



Aviation Transport Security Amendment (2009 Measures No. 1) Act 2010

No. 41, 2010

An Act to amend the *Aviation Transport Security Act 2004*, and for related purposes

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Amendments		3
Part 1—Categories of security controlled airports		3
<i>Aviation Transport Security Act 2004</i>		3
Part 2—Inspection powers		5
<i>Aviation Transport Security Act 2004</i>		5
Part 3—Enforceable undertakings		6
<i>Aviation Transport Security Act 2004</i>		6
Part 4—Control directions		9
<i>Aviation Transport Security Act 2004</i>		9



Aviation Transport Security Amendment (2009 Measures No. 1) Act 2010

No. 41, 2010

An Act to amend the *Aviation Transport Security Act 2004*, and for related purposes

[Assented to 14 April 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aviation Transport Security Amendment (2009 Measures No. 1) Act 2010*.

Aviation Transport Security Amendment (2009 Measures No. 1) Act 2010 No. 41, 2010 1

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 April 2010
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	14 April 2011
3. Schedule 1, Parts 2, 3 and 4	The day after this Act receives the Royal Assent.	15 April 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Categories of security controlled airports

Aviation Transport Security Act 2004

1 Section 27

Omit:

The Secretary may designate an airport as a security controlled airport. A security controlled airport has an airside area and a landside area.

substitute:

The Secretary may designate an airport as a security controlled airport and assign a category to that airport. A security controlled airport has an airside area and a landside area.

2 At the end of section 28

Add:

- (6) The Secretary may, by notice published in the *Gazette*, assign a particular security controlled airport a category prescribed under section 28A.
- (7) If the Secretary publishes a notice under subsection (6) in relation to a security controlled airport, the Secretary must, by written notice given to the operator of the airport, specify the category assigned to the airport.

3 After section 28

Insert:

28A Categories of security controlled airports

The regulations may prescribe different categories of security controlled airports.

Schedule 1 Amendments

Part 1 Categories of security controlled airports

Note: Regulations under this Act (for example, regulations made for the purposes of Division 3 or 4) may make different provision with respect to different categories of security controlled airports: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

4 Subsection 29(1)

Omit “section 28”, substitute “subsection 28(2)”.

5 After paragraph 126(1)(e)

Insert:

(ea) to assign a category to a particular security controlled airport under subsection 28(6); or

6 Application

The amendment made by item 2 applies in relation to airports, or parts of airports, declared to be security controlled airports before, on or after the commencement of that item.

Part 2—Inspection powers

Aviation Transport Security Act 2004

7 After paragraph 79(3)(a)

Insert:

- (aa) if the power is exercised outside the boundaries of a security controlled airport but is one to which subsection (3A) applies—at any time and without notice; or

8 After subsection 79(3)

Insert:

- (3A) This subsection applies to the following powers:
 - (a) a power covered by subparagraph (2)(b)(i) or (c)(i);
 - (b) a power covered by paragraph (2)(d), to the extent that it relates to subparagraph (2)(b)(i) or (c)(i);
 - (c) a power covered by paragraph (2)(e), (f), (g) or (h);
 - (d) a power covered by paragraph (2)(i), to the extent that the document or record is found in the exercise of a power covered by paragraph (a), (b) or (e) of this subsection;
 - (e) a power covered by paragraph (2)(j) or (k), to the extent that it relates to subparagraph (2)(b)(i) or (c)(i).

Part 3—Enforceable undertakings

Aviation Transport Security Act 2004

9 Section 4

Omit:

Part 8 provides a range of enforcement mechanisms. These are infringement notices, enforcement orders, injunctions and a demerit points system.

substitute:

Part 8 provides a range of enforcement mechanisms. These are infringement notices, enforcement orders, enforceable undertakings, injunctions and a demerit points system.

10 Section 116

Omit:

The enforcement options (and the relevant Divisions) are as follows:

- (a) infringement notices (Division 2);
- (b) enforcement orders (Division 3);
- (c) injunctions (Division 4);
- (d) demerit points system (Division 5).

substitute:

The enforcement options (and the relevant Divisions) are as follows:

- (a) infringement notices (Division 2);

- | |
|--|
| <ul style="list-style-type: none">(b) enforcement orders (Division 3);(c) enforceable undertakings (Division 3A);(d) injunctions (Division 4);(e) demerit points system (Division 5). |
|--|

11 After Division 3 of Part 8

Insert:

Division 3A—Enforceable undertakings

123A Acceptance of undertakings

- (1) The Secretary may accept any of the following undertakings:
 - (a) a written undertaking given by an aviation industry participant that the participant will, in order to comply with this Act, take specified action;
 - (b) a written undertaking given by an aviation industry participant that the participant will, in order to comply with this Act, refrain from taking specified action;
 - (c) a written undertaking given by an aviation industry participant that the participant will take specified action directed towards ensuring that the participant does not contravene this Act, or is unlikely to contravene this Act, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The participant may withdraw or vary the undertaking at any time, but only with the written consent of the Secretary.
- (4) The Secretary may, by written notice given to the participant, cancel the undertaking.

123B Enforcement of undertakings

- (1) If:

- (a) an aviation industry participant has given an undertaking under section 123A; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the Secretary considers that the participant has breached the undertaking;
- the Secretary may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the participant has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the participant to comply with the undertaking;
 - (b) an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial benefit that the participant has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the participant to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

12 Paragraph 127(2)(b)

After “Division 3”, insert “or 3A”.

Part 4—Control directions

Aviation Transport Security Act 2004

13 Section 9

Insert:

screening authority means a body corporate that is authorised or required to conduct screening by or under regulations made for the purposes of paragraph 44(2)(a).

14 Section 74A

Repeal the section, substitute:

74A Simplified overview of Division

Compliance control directions can be used:

- (a) to control the movement of aircraft that are not in flight; or
- (b) in relation to security controlled airports.

Compliance control directions, given by aviation security inspectors, are used to ensure compliance with this Act. They may be given to aircraft operators, operators of security controlled airports, screening authorities, pilots in command or screening officers.

Incident control directions can be used to control the movement of aircraft. Incident control directions, given by the Secretary, are used in response to aviation security incidents. They may be given to aircraft operators or pilots in command.

Failing to comply with a compliance control direction or an incident control direction is an offence.

15 After subsection 74B(1)

Insert:

- (1A) An aviation security inspector may direct the operator of a security controlled airport to take specified action in relation to the airport.
- (1B) An aviation security inspector may direct a screening authority or a screening officer to take specified action in relation to a screening point at a security controlled airport.

16 Subsection 74B(2)

After “subsection (1)”, insert “, (1A) or (1B)”.

17 After subsection 74B(4)

Insert:

- (4A) The action that an operator of a security controlled airport may be directed to take under subsection (1A) includes, but is not limited to, taking particular actions, or ensuring that particular actions are taken, in relation to persons or things in specified areas or zones of the airport.
- (4B) The action that a screening authority or a screening officer may be directed to take under subsection (1B) includes, but is not limited to, taking particular actions, or ensuring that particular actions are taken, in relation to screening or re-screening particular passengers, goods or vehicles.

18 Subsection 74C(1) (penalty)

Repeal the penalty, substitute:

Penalty: For an aircraft operator, an operator of a security controlled airport or a screening authority—200 penalty units.

For a pilot in command or a screening officer—50 penalty units.

*[Minister's second reading speech made in—
House of Representatives on 24 June 2009
Senate on 9 September 2009]*

(133/09)

Aviation Transport Security Amendment (2009 Measures No. 1) Act 2010 *No. 41, 2010*

11