



Aviation Legislation Amendment (2007 Measures No. 1) Act 2007

No. 131, 2007

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend legislation relating to aviation, and for related purposes

[Assented to 20 August 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aviation Legislation Amendment (2007 Measures No. 1) Act 2007*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Aviation Transport Security Act 2004

1 Subsection 7(2)

Repeal the subsection, substitute:

- (2) This Act does not make the Crown in right of the Commonwealth liable to be prosecuted for an offence.

2 Section 9

Insert:

eligible customs officer has the meaning given by subsection 89B(1).

3 Subsection 10(1)

After “following done”, insert “, or attempted to be done,”.

4 At the end of paragraph 10(1)(a)

Add “or by any trick or false pretence”.

5 Paragraph 10(1)(g)

After “false”, insert “or misleading”.

6 Subsection 19(4)

Repeal the subsection, substitute:

Failure to approve program within consideration period

- (4) If:
- (a) an aviation industry participant gives the Secretary a transport security program; and
 - (b) the Secretary does not approve, or refuse to approve, the program within the consideration period;
- the Secretary is taken to have refused to approve the program at the end of that period.

Note: An aviation industry participant may apply to the Administrative Appeals Tribunal for review of a decision to refuse to approve a

transport security program under subsection (2) or (4): see section 126.

Secretary may request further information

- (5) The Secretary may, by written notice given to the participant within the consideration period, request the participant to give the Secretary specified information relevant to the approval of the program.
- (6) The notice must specify a period of not more than 45 days within which the information must be given. However, if more than one notice is given to the participant under subsection (5), the total of the periods specified in the notices must not exceed 45 days.

Consideration period

- (7) The **consideration period** is the period of 60 days starting on the day on which the Secretary received the program, extended, for each notice given under subsection (5), by the number of days falling within the period:
 - (a) starting on the day on which the notice was given; and
 - (b) ending on:
 - (i) the day on which the information requested in that notice was received by the Secretary; or
 - (ii) if the information was not given within the period specified in that notice—the last day of that period.

7 Subsection 20(3)

Repeal the subsection, substitute:

- (3) The program remains in force for a period of 5 years or such lesser period as the Secretary specifies in the notice of approval (which must be at least 12 months), unless before the end of that period:
 - (a) the program is replaced under subsection 22(2); or
 - (b) the approval of the program is cancelled under this Division.

8 After subsection 21(3)

Insert:

- (3A) If the participant gives the Secretary the program:
 - (a) varied in accordance with the direction; and

(b) within the specified period, or within any further period allowed by the Secretary;

the Secretary must, by written notice given to the participant, approve the variation. The variation comes into force when the notice is given.

Note: As the program is not replaced, the variation does not affect the period for which the program is in force. Subsection 20(3) deals with the period a transport security program is in force.

Example: A transport security program is approved on 1 January 2008. The Secretary does not specify in the notice of approval the period it is to be in force.

On 1 March 2011 a variation to the program comes into force.

The program (as now varied) will cease to be in force at the end of 31 December 2012 unless it is replaced or cancelled before then.

9 At the end of section 22

Add:

(3) Paragraph (1)(b) does not apply to a varied program given to the Secretary under section 21.

10 At the end of subsection 23A(5)

Add:

Note: As the program is not replaced, the alterations do not affect the period for which the program is in force. Subsection 20(3) deals with the period a transport security program is in force.

Example: A transport security program is approved on 1 January 2008. The Secretary does not specify in the notice of approval the period it is to be in force.

On 1 March 2011 alterations to the program come into force.

The program (as now altered) will cease to be in force at the end of 31 December 2012 unless it is replaced or cancelled before then.

11 Section 24

Repeal the section.

12 At the end of Division 5 of Part 2

Add:

26A Cancelling transport security programs on request

If:

- (a) a transport security program for an aviation industry participant is in force; and
- (b) the participant makes a written request to the Secretary for the approval of the program to be cancelled;

the Secretary must, by written notice given to the participant, cancel the approval of the program.

13 At the end of section 27

Add:

Regulations under Division 5 may create offences for causing disruption or interference in relation to security controlled airports.
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14 At the end of Part 3

Add:

Division 5—Offences for causing disruption or interference in relation to security controlled airports

38B Offences for causing disruption or interference in relation to security controlled airports

- (1) The regulations may prescribe offences in relation to the disruption to or interference with the activities of an airport operator of a security controlled airport, or the activities of an aircraft operator at a security controlled airport, if:
 - (a) that airport is located in a Commonwealth place or in a Territory; or
 - (b) that operator is a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (c) those activities take place in the course of, or in relation to, trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories.

The penalties prescribed by the regulations for the offences must not exceed 50 penalty units.

- (2) The offences prescribed by the regulations may relate to conduct that occurs outside the boundaries of a security controlled airport.
- (3) Subsection (2) does not limit subsection (1).

15 After paragraph 62(1)(a)

Insert:

- (aa) the security features on an aircraft;

16 Section 75

After:

(b) law enforcement officers (Division 3);

insert:

(ba) eligible customs officers (Division 3A);

17 After subsection 84(1)

Insert:

- (1A) An ordinary search or a frisk search of a person under subsection (1) must, if practicable, be conducted by a person of the same sex as the person being searched.

18 After Division 3 of Part 5

Insert:

Division 3A—Eligible customs officers

89A Simplified overview of Division

This Division provides certain customs officers with powers to:

- (a) stop and search persons and vehicles at airports;
and

- (b) request persons to leave an aircraft, an airport or an area or zone of an airport; and
- (c) restrain and detain persons until the persons can be dealt with by a law enforcement officer; and
- (d) remove vehicles from an airport, or from an area or zone of an airport, if the customs officer is unable to have the vehicle removed by the person in control of it.

This Division establishes restrictions on these powers, such as requiring the customs officer to explain why a search is to be made and limiting the amount of force that may be used.

A person who does not leave an aircraft or an airport, or an area or zone of an airport, when requested to do so by the customs officer commits an offence, as does a person who hinders or obstructs the officer exercising powers under this Division.

89B Eligible customs officers

- (1) An *eligible customs officer* is a person who:
 - (a) is an officer of Customs within the meaning of subsection 4(1) of the *Customs Act 1901*; and
 - (b) is on duty at a security controlled airport; and
 - (c) satisfies the training and qualification requirements prescribed by the regulations for the purposes of this paragraph.
- (2) The regulations may prescribe the following for eligible customs officers:
 - (a) requirements in relation to the form, issue and use of identity cards;
 - (b) requirements in relation to uniforms.

89C Stopping and searching persons

- (1) If an eligible customs officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation, the officer may stop a person

who is in an airside area and conduct an ordinary search or a frisk search of the person.

- (2) An ordinary search or a frisk search of a person under subsection (1) must, if practicable, be conducted by a person of the same sex as the person being searched.
- (3) If an eligible customs officer stops a person under subsection (1), the officer must:
 - (a) identify himself or herself as an eligible customs officer to the person; and
 - (b) tell the person why the person has been stopped; and
 - (c) if the person is to be searched—tell the person why the person is to be searched.
- (4) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs an eligible customs officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection: Imprisonment
for 2 years.

89D Stopping and searching vehicles

- (1) If an eligible customs officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation, the officer may do either or both of the following in an airside area:
 - (a) require the driver of a vehicle to stop the vehicle;
 - (b) search the vehicle.
- (2) If an eligible customs officer stops a vehicle under subsection (1), the officer must:
 - (a) identify himself or herself as an eligible customs officer to the driver of the vehicle; and
 - (b) tell the driver why the vehicle has been stopped; and
 - (c) if the vehicle is to be searched—tell the driver why the vehicle is to be searched.

- (3) Before an eligible customs officer searches a vehicle under subsection (1) that was not stopped by the officer, the officer must, if there is a driver or person in control of the vehicle present:
- (a) identify himself or herself as an eligible customs officer to the driver or person; and
 - (b) tell the driver or person why the vehicle is to be searched.
- (4) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct hinders or obstructs an eligible customs officer in the exercise of a power under subsection (1).

Penalty for an offence against this subsection: Imprisonment for 2 years.

89E Requests to leave aircraft, airport or areas or zones

- (1) If an eligible customs officer reasonably suspects that a person on a prescribed aircraft, or in an area or zone of a security controlled airport, is committing, or has committed, an offence against this Act, the officer may request the person to leave:
- (a) the aircraft; or
 - (b) the area or zone; or
 - (c) the airport.
- (2) A person commits an offence if:
- (a) a request has been made to the person under subsection (1); and
 - (b) the person fails to comply with the request.

Penalty for an offence against this subsection: 50 penalty units.

89F Power to physically restrain persons

- (1) If an eligible customs officer reasonably suspects that a person in an area or zone of a security controlled airport is committing, or has committed, an offence against this Act, the officer may physically restrain the person.

- (2) If a person is restrained under subsection (1), the eligible customs officer may detain the person until the person can be dealt with by a law enforcement officer.
- (3) In exercising a power under subsection (1) or (2), an eligible customs officer must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

89G Removing vehicles from areas or zones

- (1) If an eligible customs officer reasonably suspects that:
 - (a) a vehicle in or near an area or zone of a security controlled airport presents a risk to aviation security; or
 - (b) a vehicle is in an area or zone of a security controlled airport without proper authorisation;the officer may remove the vehicle.
- (2) However, the eligible customs officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.
- (3) The eligible customs officer:
 - (a) must not use more force, or subject a person to greater indignity, than is necessary and reasonable to remove the vehicle from the area or zone; and
 - (b) must make reasonable efforts to avoid damaging the vehicle.

89H Other powers not affected

This Act does not, by implication, limit the exercise of the powers an eligible customs officer has apart from this Act.

19 At the end of subsection 91(1)

Add:
; and (d) is not an eligible customs officer.

20 Paragraph 126(1)(a)

Omit “section 19”, substitute “subsection 19(2) or (4)”.

21 Section 131

Repeal the section, substitute:

131 Scope of immunities and privileges

- (1) Subject to this section, this Act does not affect an immunity or privilege that is conferred by or under the *Consular Privileges and Immunities Act 1972*, the *Defence (Visiting Forces) Act 1963*, the *Diplomatic Privileges and Immunities Act 1967*, the *Foreign States Immunities Act 1985* or any other Act.

Screening and clearing

- (2) An immunity or privilege (other than one that is accorded to diplomatic bags) conferred by or under an Act referred to in subsection (1) does not limit the application of provisions of this Act which specify requirements for screening or for receiving clearance.

22 Application—transport security programs

- (1) The amendment made by item 6 applies to transport security programs given under section 18 of the *Aviation Transport Security Act 2004* after the commencement of that item.
- (2) The amendment made by item 7 applies to transport security programs approved before or after the commencement of that item.

Civil Aviation Act 1988

23 After paragraph 9(1)(d)

Insert:

- (da) administering Part IV (about drug and alcohol management plans and testing);

24 Subsection 24(1)

Repeal the subsection, substitute:

- (1) A person commits an offence if:
- (a) the person does an act; and
 - (b) the act:
 - (i) interferes with a crew member of an aircraft in the course of the performance of his or her duties as such a crew member; or

- (ii) threatens the safety of an aircraft or of persons on board an aircraft.

Penalty: Imprisonment for 2 years.

25 After Part IIIB

Insert:

Part IV—Drug and alcohol management plans and testing

Division 1—Definitions

33 Definitions

- (1) In this Part:

body sample means any of the following:

- (a) any human biological fluid;
- (b) any human biological tissue (whether alive or not);
- (c) any human breath.

drug or alcohol test means:

- (a) a test of a body sample of a person to determine the presence (if any), but not the level, of alcohol or a testable drug in the sample; or
- (b) a test of a body sample of a person to determine the presence (if any), and the level, of alcohol or a testable drug in the sample.

positive test result, in relation to a drug or alcohol test of a body sample, means a finding by the person or body who was authorised under the regulations to conduct the test that the test reveals:

- (a) the presence of alcohol or a testable drug in the sample; and
- (b) if the test determined the level of alcohol or testable drug in the sample and a permitted level for alcohol or that drug is specified in the regulations—that the permitted level has been exceeded.

safety-sensitive aviation activities means activities that impact directly or indirectly on the safety of:

- (a) civil air operations in Australian territory; or
- (b) the operation of Australian aircraft outside Australian territory.

testable drug means a drug specified in an instrument under subsection (2).

- (2) The Minister may, by legislative instrument, specify a drug for the purposes of the definition of *testable drug* in subsection (1).

Division 2—Regulations

34 General regulation-making power

Drug and alcohol management plans

- (1) The regulations may make provision for and in relation to the development, implementation and enforcement of drug and alcohol management plans covering persons who perform, or are available to perform, safety-sensitive aviation activities.

Drug or alcohol tests

- (2) The regulations may make provision for and in relation to drug or alcohol tests in respect of persons who perform, or are available to perform, safety-sensitive aviation activities.

Limitation

- (3) Regulations must not be made for the purposes of this section unless the performance of the safety-sensitive aviation activities concerned could be adversely affected by the use of alcohol or a testable drug by persons who perform those activities.

35 Drug and alcohol management plans

Regulations made for the purposes of subsection 34(1) may make provision for and in relation to any one or more of the following:

- (a) the persons required to develop a drug and alcohol management plan;
- (b) the persons to be covered by such plans;

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- (c) the content of such plans (including requirements for drug and alcohol education, for drug or alcohol tests in accordance with a specified standard, and for drug and alcohol management, treatment, counselling and rehabilitation, of persons covered by such plans);
 - (d) the submission of such plans to CASA for approval;
 - (e) the assessment and approval by CASA of such plans;
 - (f) the period such plans are to be in force;
 - (g) the amendment of such plans;
 - (h) the records to be maintained by persons required to develop such plans;
 - (i) the obtaining of information or records from persons required to develop such plans.

36 Drug or alcohol tests

- (1) Regulations made for the purposes of subsection 34(2) may make provision for and in relation to any one or more of the following:
 - (a) the persons who may be required to provide a body sample for a drug or alcohol test;
 - (b) the persons who may require the persons covered by paragraph (a) to provide a body sample for a drug or alcohol test;
 - (c) the conduct of random drug or alcohol tests and the other circumstances in which drug or alcohol tests may be conducted;
 - (d) the provision of body samples for drug or alcohol tests (including the persons or bodies authorised to take body samples);
 - (e) the persons or bodies authorised to conduct drug or alcohol tests;
 - (f) if a drug or alcohol test of a body sample of a person reveals the presence of alcohol or a testable drug in the sample but not the level of alcohol or the testable drug—the conduct of a further drug or alcohol test of the same body sample, or another body sample of the person, to determine the presence (if any), and the level, of alcohol or a testable drug in that sample;
 - (g) the manner of conducting drug or alcohol tests;

- (h) the devices used in conducting drug or alcohol tests, including the calibration, inspection and testing of those devices;
 - (i) the procedure for the handling and analysis of body samples taken in connection with drug or alcohol tests;
 - (j) the notification of test results to the person tested and to CASA;
 - (k) the other persons to whom test results may be notified;
 - (l) the use and disclosure of test results;
 - (m) the giving of test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
 - (n) a person ceasing to perform safety-sensitive aviation activities if a drug or alcohol test in respect of the person returns a positive test result and the conditions the person must satisfy before resuming such activities;
 - (o) a person ceasing to perform safety-sensitive aviation activities if the person refuses to provide a body sample for a drug or alcohol test when required to do so in accordance with the regulations and the conditions the person must satisfy before resuming such activities.
- (2) For the purposes of paragraph (1)(d), the regulations may provide that a person or body is authorised to take body samples if the person or body:
- (a) has been accredited by a specified person or body; or
 - (b) has been approved by CASA to take body samples for the purposes of this Part; or
 - (c) is included in a class of persons or bodies approved by CASA to take body samples for the purposes of this Part.
- (3) For the purposes of paragraph (1)(e), the regulations may provide that a person or body is authorised to conduct drug or alcohol tests if the person or body:
- (a) has been accredited by a specified person or body; or
 - (b) has been approved by CASA to conduct drug or alcohol tests for the purposes of this Part; or
 - (c) is included in a class of persons or bodies approved by CASA to conduct drug or alcohol tests for the purposes of this Part.

Admissibility of test results etc. in legal proceedings

- (4) The following:
- (a) a certificate or other document recording the results of a drug or alcohol test conducted in respect of a person;
 - (b) any other information, answer to a question or document relevant to conducting such a test;
- are not admissible in evidence against the person in any proceedings other than:
- (c) proceedings under this Act or the regulations; or
 - (d) proceedings prescribed by the regulations for the purposes of this paragraph.

37 Conferral of administrative powers

- (1) Regulations made for the purposes of subsection 34(1) or (2) may make provision with respect to a matter by conferring on a person a power to make a decision of an administrative character.
- (2) If regulations made for the purposes of subsection 34(1) or (2) confer on a person a power to make a decision of an administrative character, the regulations may also make provision for and in relation to the person delegating that power to another person.

38 Conferral of power to make legislative instruments

- (1) Regulations made for the purposes of subsection 34(1) or (2) may empower CASA to make legislative instruments.
- (2) Such an instrument must not prescribe a penalty.

39 General regulation-making power not limited

Sections 35 to 38 do not, by implication, limit section 34.

Note 1: Paragraph 98(3)(m) allows regulations to be made providing for the review of decisions under the regulations.

Note 2: Paragraphs 98(3)(p) and (q) allow regulations to be made providing for penalties for contraventions of the regulations.

Note 3: Subsection 98(3A) allows regulations to apply, adopt or incorporate any matter contained in a written instrument or other document as in force at a particular time or from time to time.

*[Minister's second reading speech made in—
Senate on 13 August 2007
House of Representatives on 15 August 2007]*

(127/07)

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