

EXPLANATORY STATEMENT

Select Legislative Instrument No. 124, 2015

(Issued by the Authority of the Minister for Infrastructure and Regional Development)

Subject - *Aviation Transport Security Act 2004*

*Aviation Transport Security Amendment (2015 Measures No.2)
Regulation 2015*

The *Aviation Transport Security Act 2004* (the Act) establishes a regulatory framework to safeguard against unlawful interference with aviation. The Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities.

Subsection 133(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Act and the *Aviation Transport Security Regulations 2005* (the Principal Regulations) provide for various aviation security zones and secure areas in security controlled airports for the purpose of subjecting those zones and areas to additional security requirements. The additional security requirements address matters such as controlling the movement of people and things; restricting access to zones and areas, including conditions of entry, the issue and use of security passes and other identification systems; and providing for screening of people, vehicles and goods.

The Principal Regulations also establish the regulatory framework for the aviation security identification card (ASIC). The ASIC is a nationally consistent identification card which shows that the holder has met the minimum security requirements to remain unmonitored within an airside security zone or secure area. The ASIC allows the holder to be within those zones and areas, and is required by a number of people who work at security controlled airports.

The Principal Regulations prescribe that a person in the airside security zone of a security controlled airport must properly display a valid red ASIC, and a person in a secure area (other than the airside security zone) of such an airport must properly display either a valid red ASIC or a valid grey ASIC.

There are exemptions to this general requirement, for example in relation to embarking/disembarking passengers, or for a person who is properly displaying a valid visitor identification card (VIC) or temporary aircrew card (TAC). Subject to these exemptions, failure to display a valid ASIC in the airside security zone or a secure area is an offence of strict liability.

Section 89B of the Act defines an “eligible customs officer” as a person, who is an officer of Customs within the meaning of subsection 4(1) of the *Customs Act 1901*, is on duty at a security controlled airport, and who satisfies the training and qualification requirements

prescribed by the Principal Regulations. An “eligible customs officer” has search, detain and removal powers as described in Division 3A, Part 5 of the Act.

The Regulation amends the Principal Regulation to give additional powers to “eligible customs officers” so that they may:

- direct persons who are in specified security zones or secure areas of a security controlled airport to show a valid ASIC, VIC or TAC; and
- issue infringement notices in respect of the failure to properly display a valid ASIC.

Infringement notices issued in respect to failure to properly display a valid ASIC, can also be issued to persons that are not properly displaying a valid VIC or TAC as these persons are no longer exempt from the requirement to properly display a valid ASIC.

The Regulation also amends the Principal Regulations by inserting the word “alleged” before “offence” throughout Part 7 of the Principal Regulations. The amendment avoids any implication that the person issuing the infringement notice has predetermined that the person receiving the notice has committed an offence.

Consultation has occurred with the Australian Customs and Border Protection Service, the Australian Federal Police, the Attorney-General’s Department and the Australian Crime Commission. Industry has been consulted through airport security committee meetings, the Aviation Security Advisory Forum and the Regional Industry Consultative Meeting.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the making of this Regulation. The OBPR advised that a Regulatory Impact Statement is not required as the amendments do not impose any additional regulatory burden on industry as the impact on individuals is minor (OBPR ID: 18723).

A Statement of Compatibility with Human Rights is set out at Attachment A.

The *Aviation Transport Security Amendment (2015 Measures No.2) Regulation 2015* (the Regulation) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Details of the Regulation are set out at Attachment B.

The Regulation commences on the day after registration.

Authority: Subsection 133(1) of the *Aviation Transport Security Act 2004*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aviation Transport Security Amendment (2015 Measures No.2) Regulation 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument amends the Principal Regulations to allow an “eligible customs officer” to:

- direct persons who are in specified security zones and secure areas of a security controlled airport to show a valid Aviation Security Identification Card (ASIC), Visitor Identification Card (VIC) or Temporary Access Card (TAC); and
- issue infringement notices in respect to failure to display a valid ASIC.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

WARREN TRUSS

Minister for Infrastructure and Regional Development

Details of the *Aviation Transport Security Amendment (2015 Measures No.2) Regulation 2015*

Section 1 – Name of Regulation

Section 1 provides that this Regulation is the *Aviation Transport Security Amendment (2015 Measures No.2) Regulation 2015*.

Section 2 – Commencement

Section 2 provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

Section 3 provides that the Regulation is made under the *Aviation Transport Security Act 2004*.

Section 4 – Schedule(s)

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item [1] – regulation 5.09

Item 1 amends regulation 5.09 of the Principal Regulations to provide that the training requirement for an eligible customs officer is completion by the officer of training approved by the Secretary. This training ensures that the officer is familiar with the powers of an eligible customs officer under Division 3A of Part 5 of the Act (Eligible Customs Officer Powers, including search, detain and removal); and Parts 6 (Security Identification) and Part 7 (Enforcement) of the Principal Regulations.

Item [2] – regulation 6.52 (at the end of the definition of security officer)

Item 2 adds paragraph 6.52(d) to regulation 6.52 of the Principal Regulations, so that an “eligible customs officer” is a “security officer” for the purposes of that regulation. This amendment allows an eligible customs officer to direct a person who is in an airside security zone or a secure area of a security controlled airport to show a valid Aviation Security Identification Card (ASIC), Visitor Identification Card (VIC) or Temporary Aircrew Card (TAC) under subregulation 6.53(2) of the Principal Regulations.

Item [3] – subregulation 7.01(1)

Item 3 amends subregulation 7.01(1) of the Principal Regulations to provide that, for section 117 of the Act, Part 7 of the Principal Regulations sets up an infringement notice

scheme in relation to alleged offences against the Act and the Principal Regulations as an alternative to prosecution.

The amendment changes the language of the provision to make it consistent with modern drafting practice. The amendment also clarifies that the infringement notice scheme relates to “alleged” offences to avoid any implication that the person issuing the infringement notice has predetermined that the person receiving the notice has committed an offence.

Item [4] – regulation 7.02 (at the end of the definition of authorised person)

Item 4 adds paragraph 7.02(d) to regulation 7.02 of the Principal Regulations to add an “eligible customs officer” to the definition of an “authorised person”. The amendment enables an eligible customs officer to issue infringement notices in accordance with Part 7 of the Principal Regulations.

Item [5] – regulation 7.03

The amendment to regulation 7.03 of the Principal Regulations changes the language of the provision to make it consistent with modern drafting practices. The amendment also clarifies that the infringement notice scheme relates to “alleged” offences to avoid any implication that the person issuing the infringement notice has predetermined that the person receiving the notice has committed an offence.

Item [6] – subregulations 7.04(1) and (2)

Subregulation 7.04(1) of the Principal Regulations sets out what is an infringement notice offence and subregulation 7.04(2) provides that an authorised person may issue an infringement notice in respect of such offences.

The amendments to subregulations 7.04(1) and (2) of the Principal Regulations changes the language of the provision to make it consistent with modern drafting practices, clarifies that the infringement notice scheme relates to “alleged” offences and include a reference to an eligible customs officer (to distinguish them from other authorised officers).

Subregulation 7.04(3) of the Principal Regulations provides that an authorised person that is an eligible customs officer may only issue infringement notices in relation to offences that deal with the failure to display a valid ASIC (subregulations 3.03(1), 3.07(3), 3.07(3A) and 3.12(1)) and not in relation to all infringement notice offences.

Item [7] – subparagraph 7.05(1)(b)(ii)

Subparagraph 7.05(1)(b)(ii) of the Principal Regulations provides that an infringement notice must state the name of the airport security guard or an aviation security inspector who issued it and the fact that the issuer of the notice is an airport security guard or an aviation security inspector. The amendment to subparagraph 7.05(1)(b)(ii) adds an “eligible customs officer” to this requirement. Therefore eligible customs officers are required to state their name and the fact that they are an eligible customs officer when they issue an infringement notice.

Item [8] – paragraph 7.05(1)(i)

Item 8 amends paragraph 7.05(1)(i) of the Principal Regulations to delete the reference to “greatest penalty” and insert a reference to “maximum penalty”, consistent with modern drafting practice.

Item [9] – Amendments of listed provisions

The amendments to the listed provisions in Item 9 replace references to “offence” with references to “alleged offence” throughout Part 7 of the Principal Regulations. This avoids any implication that the person issuing the infringement notice has predetermined that the person receiving the notice has committed an offence.