



Aviation Security Amendment Act 2004

No. 149, 2004

**An Act to amend laws relating to aviation security,
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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No. 149, 2004

An Act to amend laws relating to aviation security, and for related purposes

[Assented to 14 December 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aviation Security Amendment Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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.	14 December 2004
2. Schedule 1	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> .	10 March 2005 (paragraph (b) applies)
3. Schedule 2, items 1 and 2	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> .	10 March 2005 (paragraph (b) applies)
4. Schedule 2, item 3	The day on which this Act receives the Royal Assent.	14 December 2004

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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments relating to security status checking

Aviation Transport Security Act 2004

1 Section 9

Insert:

Director of CASA means the Director of Aviation Safety appointed under section 84 of the *Civil Aviation Act 1988*.

2 Section 9

Insert:

security designated authorisation has the meaning given by the regulations.

3 At the end of section 39

Add:

; (h) security status checking (Division 9).

4 At the end of Part 4

Add:

Division 9—Security status checking

74F Simplified overview of Division

This Division will facilitate the security status checking of applicants for, and holders of, certain authorisations.

The Division enables an adverse security status determination to be made in respect of a person. If a determination is made, any such authorisation that the person has applied for will be refused, and any such authorisation that the person holds will be cancelled or suspended.

The regulations will prescribe details relating to security status checking and the making of adverse security status determinations.

74G Secretary may determine that a person has an adverse aviation security status

- (1) The Secretary may determine in writing that a person has an adverse aviation security status.
- (2) If the Secretary makes such a determination, the Secretary must give a copy of the determination to the following:
 - (a) the person;
 - (b) CASA.
- (3) As soon as reasonably practicable after such a determination is made, CASA must:
 - (a) if the person is an applicant for a security designated authorisation—refuse the application under this paragraph; or
 - (b) if the person is the holder of a security designated authorisation—suspend or cancel the authorisation under this paragraph.
- (4) The exercise of the power to determine that a person has an adverse aviation security status is taken to be prescribed administrative action in respect of the person for the purposes of Part IV of the *Australian Security Intelligence Organisation Act 1979*.

74H Regulations

- (1) Regulations may be made:
 - (a) providing for matters to which the Secretary must have regard for the purposes of deciding whether or not to determine that a person has an adverse aviation security status; and
 - (b) specifying circumstances in which the Secretary must determine that a person has an adverse aviation security status; and
 - (c) specifying circumstances in which the Secretary may determine that a person has an adverse aviation security status; and

- (d) providing for matters relating to the carrying out of security status checking; and
 - (e) authorising the use or disclosure of information (including personal information within the meaning of the *Privacy Act 1988*) for the purposes of, or in relation to, security status checking; and
 - (f) specifying procedures and other matters relating to the determination of applications for security designated authorisations, including, but not limited to, delaying the determination of such applications pending the outcome of security status checking; and
 - (g) specifying procedures and other matters relating to the issue, suspension or cancellation by CASA of security designated authorisations or the refusal by CASA to issue security designated authorisations; and
 - (h) providing that applicants for, or holders of, security designated authorisations may request security status checking to be undertaken; and
 - (i) specifying the consequences of a failure to make a request of a kind mentioned in regulations under paragraph (h); and
 - (j) providing for the collection of fees by CASA on behalf of the Commonwealth, being fees prescribed by the regulations for the purposes of this Division; and
 - (k) conferring the function of determining under subsection 74G(1) that a person has an adverse security status upon CASA (in addition to, but not instead of, the Secretary); and
 - (l) empowering the Director of CASA to delegate all or any of CASA's functions and powers under this Division to a person holding, or performing the duties of, an office or position within CASA that is at a level equivalent to that of an SES employee; and
 - (m) in relation to any other matter related to the operation of this Division.
- (2) If regulations under paragraph (1)(k) are in force:
- (a) references in section 74G and in this section to the Secretary are to be taken to include references to CASA; and
 - (b) paragraph 74G(2)(b) does not apply to a determination by CASA under subsection 74G(1); and

- (c) paragraph 126(1)(f) has effect as if the reference in subsection 126(1) to the Secretary included a reference to CASA.

74I Division operates despite the *Civil Aviation Act 1988*

This Division has effect despite anything in the *Civil Aviation Act 1988* or regulations under that Act.

5 At the end of section 126

Add:

; or (f) to determine under subsection 74G(1) that a person has an adverse aviation security status.

- (2) To avoid doubt, paragraph (1)(f) does not permit the Administrative Appeals Tribunal to review an adverse security assessment or a qualified security assessment other than in accordance with the provisions of the *Australian Security Intelligence Organisation Act 1979* and the *Administrative Appeals Tribunal Act 1975*.

- (3) In subsection (2):

adverse security assessment and *qualified security assessment* have the same meanings as in the *Australian Security Intelligence Organisation Act 1979*.

6 After subsection 127(2)

Insert:

(2A) The Secretary may, by writing, delegate all or any of his or her powers and functions under Division 9 of Part 4 to a person holding, or performing the duties of, an office or position within CASA that is at a level equivalent to that of an SES employee.

Civil Aviation Act 1988

7 After paragraph 9(3)(ca)

Insert:

(cb) any functions conferred on CASA under the *Aviation Transport Security Act 2004*;

8 Subsection 9(5)

Repeal the subsection.

9 After paragraph 98(3)(r)

Insert:

(ra) formulating a scheme in relation to security status checking;

10 At the end of subsection 98(3)

Add:

; (v) prescribing fees (either by specifying amounts or by prescribing a method of calculation) in relation to services, applications or requests, or the doing of anything by CASA under the *Aviation Transport Security Act 2004*.

Schedule 2—Amendments relating to transitional provisions

Aviation Transport Security Act 2004

1 Section 9 (paragraph (f) of the definition of *aviation industry participant*)

Omit “(e)”, substitute “(ea)”.

Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act 2004

2 After paragraph 1(2)(b) of Schedule 3

Insert:

- (ba) providing for airport security programs approved under the old Act to continue to be taken to be in force (with any prescribed alterations and for such time as is prescribed) as transport security programs under the new Act; and
- (bb) providing for ASIC programs and international cargo security programs approved under the old Act to continue to be taken to be in force (with any prescribed alterations and for such time as is prescribed) as transport security programs under the new Act, or as such other programs under the new Act as are prescribed by the regulations; and

3 Transitional provision

The exercise or purported exercise (whether before, at or after the commencement of this item) of the power under regulation 5 of the *Air Navigation (Aviation Security Status Checking) Regulations 2004* to determine that a person has an adverse aviation security status is taken for all purposes to be, and is taken for all purposes always to have been, prescribed administrative action in respect of the person for the purposes of Part IV of the *Australian Security Intelligence Organisation Act 1979*.

*[Minister's second reading speech made in—
Senate on 17 November 2004
House of Representatives on 2 December 2004]*

(193/04)