



Transport Legislation Amendment Act (No. 2) 1995

No. 89 of 1995

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Transport Legislation Amendment Act (No. 2) 1995

No. 89 of 1995

An Act to amend various Acts relating to transport

[Assented to 20 July 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Transport Legislation Amendment Act (No. 2) 1995*.

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Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) The items in the Schedule (other than items 23 and 30) commence on a day or days to be fixed by Proclamation.

(3) If an item in the Schedule (other than item 23 or 30) does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Amendments

3. The Acts referred to in the Schedule are amended in accordance with the applicable items in the Schedule.

SCHEDULE

Section 3

PART 1—AMENDMENTS OF THE AIR NAVIGATION ACT 1920

1. Before section 1:

Insert:

“PART 1—PRELIMINARY”.

2. Subsection 3(1):

Insert:

“ **‘aircraft operator’** or **‘operator’**, in relation to an aircraft, means a person who conducts, or offers to conduct, an air service by the use of the aircraft;

‘airport’ means an area of land or water (including any buildings, installations and equipment situated in the area) intended for use either wholly or partly for the arrival, departure or movement of aircraft;

‘airport operator’ or **‘operator’**:

(a) in relation to a Federal airport—means the Corporation; and

(b) in relation to any other airport—means the operator of the airport;

‘airport security committee’ means an airport security committee established under section 22ZB;

‘air service’ means a service of providing air transportation of people or goods, or both people and goods, by:

(a) regular public transport operation; or

(b) charter operation;

‘baggage’ means any article or possession of a passenger or crew member that is to be carried on board an aircraft, but does not include an article that is accessible to the passenger or crew member while the aircraft is in flight;

‘carriage’ means carriage anywhere on board an aircraft;

‘categorised airport’ means an airport categorised under section 22ZK;

‘charter aircraft’ means an aircraft engaged in a charter operation;

‘charter operation’ means an operation of an aircraft for the purpose of:

(a) a service of providing air transportation of people or goods, or both people and goods, that:

(i) is provided for a fee payable by persons using the service; and

(ii) is not available to the general public on a regular basis;

whether or not the service is conducted in accordance with fixed schedules to or from fixed terminals over specific routes; or

(b) a service of providing air transportation of people or goods, or both people and goods, that:

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- (i) is provided for a fee payable by persons using the service; and
 - (ii) is available to the general public on a regular basis; and
 - (iii) is not conducted in accordance with fixed schedules to or from fixed terminals over specific routes; or
- (c) a service of providing air transportation of people or goods, or both people and goods, that:
- (i) is not provided for a fee payable by persons using the service; and
 - (ii) is conducted in accordance with fixed schedules to or from fixed terminals over specific routes; and
 - (iii) is not available to the general public;
- ‘clear’**, in relation to the screening of people, vehicles or goods, has the meaning given by section 3AD;
- ‘Corporation’** means the Federal Airports Corporation;
- ‘domestic air service’** means an air service provided by means of a flight from a place within Australia to another place within Australia with no intermediate stop outside Australia;
- ‘emergency operations centre’**, in relation to an airport, means the facility established at the airport for the purpose of co-ordinating the response to, or to a threat of, an unlawful interference with aviation;
- ‘Federal airport’** means an airport that is managed by the Corporation;
- ‘international airport’** means an international airport designated under subsection 9(1);
- ‘international air service’** means an air service provided by means of a flight:
- (a) from a place within Australia to a place outside Australia; or
 - (b) from a place outside Australia to a place within Australia;
- ‘protective service officer’** means a protective service officer within the meaning of the *Australian Protective Service Act 1987*;
- ‘regular public transport aircraft’** means an aircraft engaged in a regular public transport operation;
- ‘regular public transport operation’** means an operation of an aircraft for the purpose of an air service that:
- (a) is provided for a fee payable by persons using the service; and
 - (b) is conducted in accordance with fixed schedules to or from fixed terminals over specific routes; and
 - (c) is available to the general public on a regular basis;
- ‘screen’** has the meaning given by section 3AD;

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‘screening point’, in relation to an aircraft, means a place where screening and clearance of people, vehicles or goods for the purposes of this Act are conducted by the operator of the aircraft, whether the place is in an airport or not;

‘security restricted area’, in relation to an airport, means any part of the airport that is identified as a security restricted area in an airport security program prepared for the airport by the operator of the airport and approved by the Secretary under subsection 22ZD(1);

‘sterile area’ means a place approved by the Secretary to be designated as a sterile area under subsection 21(5);

‘threaten’ has the meaning given by section 3AA;

‘thing’ includes any substance;

‘transceiver’ includes a mobile telephone;

‘uniformed security force’, in relation to an airport, has the meaning given by section 3AF;

‘unlawful interference with aviation’ has the meaning given by section 3AE;

‘weapon’ means:

(a) a firearm of any kind; or

(b) a thing stated in the regulations to be a weapon;

and includes a device that:

(c) except for the absence of, or a defect in, a part of the device, would be a weapon of a kind mentioned in paragraph (a) or (b); or

(d) is reasonably capable of being converted into a weapon of a kind mentioned in paragraph (a) or (b);”.

3. Subsection 3(1) (definition of “state aircraft”):

Insert after “his” in paragraph (c) “or her”.

4. After section 3:

Insert:

Meaning of “threaten”

“3AA. For the purposes of this Act, a person is taken to **‘threaten’** to do an act if the person makes a statement, or does anything else, showing, or from which it could reasonably be inferred, that it is his or her intention to do the act.

Aircraft flights: when do they start?

“3AB. For the purposes of this Act, a flight of an aircraft is taken to start:

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- (a) when the last external door is closed in preparation for the first movement of the aircraft for the purpose of taking off on the flight; or
- (b) if the aircraft moves, before all the external doors are closed, for the purpose of taking off on the flight—when it first so moves.

Aircraft flights: when do they end?

“3AC.(1) Subject to this section, a flight of an aircraft is, for the purposes of this Act, taken to end when the first external door is opened after the aircraft comes to rest on the next landing it makes after starting the flight.

“(2) If an aircraft makes a forced landing, its flight is, for the purposes of this Act, taken to end when the competent authorities take over responsibility for the aircraft and for the people and property on board.

“(3) If, after an aircraft starts a flight:

- (a) the aircraft is destroyed before the flight is taken to have ended under subsection (1) or (2); or
- (b) the flight is abandoned;

the flight is, for the purposes of this Act, taken to end when the aircraft is destroyed, or the flight is abandoned, as the case may be.

Screening and clearance

“3AD.(1) A person or vehicle is, or goods are, ‘**screened**’ for the purposes of this Act when an aircraft operator applies testing procedures to the person, vehicle or goods in order to detect the presence of any weapon that might be on the person, or in the vehicle or goods.

“(2) The person or vehicle is, or goods are, ‘**cleared**’ for the purposes of this Act if:

- (a) the screening has not revealed the presence of any weapon on the person or in the vehicle or goods; or
- (b) in respect of a screening that has revealed the presence of a weapon on the person or in the vehicle or goods—the weapon is surrendered to the aircraft operator.

Meaning of unlawful interference with aviation

“3AE.(1) In this Act, an ‘**unlawful interference with aviation**’ is any of the following acts that is committed by a person without a lawful excuse:

- (a) seizing, or exercising control of, an aircraft by force, or threat of force, or any other form of intimidation;
- (b) committing, against a person on board an aircraft in flight, an act of violence that is likely to endanger the safety of the aircraft;

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- (c) destroying an aircraft that is in service;
- (d) causing, to an aircraft in service, damage that:
 - (i) renders the aircraft incapable of flight; or
 - (ii) is likely to endanger its safety in flight;
- (e) placing, or causing to be placed, on board an aircraft in service a thing that is likely to:
 - (i) destroy the aircraft; or
 - (ii) render it incapable of flight; or
 - (iii) endanger its safety in flight;
- (f) destroying or damaging any air navigation facilities, if the destruction or damage is likely to endanger the safety of an aircraft in flight;
- (g) interfering with the operation of any air navigation facilities, if the interference is likely to endanger the safety of an aircraft in flight;
- (h) communicating information that the person knows to be false, if the communication of the information endangers the safety of an aircraft in flight;
- (i) using a weapon or other thing to commit an act of violence against a person at an airport, if the act:
 - (i) causes, or is likely to cause, serious injury or death; and
 - (ii) endangers, or is likely to endanger, the safe operation of the airport or the safety of anyone at the airport;
- (j) using a weapon, or any other thing:
 - (i) to destroy, or cause serious damage to, the facilities of an airport; or
 - (ii) to destroy, or cause serious damage to, an aircraft that is not in service and is located within an airport; or
 - (iii) to disrupt the operation of an airport;if the use of the weapon or thing endangers, or is likely to endanger, the safe operation of the airport;
- (k) attempting to commit an act described in any of the above paragraphs.

“(2) In this section:

‘in flight’, in relation to an aircraft, has the same meaning as in Article 2 of the Montreal Convention;

‘in service’, in relation to an aircraft, has the same meaning as in Article 2 of the Montreal Convention;

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‘Montreal Convention’ means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ratified by Australia on 12 July 1973, and whose English text is set out in Schedule 2 to the *Crimes (Aviation) Act 1991*.

Uniformed security force

“3AF. In this Act, a reference to a **‘uniformed security force’** in relation to an airport is a reference to a group of people:

- (a) who are made available by a body (for example, the Australian Protective Service) to be engaged by the operator of the airport to patrol the airport in accordance with the directions of the operator of the airport; and
- (b) each of whom, when so patrolling the airport:
 - (i) wears a uniform; and
 - (ii) carries a firearm of a kind that is approved by the Secretary in writing for the purposes of this section; and
 - (iii) carries a transceiver that enables him or her to communicate with other members of the body, the airport operator or the police force of the State or Territory in which the airport is located.”.

5. Before section 3A:

Insert:

“PART 2—REGULATION OF AIR NAVIGATION”.

6. Subsection 9(1):

Omit “writing under his hand”, substitute “signed writing”.

7. Subsection 10(2):

Omit, substitute:

“(2) If an aircraft is intentionally or recklessly flown in contravention of subsection (1), the operator of the aircraft and the pilot in command of the aircraft are each, unless the operator or the pilot in command, as the case may be, has a reasonable excuse, guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

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8. Section 11:

Add at the end:

“(2) The meanings of ‘air service’ and ‘international air service’ given by subsection 3(1) do not apply to this section.”.

9. Subsection 12(1A):

Omit, substitute:

“(1A) If an aircraft is intentionally or recklessly flown in contravention of subsection (1), the operator of the aircraft is, unless the operator has a reasonable excuse, guilty of an offence punishable on conviction by imprisonment for a period of not more than 7 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

10. Section 12:

Add at the end:

“(3) The meanings of ‘air service’ and ‘international air service’ given by subsection 3(1) do not apply to this section.”.

11. Subsection 13A(2):

Omit, substitute:

“(2) If an aircraft is intentionally or recklessly flown in contravention of subsection (1), the operator of the aircraft and the pilot in command of the aircraft are each, unless the operator or the pilot in command, as the case may be, has a reasonable excuse, guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

12. Subsection 14(3):

Omit, substitute:

“(3) If a passenger or any cargo or mail is intentionally or recklessly taken on to, or discharged from, an aircraft in contravention of subsection (2), the operator of the aircraft and the pilot in command of the aircraft are

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each, unless the operator or the pilot in command, as the case may be, has a reasonable excuse, guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

13. Subsection 14(5):

After “he” insert “or she”.

14. Subsection 15(2):

After “he” (wherever occurring) insert “or she”.

15. Subsection 15(2B):

Omit, substitute:

“(2B) If an aircraft is intentionally or recklessly flown in contravention of subsection (1), the operator of the aircraft and the pilot in command of the aircraft are each, unless the operator or the pilot in command, as the case may be, has a reasonable excuse, guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

16. Subsection 15(5):

After “he” insert “or she”.

17. Subsection 17(1A):

Omit, substitute:

“(1A) If an aircraft is intentionally or recklessly flown in contravention of subsection (1), the operator of the aircraft and the pilot in command of the aircraft are each, unless the operator or the pilot in command, as the case may be, has a reasonable excuse, guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

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18. Subsection 19(3):

Omit, substitute:

“(3) If an aircraft is flown in contravention of subsection (1), the operator of the aircraft is, unless the operator has a reasonable excuse, guilty of an offence punishable on conviction by a fine of not more than 200 penalty units.

“(4) An offence against subsection (3) is an offence of strict liability.

“(5) A person must not intentionally or recklessly:

(a) carry; or

(b) have in his or her possession;

munitions or implements of war:

(c) on board an aircraft in or over Australian territory; or

(d) on board an Australian aircraft outside Australian territory.

Penalty: Imprisonment for 7 years.

“(6) Subsection (5) does not apply if the munitions or implements of war are carried in accordance with the written permission of the Minister and any conditions to which the permission is expressed to be subject.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.”.

19. After section 19:

Insert:

“PART 3—AVIATION SECURITY

“Division 1—Passengers and baggage etc.

Screening of passengers and their possessions

“20.(1) This section applies to an aircraft that is:

(a) a regular public transport aircraft that:

(i) is fitted to carry 100 or more passengers; and

(ii) is not engaged in an international flight; or

(b) a regular public transport aircraft that is engaged in an international flight; or

(c) a charter aircraft that:

(i) is fitted to carry 100 or more passengers; and

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- (ii) is not engaged in an international flight; or
- (d) a charter aircraft that:
 - (i) is fitted to carry 38 or more passengers; and
 - (ii) is engaged in an international flight.

“(2) The operator of an aircraft must not, without reasonable excuse, permit a passenger who has not been screened and cleared by the operator to board the aircraft.

Penalty: 200 penalty units.

“(3) For the purposes of subsection (2), a person who:

- (a) has been screened and cleared at an Australian airport before embarking on an aircraft flight; and
- (b) has disembarked from the aircraft at an Australian airport; and
- (c) has not had an opportunity to make physical contact with a person who:
 - (i) is required by this section to be screened but has not been screened; or
 - (ii) having been screened, has afterwards had an opportunity to make physical contact with a person of a kind referred to in this paragraph;

is taken to have been screened and cleared for the purpose of entering a sterile area in relation to another flight of that aircraft or a flight of another aircraft or for the purpose of boarding that aircraft or another aircraft.

“(4) Subsection (2) does not apply if:

- (a) the Secretary has exempted the passenger in writing from screening and clearance; or
- (b) the passenger is included in a class of people that the Secretary has exempted in writing from screening and clearance.

“(5) The operator of an aircraft must not, without reasonable excuse, permit a passenger’s accompanying possessions that have not been screened and cleared by the operator to be brought on board the aircraft.

Penalty: 200 penalty units.

“(6) Subsection (5) does not apply if:

- (a) the Secretary has exempted the possessions in writing from screening and clearance; or
- (b) the possessions are included in a class of items that the Secretary has exempted in writing from screening and clearance.

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“(7) An offence constituted by a contravention of this section is an offence of strict liability.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Sterile area: aircraft operator

“21.(1) An aircraft operator may individually, or jointly with one or more other aircraft operators, apply to the Secretary in writing for the Secretary’s approval of a place to be designated as a sterile area in respect of the operator or operators.

“(2) The application may state that the place is to be designated as a sterile area only in respect of a particular time or times (for example, particular hours of each day).

“(3) The place may be at an airport or outside an airport.

“(4) If the regulations prescribe:

(a) information that must be included in an application under subsection (1); or

(b) the manner in which the application must be made;
the application must be made in accordance with the regulations.

“(5) The Secretary must consider the application and:

(a) approve the place to be designated as a sterile area; or

(b) approve the place to be designated as a sterile area subject to a condition stated in the approval; or

(c) refuse the application.

“(6) An aircraft operator in respect of whom a place has been approved as a sterile area must ensure that people, vehicles and goods do not enter or remain in the sterile area unless they:

(a) have been screened and cleared by an aircraft operator in respect of the sterile area; or

(b) are exempted by the Secretary from screening and clearance.

“(7) An aircraft operator must not, without reasonable excuse, contravene subsection (6).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(8) An offence constituted by a contravention of subsection (6) is an offence of strict liability.

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“(9) If, under an application referred to in subsection (2), the Secretary approves a place to be designated as a sterile area only in respect of a particular time or times, a reference in this Act to a sterile area is a reference to the place during the time or times (as the case may be).

Sterile areas and screening point: weapons

“22.(1) A person must not intentionally or recklessly carry a weapon through a screening point, or intentionally or recklessly have a weapon in his or her possession in a sterile area, unless the person:

- (a) is a member of the Australian Federal Police, or of a police force of a State or Territory, who is on duty; or
- (b) is a member of a uniformed security force who is on duty; or
- (c) is permitted in writing by the Secretary to carry the weapon.

Penalty: Imprisonment for 5 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

“(2) If an authorised officer:

- (a) reasonably suspects that a person has carried a weapon through a screening point, or has a weapon in his or her possession in a sterile area, in contravention of subsection (1); and
- (b) does not think it appropriate to arrest the person;

the officer may request the person to leave the screening point or sterile area, as the case may be.

“(3) If the person fails to comply with the request, section 22ZT has effect.

“(4) In this section:

‘authorised officer’ means:

- (a) a member of a uniformed security force who is on duty; or
- (b) a member of the Australian Federal Police, or of a police force of a State or Territory, who is on duty.

Screening of people generally: sterile areas

“22A.(1) A person must not intentionally or recklessly enter a sterile area unless:

- (a) the person has been screened and cleared by an aircraft operator in respect of the sterile area; or
- (b) the Secretary has exempted the person in writing from screening and clearance; or

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- (c) the person is included in a class of people that the Secretary has exempted in writing from screening and clearance.

Penalty: 80 penalty units.

“(2) A person must not intentionally or recklessly take a vehicle into a sterile area unless:

- (a) the person:

- (i) has been screened and cleared by an aircraft operator in respect of the sterile area; or
- (ii) has been exempted by the Secretary in writing from screening and clearance; or
- (iii) is included in a class of people that the Secretary has exempted in writing from screening and clearance; and

- (b) the vehicle:

- (i) has been screened and cleared by an aircraft operator in respect of the sterile area; or
- (ii) has been exempted by the Secretary in writing from screening and clearance; or
- (iii) is included in a class of vehicles that the Secretary has exempted in writing from screening and clearance.

Penalty: 80 penalty units.

“(3) A person must not intentionally or recklessly take goods into a sterile area unless:

- (a) the person:

- (i) has been screened and cleared by an aircraft operator in respect of the sterile area; or
- (ii) has been exempted by the Secretary in writing from screening and clearance; or
- (iii) is included in a class of people that the Secretary has exempted in writing from screening and clearance; and

- (b) the goods:

- (i) have been screened and cleared by an aircraft operator in respect of the sterile area; or
- (ii) have been exempted by the Secretary in writing from screening and clearance; or
- (iii) are included in a class of goods that the Secretary has exempted in writing from screening and clearance.

Penalty: 80 penalty units.

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“(4) For the purposes of subsections (1) to (3), a person who:

- (a) has been screened and cleared at an Australian airport before embarking on an aircraft flight; and
- (b) has disembarked from the aircraft at an Australian airport; and
- (c) has not had an opportunity to make physical contact with a person who:
 - (i) is required by this section to be screened but has not been screened; or
 - (ii) having been screened, has afterwards had an opportunity to make physical contact with a person of a kind referred to in this paragraph;

is taken to have been screened and cleared for the purpose of entering a sterile area in relation to another flight of that aircraft or a flight of another aircraft or for the purpose of boarding that aircraft or another aircraft.

“(5) An aircraft operator screening people, goods or vehicles must do so:

- (a) in the manner and on the occasions that the Secretary directs in writing; and
- (b) by the use of people who meet any requirements in relation to qualification, training, experience or appropriate physical attributes that are determined by the Secretary in writing; and
- (c) by the use of equipment that conforms to, and is operated in accordance with, specifications determined by the Secretary in writing; and
- (d) by the use of areas, buildings or rooms reserved for the purposes of screening and clearance.

“(6) An aircraft operator must not, without reasonable excuse, contravene subsection (5).

Penalty: 200 penalty units.

“(7) An aircraft operator must not permit a person, a vehicle or goods to pass a screening point to enter a sterile area, or to enter an aircraft, if the screening equipment detects a metal or unidentified object that is on the person, or in the vehicle or goods, unless:

- (a) the operator is satisfied that the object is not a danger to aviation security; or
- (b) the object is surrendered to the operator.

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“(8) An aircraft operator must not, without reasonable excuse, contravene subsection (7).

Penalty: 200 penalty units.

“(9) Subject to subsection (11), an aircraft operator must ensure that passengers or intending passengers of the aircraft do not make physical contact with people, vehicles or goods that have not been screened and cleared.

“(10) The requirement in subsection (9) applies for the period beginning immediately after the passenger, or intending passenger, is screened and cleared and ending at the time when the passenger, or intending passenger, boards the aircraft.

“(11) In spite of subsection (9), an aircraft operator is not required to ensure that passengers, or intending passengers, do not make physical contact with:

- (a) a person, vehicle or goods authorised in writing by the Secretary to be in an area used by those passengers or intending passengers; and
- (b) a person, vehicle or goods in a class of people, vehicles or goods that are authorised in writing by the Secretary to be in an area used by those passengers or intending passengers.

“(12) An aircraft operator must not, without reasonable excuse, contravene subsection (9).

Penalty: 200 penalty units.

“(13) An offence constituted by a contravention of subsection (5), (7) or (9) is an offence of strict liability.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Screening officer has no power to remove person’s clothing

“22B.(1) An aircraft operator screening a person may request the person to remove any of the person’s headwear, handwear, footwear and outer clothing for the purposes of the screening.

“(2) If:

- (a) the person refuses to comply with the request; and
- (b) as a result of the refusal, the operator is unable to screen and clear the person;

the operator may refuse to permit the person to enter a sterile area or an aircraft of the operator.

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“(3) An aircraft operator screening a person must not:

- (a) subject to subsections (1) and (2), require the person to remove any of the person’s clothing; or**
- (b) remove or cause the removal of any of the person’s clothing.**

“(4) An aircraft operator must not, without reasonable excuse, contravene subsection (3).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(5) An offence constituted by a contravention of subsection (3) is an offence of strict liability.

Carriage of baggage

“22C.(1) This section applies to an aircraft that is:

- (a) a regular public transport aircraft; or**
- (b) a charter aircraft;**

that is fitted to carry 38 or more passengers.

“(2) The operator of an aircraft must not, without reasonable excuse, accept baggage for carriage on board the aircraft for a person who fails or refuses to provide to the operator his or her ticket or other authorisation for travel on that aircraft.

Penalty: 200 penalty units.

“(3) Subsection (2) does not apply if the Secretary has directed in writing that:

- (a) the aircraft; or**
- (b) a class of aircraft that includes the aircraft; or**
- (c) the baggage; or**
- (d) a class of baggage that includes the baggage;**

is exempt from the operation of that subsection.

“(4) The operator of an aircraft must not, without reasonable excuse, fail to ensure that a tag indicating the flight number and destination of the aircraft is securely attached to each item of baggage accepted by the operator for carriage on board the aircraft.

Penalty: 20 penalty units.

“(5) The operator of an aircraft must not, without reasonable excuse, allow baggage accepted by the operator for carriage on board the aircraft to be accessible by a person other than the operator before the completion of the flight.

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Penalty: 200 penalty units.

“(6) The operator of an aircraft must determine, before the aircraft starts a flight, whether a person whose baggage has been accepted for carriage in the aircraft:

- (a) has disembarked from the aircraft; or
- (b) has not boarded the aircraft.

“(7) An aircraft operator must not, without reasonable excuse, contravene subsection (6).

Penalty: 200 penalty units.

“(8) Subject to subsections (10) and (11), if a person whose baggage has been accepted by an aircraft operator to be carried on board an aircraft:

- (a) has disembarked from the aircraft; or
- (b) has not boarded the aircraft;

the operator of the aircraft must remove the baggage from the aircraft before the aircraft starts a flight.

“(9) An aircraft operator must not, without reasonable excuse, contravene subsection (8).

Penalty: 200 penalty units.

“(10) Subsection (8) does not apply if:

- (a) the Secretary has directed in writing that:

- (i) the aircraft; or
 - (ii) a class of aircraft that includes the aircraft; or
 - (iii) the baggage; or
 - (iv) a class of baggage that includes the baggage;

is exempt from the operation of that subsection; or

- (b) the person is intentionally prevented by the operator from entering or remaining in the aircraft and the operator reasonably believes that the baggage is unlikely to represent a danger to people on board the aircraft; or
 - (c) the person died before boarding the aircraft; or
 - (d) the person died after boarding the aircraft and the body of the person has been removed from the aircraft; or
 - (e) the person has disembarked from the aircraft during an unscheduled landing of the aircraft that is for safety or other operational purposes; or
 - (f) the person has disembarked from the aircraft or has not boarded the aircraft because the person travels in another aircraft at the offer of the operator.

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“(11) Subsection (8) does not apply to a person’s baggage that is on board an aircraft if:

- (a) the person has boarded another aircraft, whether an aircraft of the operator or another operator; and
- (b) the baggage was placed on the first-mentioned aircraft because of an inadvertent act or omission of an aircraft operator; and
- (c) the placing of the baggage on the first-mentioned aircraft was not caused or contributed to by anything done by the person.

“(12) An offence constituted by a contravention of this section is an offence of strict liability.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Carriage of weapons on aircraft

“22D.(1) A person on board a charter aircraft or a regular transport aircraft (whether during a flight or not) must not intentionally or recklessly:

- (a) carry a weapon; or
- (b) otherwise have in his or her possession a weapon that is located at a place in the aircraft that is accessible to the person.

Penalty: Imprisonment for 7 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment.

“(2) Subsection (1) does not apply in relation to a weapon that:

- (a) is carried on board the aircraft in accordance with a written direction or permission of the Secretary; or
- (b) is carried:
 - (i) because an animal that could endanger the safety of the aircraft, or the safety of people on board the aircraft, is being carried on board the aircraft; and
 - (ii) under the control of the pilot in command of the aircraft; or
- (c) forms part of the equipment of the aircraft in accordance with the operations manual for the aircraft.

“(3) If a direction or permission under paragraph (2)(a) sets out conditions under which, or the manner in which, the weapon is to be carried on board the aircraft, the operator of the aircraft must ensure that the weapon is carried on board the aircraft in accordance with the direction or permission.

“(4) An aircraft operator must not, without reasonable excuse, contravene subsection (3).

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Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(5) An offence constituted by a contravention of subsection (3) is an offence of strict liability.

“(6) If an authorised officer:

(a) reasonably suspects that a person on board an aircraft is carrying a weapon, or otherwise has a weapon in his or her possession, in contravention of subsection (1); and

(b) does not think it appropriate to arrest the person;

the officer may request the person to leave the aircraft before the aircraft starts a flight.

“(7) If the person fails to comply with the request, section 22ZT has effect.

“(8) In this section:

‘authorised officer’ means:

(a) a member of a uniformed security force who is on duty; or

(b) a member of the Australian Federal Police, or of a police force of a State or Territory, who is on duty.

Note: Carriage of weapons on an aircraft is also subject to provisions in the *Civil Aviation Act 1988* and *Crimes (Aviation) Act 1991*.

“Division 2—Report of unlawful interference with aviation etc.

Definitions

“22E. In this Division, unless the contrary intention appears:

‘employee’, in relation to an employer, means:

(a) a person employed by the employer; or

(b) a person engaged under a contract for services between the person and the employer;

‘employer’ means:

(a) an aircraft operator; or

(b) an airport operator; or

(c) a person to whom a lease or licence has been granted in respect of land within an airport; or

(d) a person, other than the Corporation, to whom a right has been granted to use an area or a building, or a part of a building, at an airport.

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**Report of threat of unlawful interference with aviation
etc.—employees**

“22F.(1) An employee who becomes aware of:

- (a) a threat of an unlawful interference with aviation; or
- (b) an unlawful interference with aviation;

must, as soon as possible, report the threat or interference, as the case may be, to his or her employer.

“(2) An employee must not, without reasonable excuse, contravene subsection (1).

Penalty: 200 penalty units.

“(3) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

**Report of threat of unlawful interference with aviation etc.—
aircraft operator**

“22G.(1) An aircraft operator who becomes aware of:

- (a) a threat of an unlawful interference with aviation; or
- (b) an unlawful interference with aviation;

must, as soon as possible, report the threat or interference, as the case may be, to:

- (c) if it relates to an airport—the operator of the airport; and
- (d) if it relates to an aircraft of another operator—the other operator; and
- (e) if it relates to an aircraft of the operator:
 - (i) the Department; and
 - (ii) the Australian Federal Police or the police force of a State or Territory; and
- (f) if it is an interference with aviation that relates to an aircraft of the operator in flight—Airservices Australia; and
- (g) if it is an interference with aviation that relates to an aircraft of the operator that is in an airport—the operator of the airport.

“(2) If:

- (a) an aircraft operator becomes aware of a threat of unlawful interference with aviation; and
- (b) the threat relates to an aircraft of the operator; and
- (c) either:
 - (i) the operator assesses the threat and decides that the threat is credible; or

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- (ii) for whatever reason, the operator is unable to determine whether the threat is credible;
- the operator must, as soon as possible, report the threat to:
- (d) Airservices Australia; and
 - (e) if the aircraft is on an airport—the operator of the airport.

“(3) An aircraft operator must not, without reasonable excuse, contravene subsection (1) or (2).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(4) An offence constituted by a contravention of this section is an offence of strict liability.

Report of threat etc.—airport operator

“22H.(1) The operator of an airport who becomes aware of:

- (a) a threat of an unlawful interference with aviation; or
- (b) an unlawful interference with aviation;

must, as soon as possible, report the threat or interference, as the case may be, to:

- (c) if it relates to an aircraft—the operator of the aircraft; and
- (d) if it relates to an airport of another airport operator—the other airport operator; and
- (e) if it relates to an airport of the operator:
 - (i) the Department; and
 - (ii) the Australian Federal Police or the police force of a State or Territory; and
- (f) if it relates to an area or part of an airport of the operator for which a lease or licence has been granted to another person—the other person.

“(2) For the purposes of subsection (1), the operator is not required to report under paragraph (1)(f) if the threat or unlawful interference:

- (a) relates to the airport in general; and
- (b) is not specifically directed at the area or part of the airport for which the lease or licence has been granted.

“(3) An airport operator must not, without reasonable excuse, contravene subsection (1).

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Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(4) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

Report of threat etc.—other people

“22J.(1) This section applies to the following people:

- (a) an employee of the Department;
- (b) an employee of Airservices Australia;
- (c) a member of the Australian Federal Police or of the police force of a State or Territory on duty at an airport;
- (d) a member of a uniformed security force on duty at an airport;
- (e) a person (other than an aircraft operator or airport operator) to whom a lease or licence has been granted in respect of land within an airport;
- (f) a person (other than an aircraft operator or airport operator) to whom a right has been granted to use an area at an airport.

“(2) A person to whom this section applies who becomes aware of:

- (a) a threat of an unlawful interference with aviation; or
- (b) an unlawful interference with aviation;

must, as soon as possible, report the threat or interference to:

- (c) if it relates to an aircraft—the operator of the aircraft; and
- (d) if it relates to an airport—the operator of the airport.

“(3) A person must not, without reasonable excuse, contravene subsection (2).

Penalty: 200 penalty units.

“(4) An offence constituted by a contravention of subsection (2) is an offence of strict liability.

Report must comply with certain requirements

“22K.(1) The Secretary may, by notice published in the *Gazette*, set out:

- (a) information that must be included in a report that is required to be made to a person under a provision of this Division; or
- (b) the manner in which the report must be made to the person.

“(2) A notice under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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“(3) If requirements set out under subsection (1) are in force in relation to a report required to be made to a person under a provision of this Division, a report is taken not to have been made to the person under the provision unless it complies with the requirements.

False or misleading reports

“22L.(1) A person must not, without reasonable excuse, make a report under this Division that is false or misleading in a material particular.

Penalty: 200 penalty units.

“(2) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

“Division 3—Aviation security programs

Application

“22M. This Division applies to the following air services:

- (a) an international air service by regular public transport operations;
- (b) an international air service by charter operations;
- (c) a domestic air service by regular public transport operations using aircraft fitted to carry 38 or more passengers.

Definitions

“22N. In this Division:

‘approved program’ means an aviation security program in respect of which the Secretary’s approval under section 22R is in force, and includes such a program as varied under section 22U or 22V;

‘aviation security program’ has the meaning given by section 22P;

‘program purposes’, in relation to a proposed program or an approved program means the purposes referred to in paragraphs 22P(1)(a) to (j);

‘proposed program’ means a proposed aviation security program prepared under section 22Q.

Aviation security program

“22P.(1) For the purposes of this Division, an **‘aviation security program’** of an aircraft operator is a program that describes the equipment to be used, and sets out the procedures to be followed, by the operator for each of the following purposes in relation to aircraft operated by the operator:

- (a) preventing the unlawful carriage on an aircraft of the operator of:

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- (i) any weapon; or
 - (ii) any other thing that may endanger the safety of the aircraft or of any people or property on board the aircraft;
- (b) preventing any person from having unlawful access to an aircraft;
- (c) ensuring that all baggage, mail, cargo, equipment, goods or any other articles are accepted to be taken on board an aircraft only by:
 - (i) an employee of the operator; or
 - (ii) an agent or representative duly authorised by the operator;
- (d) preventing baggage, mail, cargo, equipment, goods and any other articles from being taken on board an aircraft except in accordance with security procedures set out in the program;
- (e) protecting an aircraft and people and property on board an aircraft when there is reason to believe that a danger exists to the aircraft or to the people or property;
- (f) carrying a weapon on board an aircraft in a secure manner under paragraph 22D(2)(a);
- (g) carrying on board an aircraft in a secure manner a person who is in lawful custody;
- (h) responding to threats of unlawful interference with aviation in relation to:
 - (i) an aircraft; and
 - (ii) the air service conducted or offered to be conducted by the operator;
- (i) reporting:
 - (i) threats of an unlawful interference with aviation; and
 - (ii) an unlawful interference with aviation;under this Act;
- (j) responding to an unlawful interference with aviation against an aircraft.

“(2) The reference in subsection (1) to the equipment and procedures includes a reference to equipment to be used, and procedures to be followed, by the operator:

- (a) at an airport at which an aircraft of the operator lands; and
- (b) on board such an aircraft while it is at an airport.

“(3) If the program relates to an international air service, the reference in subsection (1) to the equipment and procedures includes a reference to equipment to be used, and procedures to be followed, by the operator:

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- (a) on board an aircraft of the operator while it is in flight to or from Australia, or within Australia; or
- (b) in respect of an aircraft that is in flight to Australia—at the place outside Australia at which the aircraft:
 - (i) last lands; or
 - (ii) last takes on board passengers or baggage, mail, equipment, cargo, goods or any other articles;
before the flight.

Preparation and submission of proposed aviation security program

“22Q. An aircraft operator who proposes to conduct or offers to conduct an air service may prepare in writing, and submit to the Secretary for approval, a proposed aviation security program.

Approval or rejection of proposed program

“22R.(1) If the Secretary is satisfied that a proposed program submitted by an aircraft operator is adequate for each of the program purposes, the Secretary must approve the program by giving written notice of the approval to the aircraft operator.

“(2) Subject to section 22U, if the Secretary is not satisfied that a proposed program submitted by an aircraft operator is adequate for each of those purposes, the Secretary must refuse to approve the program by giving written notice of the refusal to the aircraft operator.

“(3) An aviation security program in respect of which an approval under the regulations was in force immediately before the commencement of this section is taken to have been approved under subsection (1).

Start and duration of approved program

“22S.(1) An approved program comes into force:

- (a) unless paragraph (b) applies—on the day on which it is approved; or
- (b) if a later day is stated in the notice of approval—on the later day.

“(2) The approval of an aviation security program remains in force until the approval is cancelled under section 22T or subsection 22U(4).

Cancellation of approval of program

“22T. If, at any time, the Secretary is satisfied that:

- (a) an approved program is not adequate for any one or more of the program purposes; and
- (b) action to vary the program under section 22U is not appropriate;

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the Secretary must cancel the approval by giving written notice of the cancellation to the aircraft operator who submitted the program.

Direction to vary program

“22U.(1) If the Secretary is satisfied that a proposed program or an approved program is not adequate for any one or more of the program purposes, the Secretary may, by written notice given to the aircraft operator who submitted the program, direct the operator to vary the program.

“(2) The Secretary must not give a direction in relation to a program purpose unless the Secretary is satisfied that the variation will make the program adequate for that program purpose.

“(3) In the notice, the Secretary must:

- (a) set out the variation; and
- (b) state the time within which the aircraft operator must submit a revised program incorporating the variation to the Secretary for approval.

“(4) If the aircraft operator fails to comply with the direction within the stated time, the Secretary must:

- (a) refuse to approve the proposed program; or
 - (b) cancel the approval of the approved program;
- as the case requires, by giving written notice of the refusal or cancellation, as the case may be, to the aircraft operator.

Review of program by operator

“22V.(1) An aircraft operator may, at any time, review an approved program prepared by the aircraft operator.

“(2) In reviewing the approved program, the aircraft operator may have regard to:

- (a) developments, whether in Australia or overseas, in relation to:
 - (i) the equipment used; and
 - (ii) the procedures followed;in relation to aviation security; and
- (b) experience gained in relation to aviation security, whether in Australia or overseas, by other aircraft operators.

“(3) If the aircraft operator is satisfied that:

- (a) the approved program is no longer adequate for any one or more of the program purposes; or

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- (b) the effectiveness of the program for those purposes could be substantially improved;

the operator may prepare in writing, and submit to the Secretary for approval, proposals for any variation of the program that the operator thinks necessary.

“(4) If the Secretary is satisfied that the program, when varied as proposed, will:

- (a) be a program adequate for each of the program purposes; or
- (b) be substantially more effective for those purposes;

the Secretary must approve the proposals by giving written notice of the approval to the aircraft operator.

“(5) If the Secretary is not so satisfied, the Secretary must refuse to approve the proposals by giving written notice of the refusal to the aircraft operator.

Offence—international air service by regular public transport operations

“22W.(1) Subject to subsection (2), an aircraft operator must not conduct an international air service by regular public transport operations unless:

- (a) an approved program is in force in relation to the operator; and
- (b) in conducting the service, the operator complies with the program in relation to:
 - (i) an aircraft used in the service; and
 - (ii) any person or thing on board the aircraft.

“(2) Subsection (1) only applies in respect of an aircraft while it:

- (a) flies over Australian territory; or
- (b) lands at, takes off from, or otherwise is situated at, an airport in Australia.

“(3) An aircraft operator must not, without reasonable excuse, contravene subsection (1).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(4) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

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Offence—international air service by charter operations

“22X.(1) Subject to subsection (3), an aircraft operator must not conduct an international air service by charter operations unless:

- (a) an approved program is in force in relation to the operator, or the operator has adopted an approved program of another operator in accordance with subsection (2); and
- (b) in conducting the service, the operator complies with the program in relation to:
 - (i) an aircraft used in the service; and
 - (ii) any person or thing on board the aircraft.

“(2) For the purposes of subsection (1), an aircraft operator adopts an approved program of another operator if:

- (a) the other operator has consented in writing to the adoption of the program by the first-mentioned operator; and
- (b) the Secretary, on the first-mentioned operator’s application, has approved, in writing, the adoption.

“(3) Subsection (1) only applies in respect of an aircraft while it:

- (a) flies over Australian territory; or
- (b) lands at, takes off from, or is otherwise situated at, an airport in Australia.

“(4) An aircraft operator must not, without reasonable excuse, contravene subsection (1).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(5) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

Offence—domestic air service by regular public transport operations

“22Y.(1) An aircraft operator must not conduct a domestic air service referred to in paragraph 22M(c) unless:

- (a) an approved program is in force in relation to the operator; and
- (b) in conducting the service, the operator complies with the program in relation to:
 - (i) an aircraft used in the service; and
 - (ii) any person or thing on board the aircraft.

“(2) An aircraft operator must not, without reasonable excuse, contravene subsection (1).

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Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(3) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

“Division 4—Airport security programs

Definitions

“22Z. In this Division:

‘airport security program’ has the meaning given by section 22ZA;

‘approved program’ means an airport security program in respect of which the Secretary’s approval under section 22ZD is in force, and includes such a program as varied under section 22ZG or 22ZH;

‘program purposes’, in relation to a proposed program or an approved program, means the purposes referred to in paragraphs 22ZA(1)(a) to (e);

‘proposed program’ means a proposed airport security program prepared under section 22ZC.

Airport security program

“22ZA.(1) For the purposes of this Division, an **‘airport security program’** of an airport operator is a program that describes the human and other resources to be used, and the procedures to be followed, by the operator in relation to the airport for each of the following purposes:

- (a) preventing, detecting, deterring and responding to an unlawful interference with aviation at the airport;
- (b) responding to an unlawful interference with aviation against aircraft intending to land at the airport;
- (c) responding to a threat of an unlawful interference with aviation relating to:
 - (i) the airport or any part of it; or
 - (ii) an aircraft at the airport; or
 - (iii) an aircraft that is intended to land at the airport;
- (d) preventing unauthorised people from having access to areas of the airport;
- (e) reporting:
 - (i) threats of an unlawful interference with aviation; and
 - (ii) an unlawful interference with aviation;

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under this Act.

“(2) The reference in subsection (1) to a description of the human and other resources to be used, and the procedures to be followed, in relation to an airport for the purposes referred to in that subsection includes a reference to a description of:

- (a) the airport’s fencing, barriers and gates; and
- (b) any security restricted areas of the airport; and
- (c) if the airport is a category 1 or 2 airport—the operation of the airport’s emergency operations centre; and
- (d) if the airport is a category 1, 2 or 3 airport—the patrolling of the airport by a uniformed security force.

Airport security committees

“22ZB.(1) The operator of a category 1, 2, 3 or 4 airport must ensure that there is an airport security committee for the airport.

“(2) An airport operator must not, without reasonable excuse, contravene subsection (1).

Penalty: 100 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(3) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

“(4) An airport security committee is to consist of people who are:

- (a) nominated in writing by the airport operator; and
- (b) approved in writing by the Secretary.

“(5) The function of an airport security committee is to make recommendations to the airport operator about:

- (a) the preparation of an airport security program for the airport; and
- (b) the implementation of the airport security program in relation to the airport.

“(6) The airport operator is to convene:

- (a) any meetings of the airport security committee that the Secretary requires; and
- (b) any additional meetings of the committee that the airport operator thinks necessary for the efficient performance of the committee’s functions.

“(7) The airport operator or a representative of the airport operator is to preside at meetings of the airport security committee.

SCHEDULE—continued

“(8) In subsection (7):

‘representative of the airport operator’ means an individual who is:

- (a) nominated by the airport operator; and
- (b) approved in writing by the Secretary;

as the airport operator’s representative.

Preparation and submission of proposed airport security program

“22ZC.(1) The operator of an airport may prepare in writing, and submit to the Secretary for approval, a proposed airport security program for the airport.

“(2) If the airport is a category 1, 2, 3 or 4 airport, the operator must have regard to any recommendation of the airport security committee in relation to the airport when preparing the proposed program.

Approval or rejection of proposed program

“22ZD.(1) If the Secretary is satisfied that a proposed program submitted by an airport operator is adequate for each of the program purposes, the Secretary must approve the program by giving written notice of the approval to the airport operator.

“(2) Subject to section 22ZG, if the Secretary is not satisfied that the proposed program is adequate for each of those purposes, the Secretary must refuse to approve the program by giving written notice of the refusal to the airport operator.

Start and duration of approved program

“22ZE.(1) An approved program comes into force:

- (a) unless paragraph (b) applies—on the day on which it is approved; or
- (b) if a later day is stated in the notice of approval—on the later day.

“(2) The approval of an airport security program remains in force until the approval is cancelled under section 22ZF or subsection 22ZG(4).

Cancellation of approval of program

“22ZF. If, at any time, the Secretary is satisfied that:

- (a) an approved program is not adequate for any one or more of the program purposes; and
 - (b) action to vary the program under section 22ZG is not appropriate;
- the Secretary must cancel the approval by giving written notice of the cancellation to the airport operator who prepared the program.

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Direction to vary program

“22ZG.(1) If the Secretary is not satisfied that a proposed program or an approved program for an airport is adequate for any one or more of the program purposes, the Secretary may, by written notice given to the operator of the airport, direct the operator to vary the program.

“(2) The Secretary must not give a direction in relation to a program purpose unless the Secretary is satisfied that the variation will make the program adequate for that program purpose.

“(3) In the notice, the Secretary must:

- (a) set out the variation; and
- (b) state the time within which the airport operator must submit a revised program incorporating the variation to the Secretary for approval.

“(4) If the airport operator fails to comply with the direction within the stated time, the Secretary must:

- (a) refuse to approve the proposed program; or
- (b) cancel the approval of the approved program;

as the case requires, by giving written notice of the refusal or cancellation, as the case may be, to the airport operator.

Review of program by operator

“22ZH.(1) An airport operator may, at any time, review an approved program prepared by the airport operator.

“(2) In reviewing the approved program, the airport operator may have regard to:

- (a) developments, whether in Australia or overseas, in relation to:

- (i) the human and other resources used; and
 - (ii) the procedures followed;

in relation to aviation security; and

- (b) experience gained in relation to aviation security, whether in Australia or overseas, by other airport operators.

“(3) If the airport operator is satisfied that:

- (a) the approved program is no longer adequate for any one or more of the program purposes; or
- (b) the effectiveness of the program for those purposes could be substantially improved;

the operator may prepare in writing, and submit to the Secretary for approval, proposals for any variation of the program that the operator thinks necessary.

SCHEDULE—continued

“(4) If the Secretary is satisfied that the program, when varied as proposed, will:

- (a) be a program adequate for each of the program purposes; or
- (b) be substantially more effective for those purposes;

the Secretary must approve the proposals by giving written notice of the approval to the airport operator.

“(5) If the Secretary is not so satisfied, the Secretary must refuse to approve the proposals by giving written notice of the refusal to the airport operator.

Operator of categorised airport to have an approved airport security program

“22ZJ.(1) The operator of a categorised airport must:

- (a) ensure that an approved airport security program is in force at all times for the airport; and
- (b) comply with the program.

“(2) An operator of a categorised airport must not, without reasonable excuse, contravene subsection (1).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(3) An offence constituted by a contravention of subsection (1) is an offence of strict liability.

“Division 5—Security measures etc. applicable to categorised airports

Airport categories

“22ZK.(1) The Secretary may, by written notice given to the operator of an airport, categorise the airport as a category 1, 2, 3, 4 or 5 airport.

“(2) The notice comes into force:

- (a) unless paragraph (b) applies—on the day on which it is given; or
- (b) if a later day is stated in the notice—on the later day.

Category 1 airports—prescribed requirements

“22ZL.(1) The regulations may, in relation to a category 1 airport, prescribe matters relating to any of the following:

- (a) patrolling of the airport by members of a uniformed security force;
- (b) patrolling of the airport by other security personnel;
- (c) attendance at the airport by members of a police force and other security personnel;

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- (d) responding to security emergencies at the airport;
- (e) the operation of a security control centre at the airport;
- (f) security restricted areas at the airport;
- (g) meetings of an airport security committee;
- (h) appointment of an officer to co-ordinate aviation security at the airport;
- (i) provision of lighting, fencing and storage facilities at the airport.

“(2) The operator of a category 1 airport must not, without reasonable excuse, contravene regulations prescribed under subsection (1).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(3) An offence constituted by a contravention of regulations prescribed under subsection (1) is an offence of strict liability.

“(4) In this section:

‘**security control centre**’ means the place at an airport where the airport operator co-ordinates routine measures that relate to aviation security.

Category 2 airports—prescribed requirements

“22ZM.(1) The regulations may, in relation to a category 2 airport, prescribe matters relating to any of the following:

- (a) patrolling of the airport by members of a uniformed security force;
- (b) patrolling of the airport by other security personnel;
- (c) attendance at the airport by members of a police force and other security personnel;
- (d) responding to security emergencies at the airport;
- (e) security restricted areas at the airport;
- (f) meetings of an airport security committee;
- (g) appointment of an officer to co-ordinate aviation security at the airport;
- (h) provision of lighting, fencing and storage facilities at the airport.

“(2) The operator of a category 2 airport must not, without reasonable excuse, contravene regulations prescribed under subsection (1).

Penalty: 160 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

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“(3) An offence constituted by a contravention of regulations prescribed under subsection (1) is an offence of strict liability.

Category 3 airports—prescribed requirements

“22ZN.(1) The regulations may, in relation to a category 3 airport, prescribe matters relating to any of the following:

- (a) patrolling of the airport by members of a uniformed security force;
- (b) patrolling of the airport by other security personnel;
- (c) attendance at the airport by members of a police force and other security personnel;
- (d) responding to security emergencies at the airport;
- (e) security restricted areas at the airport;
- (f) meetings of an airport security committee;
- (g) appointment of an officer to co-ordinate aviation security at the airport;
- (h) provision of lighting, fencing and storage facilities at the airport.

“(2) The operator of a category 3 airport must not, without reasonable excuse, contravene regulations prescribed under subsection (1).

Penalty: 120 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(3) An offence constituted by a contravention of regulations prescribed under subsection (1) is an offence of strict liability.

Category 4 airports—prescribed requirements

“22ZO.(1) The regulations may, in relation to a category 4 airport, prescribe matters relating to any of the following:

- (a) security restricted areas at the airport;
- (b) attendance at the airport by members of a police force and other security personnel;
- (c) meetings of an airport security committee;
- (d) appointment of an officer to co-ordinate aviation security at the airport;
- (e) provision of fencing facilities at the airport.

“(2) The operator of a class 4 airport must not, without reasonable excuse, contravene regulations prescribed under subsection (1).

Penalty: 80 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

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“(3) An offence constituted by a contravention of regulations prescribed under subsection (1) is an offence of strict liability.

Category 5 airports—prescribed requirements

“22ZP.(1) The regulations may, in relation to a category 5 airport, prescribe matters relating to any of the following:

- (a) security restricted areas at the airport;
- (b) attendance at the airport by members of a police force.

“(2) The operator of a category 5 airport must not, without reasonable excuse, contravene regulations prescribed under subsection (1).

Penalty: 40 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(3) An offence constituted by a contravention of regulations prescribed under subsection (1) is an offence of strict liability.

Secretary’s power of direction

“22ZQ.(1) The Secretary may, by written notice given to the operator of a categorised airport, direct the operator to comply, in relation to the airport, with a requirement of the regulations that relates to another category of airports if the Secretary reasonably believes that the requirement is appropriate or necessary at the airport in the circumstances.

“(2) A direction may be limited as to the time or times at which, or may prescribe a manner in which, a requirement is to be complied with.

“(3) An airport operator who is given a direction must not, without reasonable excuse, contravene the direction.

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(4) An offence constituted by a contravention of a direction is an offence of strict liability.

Carriage or discharge of firearms at a categorised airport

“22ZR.(1) Subject to subsection (2), a person in a security restricted area of a categorised airport must not intentionally or recklessly:

- (a) carry a firearm; or
- (b) discharge a firearm.

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Penalty: Imprisonment for 7 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

“(2) Subsection (1) does not apply if the person is:

- (a) an officer or employee of the Department who is on duty; or
- (b) a member of the Defence Force who is on duty; or
- (c) a member of a uniformed security force who is on duty;
- (d) a member of the Australian Federal Police or a police force of a State or Territory who is on duty; or
- (e) a protective service officer who is on duty; or
- (f) an officer or employee of Airservices Australia acting in connection with safety of air navigation; or
- (g) a person acting with the authority of a person mentioned in any of the above paragraphs; or
- (h) a person exempted by the Secretary in writing from the operation of that subsection; or
- (i) the operator of the airport or a person who is acting with the operator’s authority.

“(3) If an authorised officer:

- (a) reasonably suspects that a person in a security restricted area is carrying or has discharged a firearm in contravention of subsection (1); and
- (b) does not think it appropriate to arrest the person;

the officer may request the person to leave the security restricted area.

“(4) If the person fails to comply with the request, section 22ZT has effect.

“(5) In this section:

‘authorised officer’ means:

- (a) a member of a uniformed security force who is on duty; or
- (b) a member of the Australian Federal Police, or of a police force of a State or Territory, who is on duty.

Approval of certain works at airports

“22ZS.(1) In this section:

‘facility’ means any of the following facilities at an airport:

- (a) a facility to control the access of people, vehicles or goods to a security restricted area, including any of the following:

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- (i) gates;
- (ii) doors;
- (iii) fences;
- (iv) the exterior of a building in the airport that faces a security restricted area;

- (b) a sterile area;
- (c) a cargo handling facility;
- (d) a baggage handling facility;
- (e) a facility for the storage of mishandled or misrouted baggage.

“(2) If:

- (a) the operator of a category 1, 2 or 3 airport wishes to construct, alter or add to a facility at the airport; or
- (b) the operator of an aircraft wishes to construct, alter or add to a facility at a category 1, 2 or 3 airport;

the operator may submit written plans setting out the proposed construction, alteration or addition to the Secretary for approval.

“(3) The plans must set out particulars of the proposal in sufficient detail to allow the proposal to be properly considered by the Secretary.

“(4) The Secretary must, within 30 days after receiving the plans, by written notice given to the operator:

- (a) approve the plans; or
- (b) approve the plans subject to a variation set out in the approval; or
- (c) reject the plans.

“(5) If the Secretary does not comply with subsection (4), the plans are taken to be approved by the Secretary at the end of the period of 30 days.

“(6) If the Secretary:

- (a) approves the plans subject to a variation; or
- (b) rejects the plans;

the operator may submit to the Secretary, for approval, written plans that incorporate the variation and any other revisions.

“(7) This section applies to plans submitted under subsection (6) as if they were submitted under subsection (2).

“(8) A person must not construct, alter or add to a facility at a category 1, 2 or 3 airport except in accordance with:

- (a) plans approved under this section; or
- (b) plans approved subject to a variation under this section.

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“(9) A person must not, without reasonable excuse, contravene subsection (8).

Penalty: 200 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

“(10) An offence constituted by a contravention of subsection (8) is an offence of strict liability.

“Division 6—Miscellaneous

Removal of person who fails to leave a place when requested by an authorised officer

“22ZT.(1) In this section:

‘authorised officer’ means:

- (a) a member of a uniformed security force who is on duty; or
- (b) a member of the Australian Federal Police, or of a police force of a State or Territory, who is on duty.

“(2) This section applies if a person has refused or failed, within a reasonable time, to comply with the request made by an authorised officer under subsection 22(2), 22D(6) or 22ZR(3).

“(3) Subject to this section, the authorised officer may use force to remove the person:

- (a) if the request was made under subsection 22(2)—from the screening point or sterile area and from any security restricted area; or
- (b) if the request was made under subsection 22D(6)—from the aircraft and from any sterile area or security restricted area; or
- (c) if the request was made under subsection 22ZR(3)—from the security restricted area and from any sterile area.

“(4) An authorised officer must not, in the course of removing a person under subsection (3) use more force, or subject the person to greater indignity, than is necessary and reasonable to remove the person.

“(5) The authorised officer may not remove the person under subsection (3) if, following the officer’s request, one of the following occurs:

- (a) if the request was made under subsection 22(2):
 - (i) the person voluntarily surrenders the weapon to the operator of an aircraft and the operator agrees to carry the weapon on board the aircraft; or

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- (ii) the person voluntarily surrenders the weapon to the authorised officer;
- (b) if the request was made under subsection 22D(6):
 - (i) the person voluntarily surrenders the weapon to the operator of the aircraft and the operator agrees to carry the weapon on board the aircraft; or
 - (ii) the person voluntarily surrenders the weapon to the authorised officer;
- (c) if the request was made under subsection 22ZR(3):
 - (i) the person voluntarily surrenders the firearm to the operator of an aircraft and the operator agrees to carry the firearm on board the aircraft; or
 - (ii) the person voluntarily surrenders the firearm to the authorised officer; or
 - (iii) the person voluntarily surrenders the firearm to a person referred to in any of the paragraphs of subsection 22ZR(2);
- (d) in any case:
 - (i) the person consents to being screened, and to having his or her accompanying possessions screened, by an aircraft operator; and
 - (ii) the person and those possessions are screened and cleared by the aircraft operator (whether or not they have previously been screened and cleared by an aircraft operator).

“(6) Subject to subsection (7), if a weapon is surrendered by the person to the authorised officer or a person referred to in any of the paragraphs of subsection 22ZR(2):

- (a) if the person by whom the weapon was surrendered is proposing to travel on an aircraft and the operator of the aircraft agrees to carry the weapon on board the aircraft, the person to whom the weapon was surrendered must deliver it to the operator; or
- (b) otherwise—the person to whom the weapon was surrendered must return the weapon to the person who surrendered it, but only when that person is not in a sterile area, an aircraft or a security restricted area.

“(7) If a person to whom a weapon is surrendered (the **‘weapon-holder’**) as mentioned in subsection (6) reasonably suspects that the possession of the weapon by the person who surrendered it may have contravened a law of the Commonwealth, of a State or of a Territory, the weapon-holder:

SCHEDULE—continued

- (a) must not deliver the weapon to the operator of an aircraft or return it to the person who surrendered it; and
- (b) must, as soon as possible, report the surrender of the weapon to a member of the Australian Federal Police or of a police force of a State or Territory.

“(8) If the weapon-holder ceases to have the suspicion referred to in subsection (7), the weapon-holder must, as soon as possible, deal with the weapon in accordance with subsection (6).

Weapon surrendered or delivered to operator of aircraft

“22ZU.(1) This section applies if a weapon is:

- (a) surrendered to an aircraft operator by a person (the ‘**weapon-owner**’):
 - (i) following the screening of a person, vehicle or goods under this Act; or
 - (ii) under paragraph 22ZT(5)(a), (b) or (c); or
- (b) delivered to an aircraft operator under paragraph 22ZT(6)(a) by someone to whom it was surrendered by a person (the ‘**weapon-owner**’) under subsection 22ZT(5).

“(2) Subject to subsection (4), if the weapon-owner is travelling on a flight in an aircraft of the operator, the operator must cause the weapon to be returned to the weapon-owner at the end of the flight.

“(3) Subject to subsection (4), if the weapon-owner is not travelling on a flight in an aircraft of the operator, the operator must return the weapon to the weapon-owner, but only when the weapon-owner is not in a sterile area, an aircraft or a security restricted area.

“(4) If the aircraft operator reasonably suspects that the possession of the weapon by the weapon-owner may have contravened a law of the Commonwealth, of a State or of a Territory, the operator:

- (a) must not return the weapon to the weapon-owner; and
- (b) must as soon as possible, report the surrender of the weapon to a member of the Australian Federal Police or of a police force of a State or Territory.

“(5) If the operator ceases to have the suspicion referred to in subsection (4), the operator must, as soon as possible, deal with the weapon in accordance with subsection (2) or (3), as the case requires.

Secretary may give directions

“22ZV.(1) In this section:

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‘court’ includes:

- (a) a tribunal; or
- (b) an authority; or
- (c) a person;

that has power to require the production of documents or the answering of questions;

‘designated person’ means a person who is:

- (a) an officer or employee of the Department; or
- (b) a member of the staff of Airservices Australia or of the Corporation;
or
- (c) an airport operator, other than the Corporation; or
- (d) an aircraft operator; or
- (e) a person to whom a lease or licence has been granted in respect of land within an airport; or
- (f) a person, other than the Corporation, to whom a right has been granted to use an area or a building, or a part of a building, at an airport; or
- (g) an authority, other than Airservices Australia, to which a right to use an airport or part of an airport (including a building, or a part of a building) has been granted; or
- (h) a person employed by an operator, person or authority mentioned in paragraph (c), (d), (e), (f) or (g);

‘passenger’ includes an intending passenger.

“(2) The Secretary may give written directions to a designated person or a passenger in relation to the measures and resources to be used:

- (a) in responding to a threat of an unlawful interference with aviation in relation to:
 - (i) an aircraft; or
 - (ii) an airport; or
- (b) in controlling access to a part of an airport.

“(3) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2) that is:

- (a) given to the person; or
- (b) clearly displayed at a place where the direction is to be complied with by the person.

Penalty: 200 penalty units.

“(4) Subject to subsection (5), a person must not:

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- (a) disclose to a passenger a direction under subsection (2) that is not expressed to be a direction to a passenger; or
- (b) disclose to a person who is not a designated person a direction under subsection (2) that is expressed to be a direction to a designated person only.

Penalty: 20 penalty units.

“(5) A designated person who makes a disclosure of a kind referred to in subsection (4) is not guilty of an offence because of that subsection if the disclosure is reasonably necessary for the purpose of the exercise of his or her powers, or the performance of his or her functions or duties, as a designated person.

“(6) Subsection (4) does not preclude the disclosure of a direction to a court in any civil or criminal proceeding.

“(7) An offence constituted by a contravention of this section is an offence of strict liability.

Review of decisions by AAT

“22ZW.(1) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Secretary:

- (a) to approve a place to be designated as a sterile area under subsection 21(5) subject to a condition; or
- (b) to refuse an application for a place to be designated as a sterile area under subsection 21(5); or
- (c) to refuse to approve a proposed aviation security program under section 22R or 22U; or
- (d) to direct an aircraft operator to vary a proposed program or an approved program under subsection 22U(1); or
- (e) to direct an airport operator to vary a proposed program or an approved program under subsection 22ZG(1); or
- (f) to refuse to approve a proposed airport security program under section 22ZD or 22ZG; or
- (g) to cancel the approval of an aviation security program under section 22T or 22U; or
- (h) to cancel the approval of an airport security program under section 22ZF or 22ZG; or
- (i) to refuse to approve a proposal to vary an aviation security program under section 22V; or
- (j) to refuse to approve the adoption of an approved aviation security program under paragraph 22X(2)(b); or

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- (k) to refuse to approve a proposal to vary an airport security program under section 22ZH; or
- (l) to categorise an airport under section 22ZK; or
- (m) to give a direction under subsection 22ZQ(1); or
- (n) to approve plans subject to a variation under section 22ZS; or
- (o) to reject plans under section 22ZS; or
- (p) to give a direction under subsection 22ZV(2).

“(2) Notice of a decision by the Secretary to which subsection (1) applies must include a statement to the effect that:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, a person affected by the decision may make an application to the Administrative Appeals Tribunal for review of the decision; and
- (b) a person whose interests are affected by the decision may request a statement under section 28 of that Act.

“(3) A failure to comply with subsection (2) does not affect the validity of the decision.”.

20. Before section 23:

Insert:

“PART 4—MISCELLANEOUS”.

21. Subsection 23(2):

Omit.

22. After section 24:

Insert:

Conduct by directors, servants and agents

“24A.(1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an

SCHEDULE—continued

offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

“(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

“(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

“(5) If:

- (a) a person who is an individual is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

“(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

“(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

“(9) A reference in this section to an offence against this Act includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Act.”.

23. Section 27:

Repeal, substitute:

SCHEDULE—continued

Extra-territorial operation of regulations

“27.(1) Any provisions of the regulations may be expressed to apply to and in relation to any of the following:

- (a) Australian aircraft;
- (b) aircraft (other than Australian aircraft) engaged in Australian international carriage;
- (c) passengers on board, and members of the crew of, aircraft referred to in paragraph (a) or (b);

while the aircraft are outside Australian territory.

“(2) In this section:

‘airline’ means a person engaged in the provision of air services;

‘Australian international carriage’ means 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 engage 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 operated by an Australian operator and is subject to section 13A, 14, 15 or 17; or
- (e) is operated jointly by:
 - (i) an airline referred to in paragraph (a), (b) or (c); and
 - (ii) another person;but is under the control of the airline referred to in subparagraph (i); or
- (f) is subject to section 13A, 14, 15 or 17 and is operated jointly by:
 - (i) an Australian operator; and
 - (ii) another person;but is under the control of the Australian operator;

‘Australian operator’ means:

- (a) an individual who:
 - (i) is an Australian citizen; or
 - (ii) is ordinarily resident in Australia; or
- (b) a body corporate that:
 - (i) is incorporated in Australia; or
 - (ii) has its principal place of business in Australia;

SCHEDULE—continued

‘bilateral arrangement’ means an agreement or arrangement between:

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

under which the carriage by air of passengers or freight, or both passengers and freight, between Australia and the foreign country is permitted;

‘foreign country’ includes any region:

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

“(3) For the purposes of this section:

- (a) an aircraft is taken to be subject to section 13A if the aircraft is, or apart from subsection 13A(4) would be, prohibited from being flown between the places mentioned in subsection 13A(1) except with the Secretary’s permission and in accordance with that permission; and
- (b) an aircraft is taken to be subject to section 14 if the aircraft is, or apart from subsection 14(3B) would be, prohibited, on a non-scheduled flight into Australian territory, from taking on or discharging passengers, or any cargo or mail, being carried for reward except with the Secretary’s permission and in accordance with that permission; and
- (c) an aircraft is taken to be subject to section 15 if the aircraft is, or apart from subsection 15(2D) would be, prohibited from making a non-scheduled flight over or into Australian territory unless the Minister has approved the flight; and
- (d) an aircraft is taken to be subject to section 17 if the aircraft is, or apart from subsection 17(1C) would be, prohibited from arriving in Australian territory from a place outside Australian territory, or from departing from Australian territory for a place outside Australian territory, without the permission of the Secretary.

***Legislative Instruments Act 1995* not to apply to instruments relating to aviation security**

“28. Instruments under this Act, or under the regulations, relating to aviation security are not legislative instruments for the purposes of the *Legislative Instruments Act 1995*.”.

Transport Legislation Amendment (No. 2)
No. 89, 1995

SCHEDULE—continued

24. Subsection 29(2):

- (a) After “him” insert “or her”.
- (b) After “he” insert “or she”.

25. Subsection 31(1):

- (a) Omit “writing under his hand”, substitute “signed writing”
- (b) Omit “his powers”, substitute “his or her powers”.

SCHEDULE—continued

**PART 2—AMENDMENT OF THE CIVIL AVIATION
(CARRIERS' LIABILITY) ACT 1959**

26. After Part IV:

Insert:

**“PART IVA—CARRIERS TO BE INSURED AGAINST
LIABILITY TO PASSENGERS FOR DEATH OR PERSONAL
INJURY**

Object of Part

“41A. The object of this Part is to require carriers to hold, in respect of carriage to which Part II, III or IV applies, insurance that will ensure, as far as practicable, that compensation within the limits of liability prescribed by this Act will be paid in respect of death or personal injury suffered by passengers on aircraft.

Definitions

“41B. In this Part:

‘acceptable contract of insurance’ means a contract of insurance in respect of which a certificate is in force under subsection 41C(7);

‘business day’ means a day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory;

‘carrier’ means a person engaged, or offering to engage, in an air transport operation for the carriage of passengers to which Part II, III or IV applies;

‘contract of insurance’ means a contract between a carrier and an insurer under which the insurer indemnifies the carrier against personal injury liability in respect of each passenger carried, or to be carried, by air by the carrier;

‘personal injury liability’, in relation to a carrier, means liability under this Act in respect of the death of, or personal injury suffered by, passengers carried, or to be carried, by air by the carrier.

Carriers may be required to produce evidence that an acceptable contract of insurance is in force between the carrier and an insurer

“41C.(1) The Minister may, at any time and from time to time, by written notice given to a carrier, require the carrier, within a period set out in the notice, to produce evidence, satisfactory to the Minister, that there is in force between the carrier and an insurer a contract of insurance that meets the prescribed requirements.

Transport Legislation Amendment (No. 2)
No. 89, 1995

SCHEDULE—continued

“(2) The prescribed requirements are:

- (a) the requirements of subsections (3) and (4); and
- (b) any other requirements made by the regulations for the purposes of this section.

“(3) It is a requirement in relation to a contract of insurance that, under the contract, the insurer’s liability to indemnify the carrier against personal injury liability, in respect of each passenger carried, or to be carried, by air by the carrier, is for an amount that is not less than:

- (a) in respect of carriage by a domestic carrier to which Part IV applies—\$500,000; or
- (b) in respect of any other carriage—260,000 SDRs.

“(4) It is a requirement of a contract of insurance that, under the contract, the insurer’s liability to indemnify the carrier against personal injury liability:

- (a) is not affected by any breach of a safety-related requirement imposed by or under any Act or by the Civil Aviation Safety Authority; and
- (b) is not contingent upon the financial condition or solvency of the carrier or upon the carrier not being or not becoming bankrupt or not beginning to be or not being wound up.

“(5) The prescribed requirements do not prevent a contract of insurance from including provisions indemnifying the carrier against a liability other than personal injury liability.

“(6) A contract of insurance under which:

- (a) the insurer indemnifies the carrier against liability as required by Part 205 of the Federal Aviation Regulations of the United States of America made under the law known as Title 49 United States Code—Transportation; and
- (b) the insurer’s liability to indemnify the carrier:
 - (i) extends to carriage in, to or from Australia; and
 - (ii) is not affected by any breach of a requirement referred to in paragraph (4)(a);

is taken to meet the requirements referred to in subsection (4).

“(7) If the Minister is satisfied that there is in force between a carrier and an insurer a contract of insurance that meets the prescribed requirements, the Minister may give the carrier a written certificate stating that the Minister is so satisfied.

SCHEDULE—continued

Insurer's liability not affected by exclusions or breaches

“41D. Except as prescribed by the regulations, an insurer's liability under a contract of insurance to indemnify the carrier against personal injury liability to the extent mentioned in subsection 41C(3) is not affected by any warranty or exclusion in the contract of insurance or by any breach of the contract of insurance by the carrier.

Carriers to be covered by acceptable insurance

“41E.(1) A carrier must not carry passengers by air unless an acceptable contract of insurance is in force in relation to the carrier.

“(2) A carrier who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Conduct by directors, servants and agents

“41F.(1) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Part, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

“(3) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

Transport Legislation Amendment (No. 2)
No. 89, 1995

SCHEDULE—continued

“(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Part, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

“(5) If:

- (a) a person who is an individual is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

“(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

“(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

“(9) A reference in this section to an offence against this Part includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Part.

Grounds of cancellation of contract of insurance not affected

“41G. Nothing in this Part affects:

- (a) the grounds on which an insurer may cancel a contract of insurance between the insurer and a carrier; or
- (b) any right that an insurer may have to recover from a carrier an amount paid by the insurer under a contract of insurance between the insurer and the carrier.

Conflict of laws

“41H. If:

- (a) the proper law of a contract of insurance would, except for a term that it should be the law of a foreign country or a term to a similar effect, be the law of any part of Australia; or

SCHEDULE—continued

(b) a contract of insurance contains a term that purports to substitute, or has the effect of substituting, the law of a foreign country for all or any of the provisions of this Part;
this Part applies to the contract despite that term.

Injunctions

“41J.(1) In this section:

‘prohibited carriage’ means carriage by a carrier at a time when an acceptable contract of insurance is not in force between the carrier and an insurer.

“(2) If the Minister has reason to believe that a carrier has engaged, or is proposing to engage, in prohibited carriage, the Minister may apply to a court of competent jurisdiction for an injunction restraining the carrier from engaging in the carriage.

“(3) If the carrier does not satisfy the court that it is not engaging, or proposing to engage, in prohibited carriage, the court must grant the injunction.

“(4) If in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (2).

“(5) The court may discharge or vary an injunction or an interim injunction granted under this section.

“(6) The power of the court to grant an injunction or an interim injunction restraining a carrier from engaging in prohibited carriage may be exercised:

- (a) whether or not it appears to the court that the carrier intends to engage again, or to continue to engage, in prohibited carriage of that kind; and
- (b) whether or not the carrier has previously engaged in prohibited carriage of that kind.

“(7) A court must not require the Minister, as a condition of granting an interim injunction, to give any undertakings as to damages.

“(8) The Federal Court of Australia is invested with federal jurisdiction in matters where the Minister applies for an injunction or an interim injunction under this section.

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SCHEDULE—continued

Regulations

- “41K. The regulations may make provision for or in relation to:
- (a) the manner and form in which notices may be given under subsection 41C(1); and
 - (b) the period that may be set out in such notices; and
 - (c) the manner and form in which evidence is to be produced under that subsection; and
 - (d) the giving by persons referred to in the regulations (who may be individuals not resident in Australia or corporations not incorporated or carrying on business in Australia) of notice (whether in advance, or after the occurrence of the event concerned) to the Minister of any modification, cancellation, non-renewal or expiry, or of any proposed modification, cancellation or non-renewal, or of any impending expiry, of an acceptable contract of insurance; and
 - (e) the consequences (including any effect on the contract of insurance) of failure to give a notice referred to in paragraph (d).

Delegation

“41L.(1) The Minister may, in writing, delegate to the Director, or to an officer, of the Civil Aviation Safety Authority all or any of the Minister’s powers under this Part.

“(2) In this section:

‘**Director**’ has the same meaning as in the *Civil Aviation Act 1988*.

“(3) If:

- (a) the Minister has, under this section, delegated a power of the Minister contained in a provision of this Part; and
- (b) a delegate exercises the power;

a reference in that provision to the Minister is taken, in relation to the exercise of the power by the delegate, to be a reference to the delegate.

Note: See sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* on delegations.”.

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SCHEDULE—continued

**PART 3—AMENDMENTS OF THE CRIMES (AVIATION)
ACT 1991**

27. Paragraphs 5(1)(a) and (b):

Omit, substitute

- “(a) when the last external door is closed in preparation for the first movement of the aircraft for the purpose of taking off on the flight;
or
(b) if the aircraft moves, before all the external doors are closed, for the purpose of taking off on the flight—when it first so moves.”.

28. Subsection 6(1):

Omit, substitute:

“(1) Subject to this section, a flight of an aircraft is, for the purposes of this Act, taken to end when the first external door is opened after the aircraft comes to rest on the next landing it makes after starting the flight.”.

29. Paragraph 23(2)(b):

Omit “Air Navigation Regulations”, substitute “*Air Navigation Act 1920* or regulations made under that Act”.

Transport Legislation Amendment (No. 2)
No. 89, 1995

SCHEDULE—continued

**PART 4—AMENDMENT OF THE ROAD TRANSPORT
REFORM (VEHICLES AND TRAFFIC) ACT 1993**

30. After section 2:

Insert:

Status of this Act under Commonwealth and ACT laws

“2A.(1) For the purposes of the laws of the Commonwealth and the laws of the Australian Capital Territory, this Act is taken to be a law made by the Legislative Assembly for the Australian Capital Territory under subsection 22(1) of the *Australian Capital Territory (Self-Government) Act 1988*.

“(2) Subsection (1) does not empower the Legislative Assembly for the Australian Capital Territory to make a law amending or repealing this Act.

“(3) In this section:

‘**laws of the Commonwealth**’ does not include:

- (a) this section or section 3; or
- (b) sections 31, 33 and 35 of the *Australian Capital Territory (Self-Government) Act 1988*.”

[Minister’s second reading speech made in—
Senate on 29 March 1995
House of Representatives on 30 June 1995]