

## Schedule 2—Amendment of the Air Navigation Act 1920

### 1 Subsection 3(1) (definition of *airport operator or operator*)

Repeal the definition.

### 3 Subsection 3(1)

Insert:

*aviation industry participant* means:

- (a) an airport operator prescribed by the regulations for the purposes of this paragraph; or
- (b) an aircraft operator prescribed by the regulations for the purposes of this paragraph; or
- (c) a person, prescribed by the regulations for the purposes of this paragraph, who carries on the business of handling international air cargo; or
- (d) a person, prescribed by the regulations for the purposes of this paragraph, who provides aviation security services.

### 4 Subsection 3(1)

Insert:

*aviation security information* means information that relates to compliance, or a failure to comply, with regulations under this Act that relate to aviation security.

### 8 Subsection 3(1) (definition of *Corporation*)

Repeal the definition.

### 11 Subsection 3(1) (definition of *Federal airport*)

Repeal the definition.

### 27 Section 19

Repeal the section, substitute:

## **19 Carriage of munitions**

- (1) If:
- (a) a person does an act; and
  - (b) the act is not done in circumstances prescribed by regulations that state they are made for the purposes of this paragraph; and
  - (c) the act results in munitions of war or implements of war being carried by or in:
    - (i) an aircraft in Australian territory; or
    - (ii) an Australian aircraft outside Australian territory;
- the person is guilty of an offence punishable, on conviction, by imprisonment for a term not exceeding 7 years.
- (2) Subsection (1) does not apply if the munitions of war or implements of war are carried in accordance with written permission (including any conditions) given by the Minister.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **27A Section 22E (paragraph (d) of the definition of *employer*)**

Omit “, other than the Corporation,”.

### **27B Subsection 22ZV(1) (paragraph (b) of the definition of *designated person*)**

Omit “or of the Corporation”.

### **27C Subsection 22ZV(1) (paragraph (c) of the definition of *designated person*)**

Omit “, other than the Corporation”.

### **27D Subsection 22ZV(1) (paragraph (f) of the definition of *designated person*)**

Omit “, other than the Corporation,”.

## **28 After Part 3**

Insert:

## **Part 3A—Information-gathering for aviation security purposes**

### **Division 1—Secretary may require aviation security information**

#### **22ZVA Secretary may require aviation security information**

- (1) This section applies if the Secretary believes on reasonable grounds that an aviation industry participant has aviation security information of a kind prescribed in the regulations for the purposes of this section.
- (2) The Secretary may, by written notice given to the aviation industry participant, require the participant to give any such information to the Secretary, within the period and in the way specified in the notice. The period must not be less than 14 days.
- (3) Without limiting subsection (2), the Secretary may specify in the notice any one or more of the following ways for the participant to give the information:
  - (a) orally;
  - (b) in writing;
  - (c) by electronic transmission.
- (4) If:
  - (a) a person engages in conduct; and
  - (b) the result of the conduct is that the person contravenes a requirement under subsection (2);the person is guilty of an offence punishable, on conviction, by a fine not exceeding 45 penalty units.
- (5) In this section:

***engage in conduct*** has the same meaning as in the *Criminal Code*.

### **22ZVB Self-incrimination**

An individual is not excused from giving the aviation security information on the ground that the information might tend to incriminate the individual or expose the individual to a penalty.

Note: Division 2 limits the use of information given to the Secretary under this Division and provides protection for the person who gives the information.

## **Division 2—Protection and use of aviation security information**

### **22ZVC Interpretation**

- (1) For the purposes of this Division, if a person gives a Departmental official aviation security information, whether in compliance with a notice under section 22ZVA or otherwise, then, subject to subsection (2), the information is *protected information* and the person is the *protected person* in relation to the information.
- (2) Subsection (1) does not apply if:
  - (a) the information is given to the Departmental official in the course of an investigation by the official that relates to compliance, or a failure to comply, with regulations under this Act that relate to aviation security; and
  - (b) the information is not given in compliance with a notice under section 22ZVA.
- (3) In this Division:

*APS employee* has the same meaning as in the *Public Service Act 1999*.

*Departmental official* means a person acting in the course of his or her duties as:

- (a) the Secretary of the Department; or
- (b) an APS employee in the Department; or
- (c) a delegate under this Act or the regulations.

**22ZVD Use or disclosure by Departmental officials other than for aviation security purposes**

- (1) If:
- (a) a Departmental official uses or discloses protected information; and
  - (b) that use or disclosure is not for the purposes of aviation security; and
  - (c) the Departmental official is reckless as to whether the information is protected information;
- the Departmental official is guilty of an offence punishable, on conviction, by a fine not exceeding 45 penalty units.

*Exception to subsection (1)*

- (2) Subsection (1) does not apply if the protected information is used or disclosed for the purposes of a prosecution, or defending a prosecution, of:
- (a) an offence against that subsection; or
  - (b) an offence against section 137.1 or 137.2 of the *Criminal Code*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**22ZVE Disclosure other than in excepted circumstances**

- (1) If:
- (a) a person (whether or not a Departmental official) discloses protected information to another person; and
  - (b) the person does not disclose the information in excepted circumstances (see subsection (2)); and
  - (c) the person is reckless as to whether the information is protected information;
- the person is guilty of an offence punishable, on conviction, by a fine not exceeding 45 penalty units.

*Meaning of excepted circumstances*

- (2) For the purposes of paragraph (1)(b), the protected information is disclosed in *excepted circumstances* if it is disclosed to:

- (a) a Departmental official; or
- (b) a Commonwealth Minister; or
- (c) a member of the staff of a Commonwealth Minister who is nominated by the Minister to receive protected information on the Minister's behalf; or
- (d) a person acting in the course of his or her duties as a member of the Parliament of the Commonwealth; or
- (e) either:
  - (i) an aviation industry participant; or
  - (ii) a person (other than a Departmental official) acting in the course of his or her duties in an Agency (within the meaning of the *Public Service Act 1999*);in a form that does not identify, and is not reasonably capable of being used to identify, the protected person.

*Exceptions to subsection (1)*

- (3) Subsection (1) does not apply if:
  - (a) the person discloses the protected information with the consent of the protected person; or
  - (b) the protected information is disclosed for the purposes of a prosecution, or defending a prosecution, of:
    - (i) an offence against that subsection; or
    - (ii) an offence against section 137.1 or 137.2 of the *Criminal Code*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

## **22ZVF Disclosure to court or tribunal**

A person is not to be required to disclose protected information to a court or tribunal except in a prosecution of an offence mentioned in subsection 22ZVD(2) or paragraph 22ZVE(3)(b).

## **22ZVG Protection for person who gives information**

Neither:

- (a) giving protected information; nor

(b) any information, document or thing obtained as a direct or indirect consequence of giving protected information; is admissible in evidence against the protected person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code*.



## **Schedule 3—Repeal of the Federal Airports Corporation Act 1986**

### **1 The whole of the Act**

Repeal the Act.

### **2 Definitions**

In this Schedule:

*Corporation* means the Federal Airports Corporation.

*repeal day* means the day on which this item commences.

*residual assets* means:

- (a) any legal or equitable estates or interests in real or personal property, including contingent or prospective ones; and
- (b) any rights, privileges and immunities including contingent or prospective ones;

of the Corporation immediately before the repeal day.

*residual instruments* means instruments that are in force immediately before the repeal day:

- (a) to which the Corporation is a party; or
- (b) that were given to, by or in favour of the Corporation; or
- (c) in which a reference is made to the Corporation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the Corporation.

*residual liabilities* means liabilities and duties of the Corporation, including contingent and prospective ones, immediately before the repeal day.

### **3 Residual assets and liabilities to become Commonwealth assets and liabilities**

(1) By force of this item:

- (a) all the residual assets of the Corporation cease to be assets of the Corporation and become assets of the Commonwealth on the repeal day; and

- (b) the Commonwealth becomes the Corporation's successor in law in relation to those assets immediately after they become assets of the Commonwealth.
- (2) By force of this item:
  - (a) all residual liabilities of the Corporation cease to be liabilities of the Corporation and become liabilities of the Commonwealth on the repeal day; and
  - (b) the Commonwealth becomes the Corporation's successor in law in relation to those liabilities immediately after they become liabilities of the Commonwealth.
- (3) A residual instrument continues to have effect on and after the repeal day as if a reference in the instrument to the Corporation were a reference to the Commonwealth.

#### **4 Pending proceedings**

If, immediately before the repeal day, proceedings to which the Corporation was a party are pending in a court, then, on and after the repeal day, the Commonwealth is substituted for the Corporation in the proceedings and has the same rights and obligations as the Corporation would have had in the proceedings.

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*[Minister's second reading speech made in—  
House of Representatives on 14 March 2002  
Senate on 10 December 2002]*

(59/02)

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