



Transport Security Amendment (Testing and Training) Act 2020

No. 125, 2020

An Act to amend legislation relating to transport security, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Transport Security Amendment (Testing and Training) Act 2020

No. 125, 2020

An Act to amend legislation relating to transport security, and for related purposes

[Assented to 15 December 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Transport Security Amendment (Testing and Training) Act 2020*.

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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 December 2020
2. Schedule 1	The day after this Act receives the Royal Assent.	16 December 2020
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	15 June 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Security systems testing

Aviation Transport Security Act 2004

1A Section 9

Insert:

test weapon means a weapon of a kind that is a replica or an imitation of another weapon.

1 Before subsection 79(1)

Insert:

General powers

2 At the end of subsection 79(2)

Add:

- ; or (h) test a security system, including by using an item, test weapon or vehicle to test its detection, in the following places:
- (i) a security controlled airport;
 - (ii) any area, building (other than a residence) or vehicle under the control of an aviation industry participant;
 - (iii) if an aviation industry participant operates from a residence or a part of a residence—the residence or the part of the residence from which the participant operates;

in accordance with any requirements prescribed in the regulations for the purposes of this paragraph.

Note: An aviation security inspector must ensure that the exercise of the power under paragraph (h) does not seriously endanger the health or safety of any person, or the inspector will not be immune from civil or criminal liability (see subsection (9)).

2A After subsection 79(2)

Insert:

- (2A) However, a power under paragraph (2)(h) may not be exercised unless regulations prescribing requirements for conducting tests of

security systems have been made for the purposes of that paragraph and are in force.

3 Before subsection 79(3)

Insert:

When notice required for exercise of powers

4 At the end of subsection 79(3A)

Add:

; (f) a power covered by subparagraph (2)(h)(ii).

5 Subsection 79(4)

Repeal the subsection.

6 Before subsection 79(5)

Insert:

Offence

7 Paragraph 79(5)(b)

After “under this section”, insert “(other than paragraph (2)(h))”.

8 Subsection 79(6)(note)

Omit “Note”, substitute “Note 1”.

9 At the end of subsection 79(6)

Add:

Note 2: The offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the *Criminal Code*).

10 At the end of section 79

Add:

Restrictions on exercise of power and immunity

- (8) In exercising a power under this section, an aviation security inspector must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.

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- (9) An aviation security inspector is not subject to any civil or criminal liability under the law of the Commonwealth, a State or a Territory in relation to the exercise of a power under paragraph (2)(h) to the extent that the exercise of the power:
- (a) is in good faith; and
 - (b) does not seriously endanger the health or safety of any person; and
 - (c) does not result in significant loss of, or serious damage to, property.

Note: A defendant bears an evidential burden in relation to the matter in this subsection for a criminal proceeding (see subsection 13.3(3) of the *Criminal Code*).

- (10) A person who wishes to rely on subsection (9) in relation to a civil proceeding bears an evidential burden in relation to that matter.
- (11) In this section:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

11 Before subsection 80(1)

Insert:

Powers relating to aircraft

12 At the end of subsection 80(2)

Add:

- ; or (f) test a security system, including by using an item or test weapon to test its detection, in the aircraft if the test is conducted:
- (i) while passengers are not on board, boarding or disembarking from the aircraft; and
 - (ii) in accordance with the requirements prescribed in the regulations for the purposes of this paragraph.

Note: An aviation security inspector must ensure that the exercise of the power under paragraph (f) does not seriously endanger the health or safety of any person, or the inspector will not be immune from civil or criminal liability (see subsection (7)).

12A After subsection 80(2)

Insert:

- (2A) However, a power under paragraph (2)(f) may not be exercised unless regulations prescribing requirements for conducting tests of security systems have been made for the purposes of that paragraph and are in force.

13 Before subsection 80(3)

Insert:

Notice requirement

14 Before subsection 80(4)

Insert:

Offence

15 Paragraph 80(4)(b)

After “under this section”, insert “(other than paragraph (2)(f))”.

16 Subsection 80(5)(note)

Omit “Note”, substitute “Note 1”.

17 At the end of subsection 80(5)

Add:

Note 2: The offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the *Criminal Code*).

18 At the end of section 80

Add:

Immunity

- (7) An aviation security inspector is not subject to any civil or criminal liability under the law of the Commonwealth, a State or a Territory in relation to the exercise of a power under paragraph (2)(f) to the extent that the exercise of the power:
- (a) is in good faith; and

- (b) does not seriously endanger the health or safety of any person; and
- (c) does not result in significant loss of, or serious damage to, property.

Note: A defendant bears an evidential burden in relation to the matter in this subsection for a criminal proceeding (see subsection 13.3(3) of the *Criminal Code*).

- (8) A person who wishes to rely on subsection (7) in relation to a civil proceeding bears an evidential burden in relation to that matter.
- (9) In this section:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

Schedule 2—Screening officer training

Aviation Transport Security Act 2004

1 Section 9

Insert:

screening function means a function that a screening officer is authorised or required to perform under this Act or an instrument made under this Act.

2 Section 9 (definition of **screening officer**)

Omit “subsection 94(1)”, substitute “section 94”.

3 After paragraph 44(2)(a)

Insert:

(aaa) requirements in relation to the form or issue of identity cards for screening officers;

4 Subsection 44(2)(note)

Repeal the note, substitute:

Note: Requirements for screening officers may be determined by the Secretary including in relation to training and qualifications, uniforms and the use of identity cards (see section 94A).

5 Subsection 44(3)

After “(2)(a),”, insert “(2)(aaa),”.

6 Section 93

After:

To protect the integrity of cleared areas and zones, screening officers are provided with similar restraint and detention powers to those of airport security guards.

insert:

A screening officer may only exercise powers under this Division or perform screening functions if the officer:

- (a) has complied with requirements (including training and qualification requirements) determined by the Secretary; or
- (b) is exempt from those requirements.

7 Subsections 94(1) to (3)

Repeal the subsections, substitute:

A person who is authorised or required to conduct screening is a ***screening officer***.

Note: Persons are authorised or required to conduct screening under the regulations (see paragraph 44(2)(a)).

8 After section 94

Insert:

94A Requirements relating to screening officers

The Secretary may, by legislative instrument:

- (a) determine:
 - (i) training and qualification requirements; and
 - (ii) any other requirements;for specified screening officers relating to their exercise or performance of a specified power under this Division or a specified screening function; or
- (b) determine for specified screening officers:
 - (i) requirements in relation to the use of identity cards; or
 - (ii) requirements in relation to uniforms.

Note 1: For specification of screening officers by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 2: Regulations may prescribe requirements for screening officers in relation to the form or issue of identity cards (see paragraph 44(2)(aaa)).

94B Exemption from requirements relating to screening officers

- (1) The Secretary may, in writing, exempt a class of screening officers from one or more requirements determined under paragraph 94A(a) if the Secretary is satisfied that exceptional circumstances exist.
- (2) An exemption under subsection (1) may be subject to specified conditions.

94C Exercise of powers and performance of screening functions by screening officers

- (1) A screening officer may only exercise a power under this Division or perform a screening function if the screening officer has met each requirement determined under paragraph 94A(a):
 - (a) that relates to the screening officer's exercise or performance of the power or function; and
 - (b) for which the screening officer is not exempt under subsection 94B(1).
- (2) In exercising a power under this Division or performing a screening function, a screening officer must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

94D Report on number of exemptions

The annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the number of exemptions given by the Secretary under subsection 94B(1) in that period.

9 Section 97

Repeal the section.

10 After paragraph 127(2)(a)

Insert:

- (aa) section 94A or subsection 94B(1); or

***Maritime Transport and Offshore Facilities Security Act
2003***

11 Section 10

Insert:

screening function means a function that a screening officer is authorised or required to perform under this Act or an instrument made under this Act.

12 Section 10 (definition of *screening officer*)

Omit “subsection 165(1)”, substitute “section 165”.

13 After paragraph 119(2)(a)

Insert:

(aa) requirements in relation to the form or issue of identity cards for screening officers;

14 Subsection 119(2)(note)

Repeal the note, substitute:

Note: Requirements for screening officers may be determined by the Secretary including in relation to training and qualifications, uniforms and the use of identity cards (see section 165A).

15 Subsection 119(3)

After “(2)(a)”, insert “, (2)(aa)”.

16 Section 164

After:

To protect the integrity of screening processes, screening officers are provided with similar restraint and detention powers to those of maritime security guards.

insert:

A screening officer may only exercise powers under this Division or perform screening functions if the officer:

- (a) has complied with requirements (including training and qualification requirements) determined by the Secretary; or
- (b) is exempt from those requirements.

17 Subsections 165(1) to (3)

Repeal the subsections, substitute:

A person who is authorised or required to conduct screening is a ***screening officer***.

Note: Persons are authorised or required to conduct screening under the regulations (see paragraph 119(2)(a)).

18 After section 165

Insert:

165A Requirements relating to screening officers

The Secretary may, by legislative instrument:

- (a) determine:
 - (i) training and qualification requirements; and
 - (ii) any other requirements;for specified screening officers relating to their exercise or performance of a specified power under this Division or a specified screening function; or
- (b) determine for specified screening officers:
 - (i) requirements in relation to the use of identity cards; or
 - (ii) requirements in relation to uniforms.

Note 1: For specification of screening officers by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 2: Regulations may prescribe requirements for screening officers in relation to the form or issue of identity cards (see paragraph 119(2)(aa)).

165B Exemption from requirements relating to screening officers

- (1) The Secretary may, in writing, exempt a class of screening officers from one or more requirements determined under

paragraph 165A(a) if the Secretary is satisfied that exceptional circumstances exist.

- (2) An exemption under subsection (1) may be subject to specified conditions.

165C Exercise of powers and performance of screening functions by screening officers

- (1) A screening officer may only exercise a power under this Division or perform a screening function if the screening officer has met each requirement determined under paragraph 165A(a):
- (a) that relates to the screening officer's exercise or performance of the power or function; and
 - (b) for which the screening officer is not exempt under subsection 165B(1).
- (2) In exercising a power under this Division or performing a screening function, a screening officer must not use more force, or subject a person to greater indignity, than is necessary and reasonable.

165D Report on number of exemptions

The annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the number of exemptions given by the Secretary under subsection 165B(1) in that period.

19 Section 168

Repeal the section.

20 Subsection 202(2)

Before "Division 3 of Part 11", insert "section 165A or subsection 165B(1) or".

*[Minister's second reading speech made in—
Senate on 4 December 2019
House of Representatives on 8 December 2020]*

(244/19)
