Aviation Legislation Amendment (2008 Measures No. 2) Act 2009

Act No. 26 of 2009 as amended

This compilation was prepared on 1 November 2010
taking into account amendments up to Act No. 51 of 2010

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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An Act to amend legislation relating to aviation, and for related purposes

1 Short title [*see* Note 1]

This Act may be cited as the *Aviation Legislation Amendment (2008 Measures No. 2) Act 2009*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 March 2009
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	26 March 2009
3. Schedule 1, Part 2	1 July 2009.	1 July 2009
4. Schedule 1, Part 3	1 July 2009.	1 July 2009
5. Schedule 1, Part 4	The day on which this Act receives the Royal Assent.	26 March 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Report of the Information Commissioner

(1) The Information Commissioner must examine the following matter:

The privacy implications for flight crew members of the provisions of the *Civil Aviation Act 1988* relating to copying or disclosure of CVR information, as amended by Part 2 of Schedule 1 of this Act.

(2) In examining the matter the Information Commissioner must consult representatives of associations affected by the provisions.

(3) The Commissioner must produce a written report to the Minister within 15 months of the commencement of this Act about the operation of the provisions referred to in paragraph (1) over its first 12 months, and may include in the report any recommendations the Commissioner wishes to make for amendment of the provisions to address any privacy concerns.

(4) In examining and reporting on this matter the Information Commissioner may exercise any of the powers conferred upon him or her by the *Privacy Act 1988*.

(5) The Minister shall cause a copy of a report given to the Minister under subsection (3) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Schedule 1—Amendments

Part 1—Amendment of the Aviation Transport Security Act 2004

1 Section 4 (seventh paragraph)

After "security compliance information", insert "and aviation security information".

2 Section 9

Insert:

Agency Head has the same meaning as in the *Public Service Act 1999*.

3 Section 9

Insert:

aviation security information has the meaning given by subsection 111(1).

4 Section 9

Insert:

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

5 Section 9

Insert:

SES Band 3 employee has the meaning given by subsection 127A(4).

6 At the end of section 108

Add:

> Division 3 gives the Secretary the power to require aviation security information but limits the use of the information in certain proceedings.

7 At the end of Part 7

Add:

Division 3—Secretary may require aviation security information

111 Secretary may require aviation security information

(1) Information that is not security compliance information and is prescribed by the regulations for the purposes of this section is ***aviation security information***.

(2) Without limiting the kinds of information that may be prescribed by regulations made under subsection (1), the regulations may prescribe the following kinds of information as ***aviation security information***:

(a) statistics relating to the screening of people, vehicles, goods or cargo for entry to cleared areas or cleared zones;

(b) statistics relating to the people, vehicles, goods or cargo that go through a screening process and:

(i) receive clearance as a result of going through the screening process; or

(ii) do not receive clearance as a result of going through the screening process and the reason or reasons for not receiving clearance;

(c) information about activities undertaken, or to be undertaken, to ensure that people, vehicles, goods or cargo that have not received clearance are not in cleared areas or cleared zones;

(d) information about activities undertaken, or to be undertaken, at an airport for the purposes of safeguarding against unlawful interferences with aviation;

(e) information about the controls that apply, or will apply, to airside areas, airside security zones, airside event zones, landside areas, landside security zones or landside event zones.

(3) If the Secretary believes, on reasonable grounds, that an aviation industry participant has aviation security information, the Secretary may, by written notice given to the participant, require the participant to give the information to the Secretary.

(4) The information must be given within the period and in the form and manner specified in the notice. The period must not be less than 14 days.

(5) Without limiting subsection (4), the Secretary may specify in the notice any one or more of the following ways for the participant to give the information:
   (a) orally;
   (b) in writing;
   (c) by electronic transmission.

(6) A person commits an offence if the person fails to comply with a notice under subsection (3).

   Penalty for an offence against this subsection: 45 penalty units.

112 Self-incrimination

(1) A person is not excused from giving aviation security information under section 111 on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(2) However, if the person is a natural person:
   (a) the information; and
   (b) the giving of the information; and
   (c) any information, document or thing obtained as a direct or indirect consequence of giving the information;

   are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code* that relates to the giving of the information.

8 Subsection 127(1)

Repeal the subsection, substitute:

(1) The Secretary may, by writing, delegate all or any of his or her powers and functions under this Act to a person of the following kind:
   (a) an SES employee, or acting SES employee, in the Department;
   (b) the Agency Head of an Agency that carries on activities that relate to national security.

(1A) However, a delegation under paragraph (1)(b) has no effect unless the Agency Head of the Agency agrees to the delegation.

9 After section 127

Insert:

127A Sub-delegation

(1) If the Secretary delegates a power or function to the Agency Head of an Agency under paragraph 127(1)(b), the Agency Head may, by writing, sub-delegate the power or function to an SES Band 3 employee in the Agency.

(2) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the sub-delegation in a corresponding way to the way in which they apply to a delegation.

(3) In exercising powers or functions under a sub-delegation, the delegate must comply with any directions of the Agency Head of the Agency.

(4) An ***SES Band 3 employee*** is an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Part 2—Amendment of the Civil Aviation Act 1988

10 Before paragraph 32AP(3)(a)

Insert:

(aa) copying or disclosure that is necessary for the purposes of checking whether equipment used to make a cockpit voice recording is functioning and reliable, provided the conditions set out in subsection (3A) are met; or

11 After subsection 32AP(3)

Insert:

(3A) The conditions that must be met for the purposes of paragraph (3)(aa) are:

(a) the person who copies or discloses the CVR information for the purposes of checking the equipment is authorised to do so under the regulations; and

(b) that person honestly and reasonably believes on the information available to him or her that:

(i) the cockpit voice recording does not relate to a reportable matter (as defined for the purposes of the *Transport Safety Investigation Act 2003*); and

(ii) the cockpit voice recording does not relate to an offence under the law of the Commonwealth, or of a State or Territory; and

(iii) the crew members in relation to the CVR information were notified in writing, before the cockpit voice recording was made, of the intention to copy or disclose the CVR information for the purposes of checking whether the equipment used to make the recording is functioning and reliable.

Part 3—Amendment of the Transport Safety Investigation Act 2003

12 Section 3

Before "In", insert "(1)".

13 At the end of section 3

Add:

(2) Regulations made for the purposes of the definition of ***immediately reportable matter*** or ***routine reportable matter*** may prescribe the matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force from time to time.

14 Section 9

Repeal the section.

15 Subsection 18(1)

Omit "and by the means prescribed by the regulations", substitute ", by the means prescribed by the regulations and including those of the particulars prescribed by the regulations that are known to the responsible person".

16 Subsection 18(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 12 months.

17 Subsection 18(2)

Repeal the subsection, substitute:

(2) Subsection (1) does not apply if the person believes, on reasonable grounds, that another responsible person has, or other responsible persons have, already reported the matter, or will as soon as is reasonably practicable report the matter, to a nominated official with all the particulars prescribed by the regulations.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

18 Paragraph 18(3)(b)

After "has already reported", insert ", or will as soon as is reasonably practicable report,".

19 Subsection 19(1) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

20 At the end of section 19

Add:

(4) The Executive Director may, by notice in writing to a responsible person, require the person to give the Executive Director a written report in relation to an immediately reportable matter or a routine reportable matter within the period specified in the notice, by the means prescribed and including the particulars prescribed by the regulations.

(5) The Executive Director must not require a responsible person to give a report under subsection (4) unless either:

(a) the Executive Director is satisfied that:

(i) the person has knowledge of the immediately reportable matter or routine reportable matter; but

(ii) the person is one to whom subsection (1) does not apply because of the operation of subsection (2) or (3); or

(b) the Executive Director is satisfied that:

(i) the person is one to whom subsection (1) applies despite the operation of subsection (2) or (3); and

(ii) the person may have information that was not communicated in a report given under subsection (1).

(6) The responsible person must comply with the notice.

Penalty: 30 penalty units.

(7) A prosecution of a person for an offence against subsection (1) may be commenced at any time within 6 years after the commission of the offence.

21 Subsection 24(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 12 months.

22 Subsections 26(2), 29(3), 32(5) and 36(5)

Omit "Maximum penalty", substitute "Penalty".

23 Section 37

Omit "Maximum penalty", substitute "Penalty".

24 Subsections 42(1), 42(4), 43(3), 44(2), 53(1), 53(2), 59(5), 60(1), 60(2) and 60(3)

Omit "Maximum penalty", substitute "Penalty".

Part 4—Application and savings provisions

25 Application of amendments of section 127 of the *Aviation Transport Security Act 2004*

A delegation to an SES employee, or acting SES employee in force, immediately before the commencement of this item, under section 127 of the *Aviation Transport Security Act 2004* (as in force immediately before the commencement of this item) has effect after that commencement as if it were a delegation to the SES employee, or the acting SES employee, under that section as amended by item 8 of this Schedule.

26 Application of Part 2 of this Schedule

The amendments made by Part 2 of this Schedule apply to copying or disclosure that occurs on or after the commencement of that Part.

27 Application of amendments of section 18 of the *Transport Safety Investigation Act 2003*

The amendments made by items 15 to 18 apply in relation to immediately reportable matters that occur on or after the commencement of Part 3 of this Schedule.

28 Application of amendments of section 19 of the *Transport Safety Investigation Act 2003*

The amendments made by items 19 and 20 apply in relation to immediately reportable matters and routine reportable matters that occur on or after the commencement of Part 3 of this Schedule.

29 Application of amendment of section 24 of the *Transport Safety Investigation Act 2003*

The amendment made by item 21 applies in relation to conduct engaged in on or after the commencement of Part 3 of this Schedule.

Notes to the *Aviation Legislation Amendment (2008 Measures No. 2) Act 2009*

Note 1

The *Aviation Legislation Amendment (2008 Measures No. 2) Act 2009* as shown in this compilation comprises Act No. 26, 2009 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Freedom of Information Amendment (Reform) Act 2010, see* Act No. 51, 2010.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Aviation Legislation Amendment (2008 Measures No. 2) Act 2009	26, 2009	26 Mar 2009	*See* s. 2(1)	
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Schedule 5 (items 9, 10) and Schedule 7: *(a)*	Sch. 7 [*see* Note 1]

Act Notes

(a) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*. However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all.	1 November 2010

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 4	am. No. 51, 2010
S. 4	am. No. 51, 2010