

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AVIATION LEGISLATION AMENDMENT (2008 MEASURES NO.1) BILL  
2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure, Transport, Regional  
Development and Local Government,  
The Honourable Anthony Albanese, MP)

## **AVIATION LEGISLATION AMENDMENT (2008 MEASURES NO.1) BILL 2008**

### **OUTLINE**

The Aviation Legislation Amendment (2008 Measures No. 1) Bill 2008 would amend the *Aviation Transport Security Act 2004* (the ATSA) and the *Civil Aviation Act 1988* (the CAA) to further strengthen aviation security and safety.

The key provisions of Schedule 1 to the Bill would:

- insert a new regulation making power under the ATSA to enable regulations that have extraterritorial operation to be made; and
- make minor technical amendments to the CAA, consequential to the amendments to the ATSA.

The purpose of this Bill is to enable regulations to be made under the Aviation Transport Security Regulations 2005 which have extraterritorial effect. Specifically, this would allow regulations to be made which would permit Air Security Officers (ASOs) to lawfully discharge their firearms on board an aircraft in Australian territory or an Australian aircraft in foreign territory.

Currently, existing regulations do not allow an ASO to discharge a firearm in an aircraft without the risk of prosecution. This problem is currently being addressed by periodic notices issued under regulation 144 of the Civil Aviation Regulations 1988 by the Civil Aviation Safety Authority, which permit on-duty ASOs to lawfully discharge a firearm in an aircraft.

There has been some concerns that the current notices issued under safety legislation may imply that it is safe to discharge a firearm on board an aircraft. This Bill would replace the notices with new regulations under the aviation security legislative framework to provide a more appropriate and permanent basis to deal with the lawful discharge of firearms by ASOs.

### **FINANCIAL IMPACT STATEMENT**

The amendments would have no significant financial impact on Government expenditure, therefore a Financial Impact Statement is not required.

## **NOTES ON CLAUSES**

### **Clause 1: Short Title**

Clause 1 is a formal provision specifying the short title of the Act which may be cited as the *Aviation Legislation Amendment (2008 Measures No. 1) Act 2008*.

### **Clause 2: Commencement**

The Bill contains one schedule of amendments to the Act. All provisions of the Bill would commence on the day it receives Royal Assent.

### **Clause 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. Any other item in a Schedule to this Act has effect according to its terms.

## **SCHEDULE 1 – AMENDMENTS**

Schedule 1 would amend both the *Aviation Transport Security Act 2004* and the *Civil Aviation Act 1988*.

### ***Aviation Transport Security Act 2004***

Amendments to the *Aviation Transport Security Act 2004*.

#### **Items 1 to 5 – Section 9 – Definitions**

1. Items 1 to 5 would insert new definitions under section 9 of the following terms for the purposes of proposed subsection 134(2):
  - airline;
  - Australian international carriage;
  - Australian operator;
  - bilateral arrangement; and
  - foreign country.
2. The full definitions of these terms would be found in new subsection 134(2).

#### **Item 6 – At the end of subsection 133(1)**

3. This item would insert a note under subsection 133(1) to refer the reader to proposed section 134 which would deal with the extra-territorial operation of regulations.

#### **Item 7 – At the end of the Act**

4. Under existing section 133 regulations could be made where required or permitted by the Act, or where necessary or convenient for the purposes of the Act. However, the Act does not expressly provide for the extraterritorial operation of such regulations.
5. Proposed item 7 would insert new subsection 134(1) in the Act which would extend the regulation making power under the Act to allow regulations to be made with extraterritorial effect.
6. Under proposed subsection 134(1) regulations would only have extraterritorial operation if expressed, and would only apply to Australian aircraft or aircraft engaged in Australian international carriage, and the crew and passengers on board these aircraft. This approach would be modelled on existing section 27 of the *Air Navigation Act 1920* (ANA).
7. Proposed subsection 134(2) would set out the full definitions of the following terms for the purposes of proposed subsection 134(1):

*Airline* would mean a person engaged in the provision of air services.

*Australian international carriage* would mean the carriage of passengers or freight, or both passengers and freight, whether within or outside Australian territory, by an aircraft that:

- (a) is operated by an airline that is designated, nominated or otherwise similarly authorised by Australia under a bilateral arrangement to engaged in such carriage; or
- (b) is operated by an airline incorporated in Australia; or
- (c) is operated by an airline having its principal place of business in Australia; or
- (d) is under the control of an airline outlined above in paragraphs (a) to (c) but is operated jointly with another person; or
- (e) is operated by an Australian operator (or operated jointly with another person, but under the control of the Australian operator) and is subject to sections 15A or 17 of the ANA.

*Australian operator* would mean an aircraft operator who:

- if the operator is an individual – is an Australian citizen, or is ordinarily resident in Australia; or
- if the operator is a body corporate – is incorporated in Australia or has its principal place of business in Australia.

*Bilateral arrangement* would mean an agreement or arrangement between:

- Australia, or an entity or organisation nominated or otherwise similarly authorised by Australia to enter into the agreement or arrangement; and
- a foreign country;

under which the carriage of air of passengers or freight (or both) between Australia and the foreign country is permitted.

*Foreign country* would include any region:

- that is part of a foreign country; or
- that is under the protection of a foreign country; or
- for whose international relations a foreign country is responsible.

8. Proposed subsection 134(3) would clarify the types of aircraft which would be taken to be subject to sections 15A and 17 of the ANA for the purposes of section 134.

9. Section 15A of the ANA generally provides that non-scheduled flights (i.e. charter operations) must not take on or discharge passengers, cargo or mail unless permitted by the Secretary of the Department. Similarly, section 17 generally prohibits international flights to or from Australia unless the flights are: (i) permitted by the Secretary, or (ii) in accordance with an international airline licence or permitted under section 15D, or (iii) authorised by a determination by the Secretary.

## *Civil Aviation Act 1988*

### Amendments to the *Civil Aviation Act 1988*

**Item 8 – After paragraph 23(1)(a)**

**Item 9 – After paragraph 23(2)(a)**

**Item 10 – After paragraph 23(2A)(a)**

10. Section 23 of the CAA currently provides that an aircraft or person must not carry or consign to carry any dangerous goods on board an aircraft except in accordance with the Civil Aviation Regulations 1988 or with the written permission of the Civil Aviation Safety Authority.

11. Items 8, 9 and 10 would insert new paragraphs 23(1)(ab), 23(2)(ab) and 23(2A)(ab) respectively to provide an additional exception to subsection 23, by allowing an aircraft or person to carry or consign to dangerous goods if it is in accordance with the Aviation Transport Security Regulations 2005.

12. These items are minor technical amendments consequential to item 7, in anticipation of regulations that will be made.