

EXPLANATORY STATEMENT

Select Legislative Instrument No. 186, 2015

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

Subject - *Aviation Transport Security Act 2004*

Aviation Transport Security Amendment (Checked Baggage) Regulation 2015

The *Aviation Transport Security Act 2004* (the Act) and the *Aviation Transport Security Regulations 2005* (the Principal Regulations) establish a regulatory framework to safeguard against unlawful interference with civil aviation in Australia.

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 purpose of the *Aviation Transport Security Amendment (Checked Baggage) Regulation 2015* (the Regulation) is to introduce a more flexible framework for handling checked baggage following disruptions to flights. This will reduce compliance costs for the aviation industry, specifically aircraft operators, and delays for passengers.

The Regulation amends the Principal Regulations to allow the operator of a prescribed air service to ‘flow forward’ checked baggage (i.e. send it on an aircraft that departs before the aircraft the corresponding passenger travels on) following an operational disruption to a flight that is clearly and verifiably beyond the control of a passenger.

The amendments do not affect aviation security outcomes as passengers will still not be able to determine whether they will be travelling with their bags or on a different flight. Currently, other than in certain specific circumstances following the diversion of an aircraft while in flight, aircraft operators were not permitted to carry checked baggage unless it could be matched to a passenger who was on board the aircraft or had already departed on an earlier flight. These amendments will allow checked baggage to also travel on a domestic flight departing before the passenger in certain circumstances.

Consultation has occurred with industry and government stakeholders via the Department of Infrastructure and Regional Development’s Aviation Security Advisory Forum and the Regional Industry Consultative Meetings. Membership of these forums comprises key aviation security stakeholders, including international, domestic and regional aircraft operators and airports, aviation industry associations, local and federal police, and government agencies. Industry and government stakeholders support these changes.

The Office of Best Practice Regulation (OBPR) was consulted and advised that a Regulation Impact Statement was not required (OBPR reference: 18872) as the changes had a relatively minor regulatory impact.

A Statement of Compatibility with Human Rights is set out in [Attachment A](#).

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered.

Details of the Regulation are set out in Attachment B.

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 (Checked Baggage) 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 enable the operator of a prescribed air service to ‘flow forward’ checked baggage (i.e. send it on an aircraft that departs before the aircraft the corresponding passenger travels on) following an operational disruption to a flight that is beyond the control of a passenger.

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 (Checked Baggage) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Aviation Transport Security Amendment (Checked Baggage) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences the day after the instrument is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Aviation Transport Security Act 2004*.

Section 4 – Schedules

This section provides for the *Aviation Transport Security Regulations 2005* to be amended as set out in the Schedule to the Regulation.

Schedule 1 – Amendments

Item [1] – paragraph 2.38(1)(a)

The amendment corrects an error. The transport security program (TSP) should set out the details of the procedures used to reconcile passengers and baggage. This is consistent with the other requirements for a TSP in regulation 2.38 of the Principal Regulations.

Item [2] – paragraphs 2.38(b) and (c)

The amendment is consequential to the amendments to regulation 4.21 below. It requires an aircraft operator's TSP to set out the procedures used by the operator to ensure that checked baggage is dealt with according to the regulatory requirements set out in subregulations 4.21(6) and 4.21(7) of the Regulation. Regulation 2.38 of the Principal Regulations is based on regulation 4.21 of the Principal Regulations, and, therefore, requires amending to reflect the amendments to that regulation.

While subregulation 4.21(6) does not require an aircraft operator to carry checked baggage in all the circumstances referred to in that subregulation, for example there is no obligation to enable checked baggage to flow forward in the circumstances set out in subregulation 4.21(6)(d), the operator of a prescribed air service needs to set out the procedures it uses to reconcile checked baggage and passengers in its TSP. These procedures need to be consistent with subregulations 4.21(6) and (7) of the Regulation.

The amendment also repeals paragraph 2.38(c) because the Government does not consider that it is necessary in the context of passenger-baggage reconciliation.

Item [3] – subregulation 4.21(1)

Subregulation 4.21(1) of the Principal Regulations requires each item of baggage to carry a tag that identifies the flight that the item is to be carried on.

The amendment clarifies that, if the baggage ‘flows forward’ under the conditions set out in paragraph 4.21(6)(d), then the tag must identify the flight that the baggage was to be carried on originally rather than the flight that the baggage is actually to be carried on.

The amendment avoids the need for a new tag to be attached to the item of baggage, which would make it more difficult for the operator of a prescribed air service to implement ‘flow forward’ in the permitted circumstances. The operator of the aircraft the bag is actually carried on must be able to link that bag to its accompanying passenger, the aircraft it was to be carried on originally and the aircraft the bag is actually carried on to ensure compliance with subregulations 4.21(6) and 4.21(7), but this does not necessitate a new tag.

Item [4] – subregulation 4.21(2)

The amendment is consequential to the preceding amendment ensuring subregulation 4.21(2) continues to refer to the correct part of subregulation 4.21(1).

Item [5] – subregulations 4.21(5), 4.21(6), 4.21(7)

The amendment to subregulation 4.21(5) clarifies that the operator of a prescribed air service commits an offence if, with regard to all the items of checked baggage carried on a flight that is operating a prescribed air service, the operator does not comply with any of the requirements of subregulations 4.21(1) to 4.21(4).

That is, all items of checked baggage on the aircraft need to comply with the tag identification requirements in item 3 above (and the existing requirement that the tag be attached to the item of baggage before the relevant flight departed); a record independent of the tag needs to be created for each item on board the aircraft for that flight (and kept for the specified period); and the record has to reconcile the passenger, the flight number and the carriage of the item. This enables each item of baggage to be tracked against both the flight it is carried on and the passenger who checked the item in.

If an item of baggage carried on an aircraft operating a prescribed air service (such as a regular passenger transport flight) does not comply with one or more of these requirements, the operator of the prescribed air service commits an offence in relation to each subregulation for which there is non-compliance.

If the aircraft is not being used for a prescribed air service at the time of the non-compliance, the operator does not commit an offence.

The new subregulation 4.21(6), which involves amendments to the current subregulation 4.21(7), permits ‘flow forward’ of baggage by providing that the operator of a prescribed air service does not commit an offence if the reason for baggage not being matched to a passenger on the aircraft is ‘flow forward’ under the prescribed conditions. These conditions are explained in more detail in the subregulation 4.21B.

The consequence of the subregulation 4.21(6) is that when an aircraft departs, each item of baggage has been matched to a passenger that is on that aircraft or:

- a passenger properly checked in for an earlier flight on an aircraft that has departed. For example, where there was not time to load a passenger's baggage on the aircraft that the passenger travelled on, the baggage may be carried on a subsequent flight; or
- a passenger that has not re-boarded or remained on the aircraft following the diversion of the aircraft's previous flight in the circumstances specified in regulation 4.21A. For example, the passenger may have chosen to remain at the diverted destination or have been forced to by illness. The passenger may have also chosen to transfer to another aircraft (which may or may not be travelling to the same destination as the original aircraft and may or may not have the same flight number as the original flight), for example, to try and get to their original destination faster. The passenger's baggage, however, has not been unloaded from the original aircraft and remains on board (without the accompanying passenger) when the aircraft resumes its flight (which might be the continuation of its journey to its original destination); or
- if the aircraft is operating a domestic air service, a passenger that is not on board the aircraft but was properly checked in for a different air service that was disrupted by events outside that passenger's control, for example, a technical fault with the aircraft or an extreme weather event.

The new subregulation 4.21(7), which involves amendments to subregulation 4.21(6) of the Principal Regulations, results in the operator of a prescribed air service committing an offence unless the operator has removed from the aircraft before it departs all items of baggage that have not been matched to a passenger on board that aircraft or are on board the aircraft in accordance with paragraphs (b), (c) or (d) of subregulation 4.21(6). To avoid committing the offence, the operator must have removed all such baggage from the aircraft before it leaves.

The offence can only be committed if the aircraft in question is operating a prescribed air service at the time of the non-compliance. Only one offence is committed if one or more items of baggage that have not been matched to a passenger in accordance with subregulation 4.21(6) of the Regulation have not been removed from the aircraft.

The amendments repeal subregulation 4.21(6) of the Principal Regulations. The Government no longer considers it necessary to have this offence. The security outcome sought is achieved by subregulations 4.21(6) and 4.21(7) of the Regulation. Subregulation 4.21(6) of the Principal Regulations does not add to security outcomes.

Item [6] – subregulation 4.21A(1)

The amendment corrects an error. Subparagraph 2.38(a)(ii) no longer exists. The replacement of paragraph 4.21(7)(c) with paragraph 4.21(6)(c) is a consequence of item 5.

Item [7] – after regulation 4.21A

The subregulation sets out the circumstances in which flow forward of baggage is permitted (subject to any other conditions in subregulation 4.21(6)). Flow forward baggage is only able to be carried on a domestic air service, although the items may be originally checked in for

either a domestic or international air service. This baggage is allowed to travel on a flight that departs before its accompanying passenger only where that passenger is unable to travel on the flight they were originally checked in for because it has been disrupted by events outside that passenger's control. Examples of such events include a technical issue with the aircraft operating the flight, adverse weather conditions at the destination airport causing the cancellation of the original flight, or a lawful direction from air traffic control, the Civil Aviation Safety Authority, or the Secretary of the Department of Infrastructure and Regional Development.