

EXPLANATORY STATEMENT

Aviation Transport Security Act 2004

Aviation Transport Security (Prohibited cargo –Egypt) Instrument 2022

The *Aviation Transport Security Act 2004* (the Act) gives effect to Australia's obligations under Annex 17 to the Convention on International Civil Aviation (Chicago Convention) by establishing a regulatory framework to safeguard against unlawful interference with aviation in Australia. The Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation-related activities, including activities related to the handling and transport of air cargo.

Legislative Authority

Subsection 65B(1) of the Act allows the Minister to prohibit the entry of specified kinds of cargo into Australian territory for the purposes of safeguarding against unlawful interference with aviation. Relevantly, subsection 65B(2) specifies that, without limiting subsection 65B(1), an instrument made under that subsection may relate to all or any of the following:

- (a) some or all of a class of persons to whom the Act applies;
- (b) cargo originating from a particular country;
- (c) cargo transiting through a particular country;
- (d) cargo packaged in a particular way;
- (e) cargo that meets, or is more or less than, a specified weight; and
- (f) cargo that comes within a specified weight range.

Failure to comply with an instrument made by the Minister under section 65B is a strict liability offence under section 65C of the Act.

Purpose

The purpose of the *Aviation Transport Security (Prohibited Cargo –Egypt) Instrument 2022* (the instrument), made under section 65B of the Act, is to prohibit all cargo originating from, or transiting through, the Arab Republic of Egypt from entry into Australian territory, except for certain specified items of cargo or cargo that has been examined and cleared at specified last ports of call airports. The prohibition on cargo originating from, or transiting through, the Arab Republic of Egypt is a preventative security measure, based on the Government's assessment of the threat and risk environment.

The instrument operates to impose a general prohibition on cargo originating from, or transiting through, the Arab Republic of Egypt and includes exceptions to the prohibition. The instrument repeals and replaces the general prohibition on cargo originating from, or transiting through, the Arab Republic of Egypt, and substantially replicates the items of cargo that are exceptions to the prohibition, as specified in the *Aviation Transport Security (Prohibited Cargo –Egypt) Instrument 2015* (the 2015 prohibition instrument).

Terms are defined for the list of specified items of cargo that are exceptions to the prohibition in the instrument. The defined terms for this list are a replication of the terms used in relation to the list of items previously specified under the 2015 prohibition instrument, with clarifying amendments to the definitions of biological tissue and letter product.

The instrument introduces a further exception to the prohibition for all other types of cargo that originates from, or transits through, the Arab Republic of Egypt. The new exception to the prohibition provides for cargo that since originating from, or transiting through, the Arab Republic of Egypt has been examined and cleared at one of the specified last ports of call airports, which reflects the improvements in air cargo security measures in Egypt.

Four new terms have been defined to describe concepts and screening devices referred to in relation to the further exception introduced by the instrument.

There are currently no direct flights from the Arab Republic of Egypt to Australian territory. All flights from the Arab Republic of Egypt carrying cargo bound for Australian territory make intermediary stops at other international last ports of call airports. The Australian Government has arrangements in place with the specified last ports of call airports that permit Australian officials to inspect cargo examination measures and security procedures that ensure air cargo security is maintained in last ports of call airports to safeguard against unlawful interference with aviation.

The prohibition and exceptions set out in this instrument applies to aviation industry participants as defined in the Act.

Consultation

In accordance with paragraph 15J(2)(d) of the *Legislation Act 2003*, the instrument has been settled in consultation with the Government of the Arab Republic of Egypt. In accordance with the requirements of subsection 65B(3) of the Act, the Minister for Home Affairs has consulted with the Minister for Foreign Affairs and the Minister for Trade before making the instrument.

In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation with industry participants in the Arab Republic of Egypt, and in the countries in which the last port of call airports are located, in relation to introducing the new exception to the prohibition was not considered necessary as the prohibition and exceptions are commensurate with measures already imposed by some like-minded regulators internationally.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the making of the Instrument. OBPR has advised that a Regulation Impact Statement is not required (OBPR Reference Number: 43141).

The instrument is a legislative Instrument for the purpose of the *Legislative Instruments Act 2003*.

The instrument commences on the day after registration.

Details of the instrument are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights is completed for the instrument and is at [Attachment B](#).

Authority:
Subsection 65B(1)
Aviation Transport Security Act 2004

Details of the Aviation Transport Security (Prohibited cargo – Egypt) Instrument 2022

Section 1 – Name

This section provides that the name of the instrument is the *Aviation Transport Security (Prohibited cargo – Egypt) Instrument 2022*.

Section 2 – Commencement

This provides that the Instrument commences on the day after it is registered. Instruments are registered on the Federal Register of Legislation.

Section 3 – Definitions

Section 3 provides the definition of terms used in the instrument. These terms are used in section 4 of the instrument and refer to items of cargo that are exceptions to the prohibition. This section substantially replicates the terms defined for the *Aviation Transport Security (Prohibited Cargo –Egypt) Instrument 2015* (the 2015 prohibition instrument).

The following terms are used in subsection 4(2) of the instrument which deals with specified items of cargo that are exceptions to the prohibition set out in subsection 4(1). The terms *biological tissue*, *government article*, *human remains*, *letter product*, and *small item* were previously defined in the 2015 prohibition instrument.

The term *biological tissue* is defined to mean an item of cargo that consists only of biological matter that is an aggregate of cells and cell products forming a definite kind of structural material in an animal or plant, or biological substances or samples and the necessary packaging to ship the biological matter, substance or sample.

The definition of *biological tissue* given in the 2015 prohibition instrument is updated to omit “consists only of biological tissues,”, and to substitute “consists only of biological matter that is an aggregate of cells and cell products forming a definite kind of structural material in an animal or plant, or biological”. The omission and substitution is intended to clarify the meaning for the term and to remove a self-referential definition for the term.

This definition is followed by a note to remind the reader that paragraph 23(b) of the *Acts Interpretation Act 1901* provides that words in the singular number include the plural, and words in the plural number include the singular. The intention is to make clear that the definition applies to the item of cargo equally regardless of whether there is a single item of biological matter, a biological sample or a biological substance or multiple items of one, or one of each type or multiple items of each type.

For example, a box containing one item of human biological matter, four items of animal biological substances and thirty each of plant and animal biological samples, and the necessary shipping packaging, would be *biological tissue* for the purposes of subsection 4(2) of this instrument.

While this type of item of cargo is an exception to the prohibition, international air transport of *biological tissue* may be regulated by other agencies and may be required to be packaged

and labelled according to any International Air Transport Association (IATA) requirements and/or accompanied by a declaration from an IATA approved packager.

The term *government article* is defined to mean an item of cargo that:

- is sent by the Commonwealth or an authority of the Commonwealth; and
- bears on its face a security classification; and
- bears a security classification that is referred to in the protective security policy applicable to the Australian Government when the article is sent.

The term *human remains* is defined to mean an item of cargo which meets all of the following requirements:

- the item consists only of human remains and necessary packaging; and
- the sender of the item is a funeral director; and
- the airline transporting the item has sighted a copy of the death certificate of the person to whom the human remains relate.

While this type of item of cargo is an exception to the prohibition, requirements for international air transport of *human remains* may be regulated by other agencies, and may also require compliance with any IATA Guidelines on the handling of *human remains* enshrined in the law of the country from which the remains are to be shipped, or the country the *human remains* are transiting through. The definition of the term *human remains* replicates the definition used for the term in the 2015 prohibition instrument.

The term *letter product* is defined to mean an item of cargo that has all of the following characteristics:

- it weighs 500g or less;
- it contains only flexible items, nothing rigid or inflexible;
- its longest dimension is 360 mm or less;
- its second longest dimension is 260 mm or less;
- its shortest dimension is 20 mm or less.

The instrument amends the definition of *letter product* given in the 2015 prohibition instrument. In relation to the item of cargo containing only flexible items in paragraph (b) of the definition, the words “, nothing rigid or inflexible” have been added. This paragraph is also now followed by two new examples. The first example is an example of flexible items and includes thick cardboard used to protect items from being bent or crushed, and the second example is an example of rigid or inflexible items and includes pens, keys, USBs or CDs.

The intention is to make clear that the inclusion of thick cardboard would not disqualify the item from fitting within the definition of *letter product*, provided that the item still falls within the weight and dimension requirements set out in the definition.

The term *small item* is defined to mean an item of cargo that weighs 250 g or less, and is 5 mm or less in its shortest dimension. A *small item* is distinguished from a *letter product* by virtue of its smallest dimension and its maximum weight. A *letter product* may weigh 250 g or less but may be of larger dimension.

The purpose and effect of the above definitions is to provide meaning for terms used to describe items of cargo referred to in subsection 4(2) of the instrument which deals with the first exception to the prohibition set out in subsection 4(1). The definitions of the terms *government article*, *human remains* or *small item* replicate the definitions used for those terms in the 2015 prohibition instrument.

The following new defined terms have been introduced to describe concepts referred to in the new exception to the prohibition set out in subsection 4(3).

The term *last port of call airport* is defined to mean an airport that is the last international port that the aircraft departs from before landing in Australian territory. At the time this instrument came into effect there were no direct commercial flights from Egypt to Australian territory. This means that any journey from Egypt to Australia by air would require transit through an airport in another country, which would be the last port of call airport.

The term *security controls* is defined to mean requirements or procedures that, under the laws applying at the last port of call airport, must be applied to detect the presence of explosives in items of cargo. *Security controls* are similar requirements or procedures to those applied in Australia and are consistent with Australia's outbound air cargo examination requirements.

The purpose and effect of the above definitions is to provide meaning for terms used to describe concepts referred to in subsection 4(3) of the instrument which deals with the second exception to the prohibition set out in subsection 4(1).

The following new defined terms have been introduced to describe screening devices used as part of the *security controls* referred to in the new exception to the prohibition set out in subsection 4(3).

The term *ETD equipment* (explosive trace detection equipment) is defined to mean technology used to detect and indicate, by audible or visual alarm, the presence of an explosive material. *ETD equipment* is also used in Australia to examine air cargo, and the use of the term is consistent with Australia's outbound air cargo security requirements.

The term *X-ray observation equipment* is defined to mean screening X-ray equipment that has a threat image projection system capability; and can differentiate between organic and inorganic material; and can display metals, inorganic material and organic material in different colours. *X-ray observation equipment* is also used in Australia to examine air cargo, and the use of the term is consistent with Australia's outbound air cargo security requirements.

The purpose and effect of the above definitions is to provide meaning for terms used to describe cargo examination or screening devices referred to in subsection 4(4) of the instrument which deals with the *security controls* referred to in subsection 4(3).

Section 4 – Prohibited Cargo

Subsection 4(1)

Subsection 4(1) prohibits aviation industry participants from bringing, or causing to be brought, into Australian territory cargo that has originated from, or transited through, the Arab Republic of Egypt.

Subsection 4(2)

Subsection 4(2) provides an exception to the prohibition in subsection 4(1) for cargo of the following types:

- a *letter product*;
- a *small item*;
- a live animal (and the necessary packaging used to ship the animal);
- *human remains*;
- *biological tissue*;
- dangerous goods that are permitted, under section 23 of the Civil Aviation Act 1988, to be carried on board an aircraft (and necessary packaging);
- a *government article*;
- a diplomatic bag.

The purpose and effect of subsection 4(2) is to permit the carriage of these types of cargo into Australia by air without examination as they present a low risk of unlawful interference with aviation and are generally unable to be examined at the *last port of call airports* listed at subsection 4(3). These exemptions are consistent with Australia's outbound air cargo security requirements.

Subsection 4(3)

Subsection 4(3) introduces an additional exception to the prohibition in subsection 4(1) for cargo that, since originating from, or transiting through, the Arab Republic of Egypt, has been examined and cleared at one of the *last port of call airports* listed below:

- Vancouver International Airport in Canada;
- Narita Airport Tokyo or Osaka International Airport in Japan;
- Hong Kong International Airport; or Shanghai Pudong International Airport in the People's Republic of China;
- O.R. Tambo International Airport, Johannesburg in the Republic of South Africa;
- Changi International Airport in Singapore;
- Suvarnabhumi International Airport, Bangkok in Thailand;
- Dubai International Airport in the United Arab Emirates; or
- Honolulu International Airport; or Los Angeles International Airport in the United States of America.

The purpose and effect of Subsection 4(3) is to ensure that air cargo destined for Australia that originates, or transits through, the Arab Republic of Egypt is subject to appropriate security controls at trusted *last port of call airports* to protect Australian aviation from unlawful interference. The *security controls* applied at these last port of call airports are similar to those applied in Australia for export air cargo.

Subsection 4(4)

Subsection 4(4) provides that for subsection (3), examined under *security controls* means examination using either *X-ray observation equipment* or *ETD equipment*, or by performing a physical examination in accordance with subsection (5).

The purpose and effect of subsection 4(4) is to specify that one of those types of examination must be used at a *last port of call airport* when examining an item of cargo that originates, or transits through, the Arab Republic of Egypt under *security controls*.

Subsection 4(5)

Subsection 4(5) provides that physical examination (referred to in subsection 4(4)) includes the item being deconsolidated or unpacked into the smallest box, carton or other unit into which it can be deconsolidated or unpacked; and that each unit is examined in the following way:

- the sides, top and bottom of the unit, including packaging, are checked for hidden compartments and for signs that the piece has been tampered with;
- the unit is opened and all areas of the interior of the unit are searched;
- the contents of the unit are searched systematically, layer by layer;
- the search of the interior areas and the contents of the unit proceeds in a sequence that ensures that every area of the unit and all its contents are thoroughly inspected.

The purpose and effect of subsection 4(5) is to specify the process that must be followed when performing a physical examination to examine items of cargo under *security controls* at a *last port of call airport*, if physical examination is the method used under subsection 4(4).

Section 5 – Repeal

Under this section, the 2015 prohibition instrument is repealed.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides an interpretation for a head of power enabling, in part, the making of instruments, and states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Accordingly, the power under section 65B of the Act to make instruments is interpreted to include the power to revoke the instrument. The 2015 prohibition instrument is repealed under section 65B of the Act.

Statement of Compatibility with Human Rights

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

Aviation Transport Security (Prohibited cargo –Egypt) Instrument 2022

This Disallowable 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 Disallowable Legislative Instrument

The *Aviation Transport Security (Prohibited cargo –Egypt) Instrument 2022* (the 2022 instrument) repeals and replaces the *Aviation Transport Security (Prohibited Cargo –Egypt) Instrument 2015* (the 2015 instrument). The 2022 instrument operates to impose a general prohibition on cargo originating from, or transiting through, the Arab Republic of Egypt (Egypt) from entry into Australian territory, except for certain specified items of cargo or cargo that has been examined and cleared at specified last ports of call airports. The prohibition on cargo originating from, or transiting through, Egypt is a preventative security measure, based on the Government’s assessment of the threat and risk environment.

The 2022 instrument substantially replicates the prohibition set out in the 2015 instrument that prohibited all cargo originating from, or transiting through, Egypt from entry into Australian territory.

The 2022 instrument also substantially replicates the exception to the prohibition on cargo originating from, or transiting through, Egypt set out in the 2015 instrument (with clarifying amendments to the definitions of *biological tissue* and *letter product*) to the extent that the prohibition does not apply to cargo of specified types that do not present a risk to aviation security. The excepted types of cargo are:

- a *letter product*;
- a *small item*;
- a live animal and the necessary packaging to ship the animal;
- *human remains*;
- *biological tissue*;
- dangerous goods that are permitted, under section 23 of the *Civil Aviation Act 1988*, to be carried on board an aircraft and the necessary packaging to ship the goods;
- a *government article*;
- an item of cargo in a diplomatic bag.

The terms *letter product*, *small item*, *human remains*, *biological tissue*, and *government article* are defined in section 3 of the 2022 instrument.

The 2022 instrument introduces an additional exception to the prohibition on cargo originating from, or transiting through, Egypt to reflect the improvements in air cargo security measures in Egypt.

The additional exception has the effect that the prohibition does not apply to cargo that has been examined and cleared under *security controls* in one of the specified *last port of call airports* (as defined in section 3 of the 2022 instrument), which are listed in section 4(3) of the 2022 instrument as follows:

- Vancouver International Airport in Canada;
- Narita Airport Tokyo or Osaka International Airport in Japan;
- Hong Kong International Airport; or Shanghai Pudong International Airport in the People’s Republic of China;
- O.R. Tambo International Airport, Johannesburg in the Republic of South Africa;
- Changi International Airport in Singapore;
- Suvarnabhumi International Airport, Bangkok in Thailand;
- Dubai International Airport in the United Arab Emirates; or
- Honolulu International Airport; or Los Angeles International Airport in the United States of America.

The specified last ports of call airports are in locations where a high standard of examination is performed and where Australia has strong relationships with industry participants on air cargo security matters, including access to information on how cargo is examined and handled in those countries.

To meet the requirements of this exception to the prohibition, the 2022 instrument specifies that *examined under security controls* means examination using X-ray observation equipment or ETD (explosive trace detection) equipment (both defined in section 3 of the 2022 instrument) or physical examination in accordance with subsection 4(5) of the 2022 instrument.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The prohibition on cargo originating from Egypt applies only to air cargo and does not affect the ability of people living in Australia to receive goods from Egypt by sea, rail or land freight. Nor does the prohibition apply to passengers or their baggage. The 2022 instrument also replicates the earlier exception to the prohibition on cargo for certain specified cargo types. As such, the 2022 instrument does not engage or limit the right to equality or non-discrimination through disproportionately effecting the ability of people living in Australia who originate from Egypt to receive goods from Egypt.

Conclusion

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

The Honourable Karen Andrews MP, Minister for Home Affairs