AVIATION TRANSPORT SECURITY AMENDMENT BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services, the Honourable Warren Truss, MP)
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OUTLINE

The Aviation Transport Security Act Amendment Bill 2006 aims to improve the operational arrangements for aviation security in two areas – the regulation of cargo inspection, and the handling of special events at airports such as arrivals and departures for APEC 2007 and the conduct of the Australian International Air Show at Avalon Airport in March 2007.

The Bill amends the Aviation Transport Security Act 2004 (‘the Principal Act’) to improve operational arrangements and to better tailor aviation security outcomes to aviation business operations.

The Bill amends the Principal Act as follows.

• Schedule 1 – Improves the regulatory arrangements for airport security by creating event zones that may be used when an airport conducts an activity that is not part of its usual transport business.

• Schedule 2 – Creates a new Division 2A of Part 4 of the Act, to deal exclusively with how cargo is to be examined so as to ensure it is safe to be carried by aircraft, and how cargo is to be cleared for air carriage. To safeguard against unlawful interference with aviation, the Schedule also allows for the creation of two separate classes of cargo businesses: regulated air cargo agents; and accredited air cargo agents. These two classes of cargo agent will be subject to regulations that will be designed in consultation with industry for the purpose of intercepting cargo that could pose a threat to aviation during while it is still in the transport chain prior to being loaded onto an aircraft.

• Schedule 3 – Inserts amendments which will permit the Secretary to approve alterations to an existing Transport Security Program. This new alteration process will operate as a less formal alternative to the existing process by which a program can only be changed by means of a formal revision. It is expected that the new alteration process will make it easier for an aviation industry participant to align simple changes in its business and operational practice with the requirements of the regulatory framework.

• Schedule 4 – Contains technical amendments.

FINANCIAL IMPACT STATEMENT

There is no significant financial impact.
REGULATION IMPACT STATEMENT

The Office of Regulation Review advises that no RIS is required for Schedules 1, 3 and 4.

Background

A new aviation security regulatory framework came into effect in March 2005 following the passage of the Aviation Transport Security Act 2004 (ATSA) and subsequent making of Aviation Transport Security Regulations (ATSR). The purpose of the framework is to prevent unlawful interference with aviation.

The cargo industry is one of the key industry sectors that is covered by the ATSA and the ATSR given the extent to which cargo is transported by air.

Every day, thousands of land transport operators such as couriers, truck drivers, freight forwarders and warehouses handle air cargo before it is uplifted onto an aircraft. The policy intent is that these industry participants be security regulated. This is currently achieved by them becoming Regulated Air Cargo Agents (RACAs) under the existing Aviation Transport Security Act, 2004 (ATSA) and Regulations for both their international and domestic operations. The RACA scheme is primarily aimed at detecting and deterring explosives or explosive devices being concealed in an item of cargo and loaded onto an aircraft. The proposed changes are to strengthen the methods for inspecting air cargo.

The Australian air cargo industry is a diverse and multi-modal environment. A large proportion of air cargo is likely to be handled by multiple operators and pass through several consolidation points before it is loaded on to an aircraft. For example, at the start of the supply chain, air cargo consignments from customers could be picked up by any one of hundreds of land transport operators. These land transport operators deliver cargo to a freight forwarder. Using further land transport operators, the cargo would be moved from the freight forwarders to one or a number of consolidation points and then moved on again by surface transport to a cargo terminal operator at an airport where it may be consolidated again and then loaded on to an aircraft. A similar supply chain exists for both international and domestic cargo.

In the previous 12 months, some 3.6 million consignments were exported from Australia as air cargo, 65 percent of these through Sydney, with Melbourne and Brisbane the second and third largest air cargo gateways. Nationally approximately 45 percent of export air cargo by volume comprises perishable commodities with fruit and vegetables, meat products and fish and crustaceans and molluscs the top three commodities. Perishables products require special handling processes. By value, the top three exports were non-monetary gold, medicinal and pharmaceutical products and miscellaneous manufactured articles. Air cargo exports made up 21 percent of the value Australia’s annual exports, but only 1 percent of the volume. A large proportion of both export and domestic air cargo is currently loaded aboard aircraft without any form of screening or inspection.

The risk to the aviation industry presented by air cargo is the possibility of an act of unlawful interference with aviation in the form of the illegal consignment of unauthorised explosives or explosive devices with the intention to detonate such items whilst the plane is in the air. While other risks do exist such as the shipment by air of mislabelled high consequence dangerous goods, the primary focus of this regulatory change is to mitigate the risk of an act of unauthorised interference with aviation. The consequence of an explosive or explosive device being detonated on an international aircraft through the use of air cargo could be very severe.
Not only could it result significant loss of life but could significantly damage the Australian economy through the reduction in demand for air travel by the Australian public and the loss of faith in our aviation security regime by international trading partners.

The Problem

The purpose of aviation security regulation is to prevent unlawful interference with aviation. The fundamental problem identified is that as the regulatory framework currently stands it is not possible to introduce the robust security measures in relation to air cargo that Government has decided are necessary.

The current regulatory arrangements combine cargo into the section of the Act for the screening and clearing of people, goods (which currently includes baggage and cargo) and vehicles. This is judged as inappropriate as cargo, because of its nature, undergoes a significantly different process of inspection from passengers and baggage. For example, people provide identification at the airport, hand over their baggage (which is screened) and are then screened themselves before entering a sterile area, and then boarding a prescribed air service (an air service regulated under the ATSA). From a security perspective, the focus on passengers can be at the airport itself where it is technically possible to screen the person and check the baggage.

In essence there are four components to the problem:

• The fact that the current Act purports to regulate cargo in a similar manner to other goods, vehicles and people;

• The ‘one size fits all’ approach under the current arrangements which imposes the same degree of regulatory burden on all players irrespective of scale and without taking into account where they fit into the supply chain;

• The fact that the intent is to capture all parts of the cargo handling supply chain but that the current regulatory arrangements rely on industry participants to apply to become Regulated Air Cargo Agents (RACAs); and

• Based on the threat to further strengthen the methods for inspecting air cargo.

With cargo the process of identification of customers sending cargo by air is obtained at the beginning of the supply chain. Rather than just relying on screening of the cargo at the airport, the security of cargo can be and is maintained throughout the supply chain from the point of receipt by a Regulated Air Cargo Agent (RACA) which is not necessarily at the airport. It can be, and is, cleared at any point in the supply chain using a number of regulated methods.

The concept of cleared areas and zones, screening taking place exclusively at an airport, and even the levels of training required by a screening officer that apply to passenger and baggage are not appropriate in the cargo environment. The cargo security supply chain extends well beyond the airport environment, and while the Act contained most relevant powers, the Act is not sufficiently flexible to accommodate the unique features of cargo handling and the cargo supply chain.

One power that is not present in the ATSA is that of directing Cargo Terminal Operators (CTOs) to use explosive trace detection (ETD) on cargo. The very specific requirements regarding screening are not compatible with the processing of cargo before it reaches the airport and at the
airport. This amendment will strengthen security outcomes through the enhanced use of technology.

The ATSA currently treats all parties who fall under the definition of a Regulated Air Cargo Agent in the same way. RACAs are included within the ATSA as Aviation Industry Participants and, as such, are required to have a Transport Security Program in place. For example, the Act makes no distinction between a multinational company with a significant percentage of the air cargo business in Australia and a small courier company which only operates in one city and occasionally (perhaps unknowingly) picks up an item of cargo that will ultimately be carried by air. The differences in scale of operations within the cargo industry sector generally suggests that treating them all in the same way imposes a disproportionately large regulatory burden on some operators with only limited links to the air cargo industry. The current Act places an unnecessary burden on many businesses which are involved primarily in the transport of cargo rather than its storage or processing for the purposes of carriage by air.

In recognition of this, the new cargo Division provides for power to make regulations for regulated air cargo agents and accredited air cargo agents. Accredited air cargo agents will not be required to have a transport security program but will be required to operate in accordance with specified security measures developed by DOTARS. These measures will be tailored to the transport sector and will be less onerous than a TSP which will continue to apply to Regulated Air Cargo Agents (RACAs).

The requirement under the ATSA for a unique Transport Security Program (TSP) for each regulated entity stemmed from the earlier Maritime Transport Security Act 2003 (now the Maritime Transport and Offshore Oil and Gas Facility Security Act) that applied to ports and ships. Under the ATSA, the TSP obligation was developed for aviation industry participants including airports, airlines and RACAs.

It has become clear through operational experience, DOTARS experience, industry complaints, and industry consultation, that while the TSP model is appropriate for some RACAs, it is not appropriate for all air cargo industry participants. However the existing Act does not provide scope for introduction of a layered and scalable cargo regulatory regime that takes into account relative size of businesses and their proximity in the supply chain to the actual carriage of cargo by air.

Finally, the current Act relies on people to apply to become RACAs and therefore does not necessarily capture all businesses who handle, or make arrangements for air cargo.

**Objective**

The proposed regulatory change seeks to better target the compliance efforts of industry and thereby achieve a more effective security outcome. The desired security outcome is to reduce the risk of unlawful interference with the aviation industry through the medium of air cargo, particularly targeting the illegal consignment of unauthorised explosives or explosive devices. A further objective is to reduce these risks in an efficient and effective manner and through effective consultation prior to introduction of any measures, to minimise the time and financial impositions on industry and consumers.

The current situation where a business that does not store cargo, and only performs a transport function between RACAs or from the Customer to a RACA is required to complete a full Transport Security Program is not appropriate. These businesses do not have premises, and could
be equally well regulated by being required to check Customer ID and keep cargo secure while in their possession.

Finally, the intention of the Regulated Air Cargo Agent Scheme was to capture all businesses that handle or make arrangements for air cargo. The objective of this amendment is to establish a framework within which the original intent of regulating cargo, that is, all businesses that handle or make arrangements for air cargo to be regulated, can be properly implemented without unreasonable burdens being placed on the industry.

**Discussion of Options**

**Option 1 – make no change and retain the status quo**

The final option is not to amend the Act at all and to continue to operate within the existing regulatory framework.

As already identified there are a number of shortcomings with the current arrangements which cannot be addressed while cargo regulation is handled in broadly the same way as regulations in relation to screening of people and other goods.

Furthermore, the Government has made a decision requiring inspection of international outbound air cargo at Cargo Terminal Operators (CTOs) using increased technology. This cannot be effectively implemented within the current legislative framework.

**Option 2 – create a separate framework for cargo regulation and introduce a new class of regulated business called Accredited Air Cargo Agents (AACAs).**

In light of experience in applying the ATSA and its regulations to the air cargo sector and subsequent Government decisions approving the introduction of new air cargo security measures there is a clear need to amend the Act. The preferred option is to establish a specific Division within the Act to deal with air cargo security. This was also the preferred option of industry, and other government agencies including in particular the Attorney General’s Department.

Operational experience has demonstrated that a Transport Security Program is appropriate for RACAs who have premises where they store, receive, or consolidate cargo and who handle specific flight information. These businesses are integral to the processing of cargo that will travel by air. Their TSPs cover the necessary physical security, access control and information security measures that they need to undertake to maintain cargo security. The Amendment Bill does not vary this requirement for RACAs.

However, the Transport Security Program is likely to be impractical for businesses that only make arrangements for the land transport of air cargo. The Amendment Bill will introduce a category called Accredited Air Cargo Agents (‘AACAs’) and allow for regulations to be made in respect of AACAs. It is anticipated that businesses involved in the land transport of air cargo may become AACAs rather than RACAs. AACAs will be required to comply with conditions, that will be set out in regulation, in relation to the collection, land transport and transfer of cargo. This is considered appropriate to the nature of the operations of these businesses. While these parties perform a land transport function, they also fulfil an important function in the air cargo security supply chain.
By establishing a new category of persons involved in the cargo supply chain, it will be possible to introduce a different level of security requirements on these participants. This will allow the two objectives of regulating the whole industry, but not imposing onerous burdens on the smaller players to be met.

Separating the framework for cargo regulation within the ATSA from the framework for the regulation of passenger screening, it will be possible to introduce mandatory requirements on the cargo industry in terms of the type of technologies that must be employed.

**Option 3 – restrict the scope of the regulations to only one part of the industry.**

One of the concerns identified is that under the current arrangements the regulatory burden is too onerous on some industry participants, and there is no guarantee that all industry participants are regulated.

An option to address this might be to focus the regulatory arrangements on the significant industry participants. In particular those with scale and those with a close involvement with the actual processing of cargo for transport by air, or who are actually involved in transporting cargo by air. This could be achieved by amending the Act to make becoming a RACA mandatory, but only requiring it of a particular, specified class of the cargo industry.

While this option would address some components of the problem it would not lead to a desirable security outcome and would result in a diminution of security around air cargo and thus aviation. Further it would be inconsistent with the clearly established policy – as evidenced by the current Act – whereby the intention is to regulate, in some way, all people involved in handling or transporting air cargo.

In light of the fact that this option is inconsistent with the current policy intent, it is not considered further.

**Impact Analysis**

(a) **Impact on Industry**

The industry affected by security regulation of air cargo includes the cargo industry itself and other parts of the aviation sector including airports and airline operators.

**Option 1** would have a relatively limited impact on industry because it would be a continuation of the current arrangements. However because the current arrangements are application-driven, there continues to be some ongoing impact on smaller cargo industry participants who decide that they need to apply to become a RACA. In doing so, the business has to go through the process of developing, for approval by the regulator, a TSP.

The current arrangements require a Transport Security Program (TSP) to be developed by each RACA for assessment by the Department. The development and assessment of a TSP requires significant amounts of time and resources for both the RACA and the Department. The consumption of resources for the development of a TSP has little impact upon large organisations with many available staff however the impact for a small scale operation can be significant, diverting scarce resources from primary business functions, reducing customer service, revenue and competitiveness. The result of this situation is that undue competitive
pressures are placed on smaller scale operators within the industry with the possibility of forcing certain industry members to cease trading.

The resource implications for the Department for the assessment of TSPs would be much greater under Option 1. The introduction of the concept of AACAs reduces the total number of TSPs to be assessed by a significant figure.

The fact that all RACAs have to produce a TSP continues to impose an unnecessary, and potentially significant regulatory burden on more than 700 businesses.

Under current arrangements the Department does not have the power to effectively mandate matters such as screening requirements. Any matters that need to be dealt with must generally be addressed through each individual RACA TSP. This arrangement introduces the opportunity for individual requirements to differ between RACAs. This raises significant competition issues, favouring RACAs that have detailed minimum requirements in their TSP and reducing the total security outcome.

The current inability to prescribe certain matters results in a need to rely on specific issues to be addressed through individual TSPs. This can create difficulties when cargo is passed between different RACAs with different security commitments set out in their TSPs. Where these individual arrangements are contradictory the possibility for severe supply chain disruption is introduced. Under this scenario individual RACAs may not legally be able to pass cargo on to each other at all due to contradictory individual TSP requirements. The resultant impact upon industry is difficult to judge but could be significant.

**Option 2** does not immediately have any impact on industry since the any actual impact on industry will be introduced through regulations. However it is likely that because this Option increases the security outcomes it will have an impact on some industry participants who have previously not considered themselves covered by security regulation.

It is envisaged that this option would more effectively capture the entire cargo industry since it would not be application driven. This would impose some additional impact on those industry participants which have not yet realised they should apply to become RACAs. However this option also provides scope to reduce the regulatory impact on industry by limiting the requirement to prepare a TSP to only some industry participants.

The introduction of the capacity to prescribe certain critical matters such as is proposed under option 2 will minimise the competitive impact of the current one size fits all approach which has a disproportionate impact on smaller businesses.

Any impact that does flow from regulations prepared under the proposed legislative change of option 2 would be addressed and quantified through planned industry consultation. A Regulatory Impact Statement (RIS) would be prepared, as necessary, at the time the regulations are drafted.
(b) Impact on Consumers

Retaining the status quo, **Option 1**, would have no discernible impact on consumers.

**Option 2** is also unlikely to lead to any significant impact on consumers. In the immediate term there will be no impact on consumers from the Aviation Transport Security Amendment Bill 2006 since it does not change the current arrangements. Any changes will be introduced through regulations and a RIS will be prepared, as necessary, at that time.

To the extent that option 2 provides for a better security outcome as well as a greater efficiency in the regulation of air cargo, it should have benefits for consumers.

(c) Impact on the Australian Economy

The air cargo supply chain is critical to the Australian economy accounting for 21 percent of Australia’s exports by value. Current arrangements under the ATSA introduce the potential for inefficiencies and/or critical failures (as outlined above) in the air cargo supply chain. As such it is important that the industry can operate as efficiently as possible.

Possible disruptions to the cargo industry caused by an aviation security incident could have significant economic impacts.

To the extent that Option 2 provides for an improvement to the air cargo security arrangements as well as more targeted and efficient regulation of the industry, it could potentially have a some positive impact on the economy.

However the actual impact of Option 2 can only be fully determined as the regulations are developed and a RIS will be prepared, as necessary, at that time.

(d) Impact on Employment

Neither Option 1 nor Option 2 are expected to lead to any significant direct change to employment. If there is any impact on employment as a result of new regulations drafted under the ATSA a RIS will be prepared, as necessary, at that time.

(e) Impact on Trade

There will be no direct change to trade as a result of the amendments to the ATSA proposed in the Aviation Transport Security Amendment Bill 2006. If there is any impact on trade as a result of new regulations drafted under the ATSA a RIS will be prepared, as necessary, at that time.

Much of Australian trade is dependent on the availability of fast and efficient transport to distant markets. An efficient air cargo supply chain is therefore critical to trade. As outlined above the current arrangements introduce the potential for supply chain inefficiencies, potentially impacting upon trade. This may be addressed through the adoption of Option 2.
Consultation

Extensive consultation was undertaken at the time the ATSR came into force regarding changes to air cargo security arrangements. A forum with representatives from the Overnight Air Operators Association, the Conference of Asia Pacific Express Carriers, and representatives from major airlines has been held regularly throughout 2004-2006 to discuss regulations and their impact on industry.

In addition to ongoing consultation through the Cargo Working Group, there have been extensive bilateral discussions with key stakeholders across the air cargo supply chain over the last six months as part of the preparation of further advice to the Government in relation to air cargo security. Industry is supportive of the amendments and anticipates further consultation whenever regulations are developed under the scope of the proposed amendments. The consultative fora will be used when settling any regulations made in respect of air cargo security.

Conclusion and recommended option

Some sectors of industry are unhappy with current arrangements under the ATSA such as a full TSP requirement for transport operators, and the obligation on businesses that do not handle air cargo to answer cargo handling questions in their TSP. DOTARS believes there is scope to refine the current arrangements, and agrees with industry that compliance obligations should be more relevant to the functions businesses perform in the aviation security supply chain.

The proposed legislative amendments do not in themselves introduce additional requirements on any stakeholders. The amendments establish a general legal framework that will enable regulations to be made dealing specifically with the security process to which cargo (both domestic and international) is to be subjected before it is taken onto an aircraft.

Due to the clear industry message that amendment to the Act is required, the operational experience of DOTARS which has demonstrated that security regulatory obligations need to be scaleable, and the need to implement recent government decisions regarding inspection of air cargo, Option 2 is recommended. It provides for the security outcomes that the government believes are necessary without placing unnecessary burdens on the aviation industry or its consumers.

Implementation and review

The Cargo Working Group has proven to be an effective consultative mechanism. It is proposed that the group be used extensively in the development of new regulations under the Act. One-on-one meetings will also be held with affected stakeholders.

To ensure sufficient time for industry consultation on the necessary regulations, Schedule 2 of this Bill will not come into effect for 12 months.
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NOTES ON CLAUSES

Clause 1: Short title

Clause 1 is a formal provision specifying that the short title of the Bill is the Aviation Transport Security Amendment Act 2006.

Clause 2: Commencement

The Bill contains four schedules of amendments to the Principal Act. Clause 2 specifies when the various provisions will come into force.

Subclause 2(1) provides that each provision of the Bill specified in column 1 of the table incorporated in that subclause commences or is taken to have commenced on the day in column 2 of the table.

- Item 1 of the table provides that clauses 1 to 3 of the Bill and anything not covered elsewhere in the table commence on the day of Royal Assent.

- Items 2 and 4 of the table provide that items 1 to 19 and items 21 to 35 of Schedule 1 (event zones) commence on a day to be fixed by proclamation. However, if any of the provisions do not commence within 6 months from the day on which the Act receives the Royal Assent, they commence on the first day after the end of that period.

- Item 3 of the table provides that item 20 of Schedule 1 will commence as the same time as items 1 to 19 of Schedule 1 commence, but that the provision will never commence if item 27 of Schedule 2 (which amends the same provision of the Principal Act) has commenced on or before that time.

- Item 5 of the table provides that items 1 to 33 of Part 1 of Schedule 2 will commence on a day to be fixed by proclamation. However, if any of the provisions do not commence within 12 months from the day on which the Act receives the Royal Assent, they commence on the first day after the end of that period. The delay in commencement is to allow sufficient time for consultation with industry to occur.

- Item 6 of the table provides that item 34 of Part 1 of Schedule 2 will commence on the day of Royal Assent.

- Item 7 of the table provides that Part 2 of Schedule 2 will commence the day after the commencement of items 1 to 19 of Schedule 1 or items 1 to 33 of Schedule 2, whichever is the later.

- Item 8 of the table provides that Schedules 3 and 4 commence on the day of Royal Assent.
Clause 3: Schedule(s)

Clause 3 is a formal provision that specifies that each Act that is specified in a Schedule to the Bill will be amended as set out in the applicable items in the relevant Schedule, and any other item in a Schedule has effect according to its own terms.

SCHEDULE 1 – AMENDMENTS RELATING TO ZONES

Aviation Transport Security Act 2004


Overview of Schedule 1

Schedule 1 amends the Aviation Transport Security Act 2004 (‘the Principal Act’) to create a general legal framework that will enable regulations to be made for managing events or other specialised activities within a specified area of a security controlled airport. For the purposes of the proposed amendments, an event will be any activity that can sensibly be subjected to specialised rules and that can be managed within a precise area that has been specified on a map of the airport.

It is not feasible to amend the Principal Act to specify general rules that would apply to all events that are held at all security controlled airports because:

• Security controlled airports range in size and complexity from high volume airports such as Sydney and Melbourne, to very low volume country airports.

• There is great variation in the size and complexity of the various types of event that airport operators may wish to stage at security controlled airports.

• The level of risk at any given airport varies depending on the type of event, whether the event involves an essential activity, and any changes over time in relevant circumstances. At any given time, the range of risk varies from negligible (such as holding a small-scale community event that uses the infrastructure of a small regional airport on a day when there is no public transport service) to high potential risk (such as measures related to the arrival of a foreign head of state at a large international airport).

In these circumstances, where generalised solutions cannot be specified in the Principal Act and where it is expected that there will be relatively frequent amendments to the legal rules for managing different kinds of events, the amendments that Schedule 1 makes to the Principal Act focus on creating a flexible legal framework that will permit regulations to be made to prescribe different types of event zones that can be used to manage different kinds of events within the boundaries of an airport. Any given type of event zone will be managed by a combination of regulations that apply to that particular type of event zone, and by specific provisions that the airport operator may had included in its Transport Security Program (TSP). The amendments of the Principal Act that are made by Schedule 3 of the Bill (making alterations to a TSP) are expected to play an important role in managing both complex and high-risk events.

The proposed system for prescribing different kinds of event zone has been directly modelled on the existing system which already allows regulations to be made to prescribe different kinds of
security zone. The distinction between the new event zones and existing security zones is essentially one of focus: a security zone is typically an area within an airport that is subjected to legal rules which enhance a security objective, while an event zone will be an area within an airport that is appropriate for managing the range of risks that are associated with holding various types of event.

**Item 1 – Section 4 (Simplified overview of this Act)**

Item 1 amends section 4 of the *Aviation Transport Security Act 2004* (ATSA) to include in the simplified overview of the Act the new concepts of an airside event zone and a landside event zone.

**Item 2 – Section 9 (definition of airside area)**

Item 2 amends the existing definition of the term *airside area* in section 9 of the ATSA to include an airside event zone. The airside area of a security controlled airport will therefore include any airside security zones and any airside event zones that may be established from time to time within the boundaries of the airside area.

**Item 3 – Section 9 (definition of airside event zone)**

Item 3 inserts a definition for the new term *airside event zone*. This amendment ensures that any reference in the ATSA to an *airside event zone* will be understood as a zone that is established under subsection 31A(1).

**Item 4 – Section 9 (definition of landside area)**

Item 2 amends the existing definition of the term *landside area* in section 9 of the ATSA to include a landside event zone. The landside area of a security controlled airport will therefore include any landside security zones and any landside event zones that may be established from time to time within the boundaries of the landside area.

**Item 5 – Section 9 (definition of landside event zone)**

Item 3 inserts a definition for the new term *landside event zone*. This amendment ensures that any reference in the ATSA to a *landside event zone* will be understood as a zone that is established under subsection 33A(1).

**Item 6 – Section 27 (simplified overview of Part 3–Airport areas and zones)**

Item 6 replaces the existing simplified overview of Part 3 of the ATSA (Airport areas and zones) with a new version that includes references to airside event zones within the airside area, and landside event zones within the landside area, of a security controlled airport.

**Item 7 – Section 30 (Airside security zones)**

Item 7 inserts two new subsections into existing section 30 (which deals with airside security zones). An airside security zone is a zone that is established within the airside area of a security controlled airport to allow for stricter or more specialised controls than those that apply generally to the airside area.
New subsection (2A) provides that the notice that creates a particular airside security zone will commence either at the time when the Secretary gives the notice to the airport operator, or at a subsequent time that is specified in the notice.

New subsection (2B) provides that an airside security zone comes into force when the subsection (2A) notice commences.

Taken together, amended section 30 will allow the Secretary to give the airport operator a notice that maps the limits of a new airside security zone and specifies the time when the new zone comes into force. An airside security zone remains in force until the Secretary revokes the notice that establishes the zone. Section 30 does not provide for revoking a notice because subsection 33(3) of the Acts Interpretation Act 1901 provides that the power to revoke a notice is implied from the power to give the notice.

**Item 8 – Application**

Item 8 is an application provision for Item 7 and applies to those airside security zones that are in force at the time when Item 7 amends existing section 30. This ensures that all existing airside security zones will be interpreted as having come into force in the same way as an airside security zone that is created under amended section 30.

**Item 9 – paragraph 31(2)(b)**

Item 9 amends existing paragraph 31(2)(b) to change the existing reference to ‘zones’ to ‘airside security zones’. This change is necessary because existing section 31 deals exclusively with airside security zones while new section 31A deals with the new airside event zones.

**Item 10 – new section 31A and 31B**

**New section 31A (Airside event zones)**

New section 31A, which provides for the new airside event zones, has been directly modelled on existing section 31 (airside security zones).

New subsection 31A(1) provides that an airside event zone is established by means of a notice that the Secretary gives to the operator of a security controlled airport. There can be more than one event zone at any given time. For example, the airport operator may want more than one event zone for managing a single complex event (such as an airshow), and it is also possible that a large airport may have more than one event in progress at the same time but in different event zones.

New subsection 31A(2) requires the notice that establishes an airside event zone to include a map that shows where the airside event zone is located within the boundaries of the airside area of the security controlled airport.

New subsection 31A(3) specifies the period during which a particular airside event zone will be in force and will normally be for a period that is specified in the notice. The notice is intended to be flexible, so the period during which an airside event zone is in force may be expressed as extending between specified dates and times (for example, from midnight on Wednesday 12 March 2006 until midday on Friday 3 March 2006), or from a starting date and time for a specified period (for example, from midnight on Wednesday 12 March 2006 for 36 hours), or
any other description that precisely identifies the period during which the particular airside event zone is to be in force.

An event zone is intended to continue in force indefinitely if the notice does not specify a period during which the zone is in force, or if the notice specifies a starting date and time but omits to specify a closing date and time for the event zone. In this case, the event zone will only cease to be in force if the Secretary decides to revoke the notice.

The amendments do not provide for revoking a notice. As with the existing scheme of giving a notice that creates an airside security zone, the power to give a notice implies the power to subsequently revoke it using the same procedure under which the notice was given: see subsection 33(3) of the Acts Interpretation Act 1901.

New subsection 31A(4) provides that the notice the creates an airside event zone will commence either at the time when the Secretary gives the notice to the airport operator, or at some later time that is specified in the notice. The commencement of the notice is not the same thing as the time when the zone comes into force: it is important that there be an explicit rule for when a notice commences so that the airside event zone can commence at the same time if the notice omits to specify the time when the zone comes into force.

New subsections 31A(5) and (6) deal with the purpose of an airside security zones. Subsection 31A(5) deals with an airside event zone that does not include any part of an existing airside security zone, and subsection 31A(6) deals with the more complex case of an airside event zone that includes some or all of an airside security zone.

An airside security zone must be located somewhere within the airside area of a security controlled airport, and it may (but need not) include all or part of one or more existing airside security zones. The level of security that is appropriate to the management of an airside event will depend on the type of event, the nature of the airport, whether the event zone includes part of an existing security zone, and the nature of any assessed risks.

The most striking difference between the proposed airside event zones and the existing airside security zones is that an airside event zone may sometimes be managed at a lower level of security than that which applies generally to the airside area, while an airside security zone is always managed at a stricter level of security. Keeping in mind that an airside event zone will not be created for a particular event unless the Secretary is satisfied that the risks of the proposed event are being managed in an appropriate way, it is possible that an airside event might be managed at a lower level of security than that which normally applies to the airside area because the event is being staged within an enclosed area so that the only access from the event zone to airside (and thus to runways and aircraft) is through a screening point. This has important practical implications for staging events within an airside event zone because it will allow for the relaxation of the usual airside area requirements such as the obligation to display photographic identification, and it will make it easier to permit the use of objects such as tools that would otherwise be prohibited items.
New subsection 31A(8) deals with what happens when an airside event zone ceases: the area within an airside event zone that ceases to be in force becomes part of the airside area, and the controls that apply to the airside area will then apply to it. If any of the event zone overlaps an airside security zone, then the overlap area becomes part of the airside security zone when the event zone ceases to be in force, and the controls that apply to the airside security zone will then apply to it.

**New Section 31B (Types of airside event zones)**

New subsection 31B(1) is closely modelled on existing s.31 (types of airside security zones). The Regulations may prescribe more than one type of event zone. This approach permits the flexible and appropriate management of risks by allowing different types of airside event zone to be created for different combinations of type of event, type of airport and nature of risk. Each type of event zone can be managed by means of regulations that have been specifically designed to deal with managing the kind of risk that applies to a particular event. Different types of airside event zone that will be prescribed in the Regulations include an event zone for managing the arrival or departure of dignitaries, an event zone for managing large airshows, and an event zone for managing low risk community events that use the infrastructure of regional airports.

With the exception of paragraph (a) which specifically deals with managing events within event zones, new subsection 31B(2) copies existing subparagraph 31(2) (which applies to the existing airside security zones). Subsection (2) specifies an inclusive range of purposes for which it would be appropriate to prescribe an airside event zone.

**Item 11 – Section 32 (Landside security zones)**

Item 11 inserts two new subsections into existing section 32 which deals with landside security zones. A landside security zone is a zone that is established within the landside area of a security controlled airport to allow for stricter or more specialised controls than those that apply generally to the landside area.

New subsection 32(2A) provides that the notice that creates a particular landside security zone will commence either at the time when the Secretary gives the notice to the airport operator, or at some later time that is specified in the notice.

New subsection 32(2B) provides that any particular landside security zone will be in force from the when the notice commences.

Taken together, the two new subsections are a refinement of the existing section 32 that will allow the Secretary to give the airport operator a notice that specifies the limits of a new landside security zone and the time when the new zone will come into force. A landside security zone remains in force until the Secretary revokes the notice that establishes the zone. The power to revoke a notice is implied from the power to give one: see *Acts Interpretation Act 1901* subsection 33(3).

**Item 12 – Application**

Item 12 is an application provision for Item 11, and will to those landside security zones that are in force at the time when Item 11 amends existing section 32. This ensures that all the landside security zones that exist when section 32 is amended will be interpreted as having come into force in the same way as a landside security zone that is created under amended section 32.
Item 13 – paragraph 33(2)(b)

Item 13 amends existing paragraph 33(2)(b) to change the existing reference to ‘zones’ to ‘landside security zones’. This change ensures that existing section 33 deals exclusively with landside security zones while new section 33A deals with the new landside event zones.

Item 14 – new sections 33A and 33B

New section 33A (Landside event zones)

New section 33A will operate with respect to establishing landside security zones in exactly the same way as new section 31A operates with respect to airside security zones. The Secretary establishes a landside event zone by giving a notice to the airport operator (subsection (1)). The notice must contain a map of the event zone (subsection (2)) and may specify the period during which the event zone is in force; but, if no period is specified in the notice, the event zone will be in force from the time that the notice commences (subsection (3)). The notice commences at the time when the Secretary gives the notice to the airport operator, or at a later time that is specified in the notice (subsection (4)).

The purpose of a landside security zone is to provide for different controls than those that apply to the landside area generally (subsections (5) and (6)). This may mean that a particular landside event zone will subject to stricter controls than those that apply to the landside area generally.

New section 33B (Types of landside event zones)

New subsection 33B(1) is closely modelled on existing s.33 (types of landside security zones). The Regulations may prescribe more than one type of landside event zone. This approach permits the flexible and appropriate management of risks by allowing different types of landside event zone to be created for different combinations of type of event, type of airport and nature of risk. Each type of event zone can be managed by means of regulations that have been specifically designed to deal with managing the kind of risk that applies to a particular event.

Different types of landside event zone that will be prescribed in the Regulations include an event zone for managing the arrival or departure of dignitaries, an event zone for managing large airshows, and an event zone for managing low risk community events that use the infrastructure of regional airports.

With the exception of paragraph (a) which specifically deals with managing events within event zones, new subsection 33B(2) copies existing subparagraph 33(2) (which applies to the existing airside security zones). Subsection (2) specifies an inclusive range of purposes for which it would be appropriate to prescribe a landside event zone.
Item 15 – new section 36A (Requirements for airside event zones)

New subsection 36A(1) authorises the making of regulations in relation to each type of airside event zone. This means that a different set of regulations might be prescribed for managing each type of airside event zone.

New subsection 36A(2) specifies a non-exhaustive range of matters that may be prescribed in regulations that deal with airside security zones. These regulations are subject to the purpose for which an airside security zone is created (see new section 31B(2)).

New subsection 36A(3) permits the regulations to prescribe offences for matters related to an airside event zone. The most serious penalties (up to 200 penalty units, currently $22,000) apply to airport operators and aircraft operators, with a middle range of penalties (up to 100 penalty units, currently $11,000) for aviation industry participants, and the lowest range of penalties (up to 50 penalty units, currently $5,500) for other persons. (If an offender is a corporation, the maximum penalty that may be imposed is five times the prescribed penalty.)

Item 16 – new section 38A (Requirements for landside event zones)

New subsection 38A(1) authorises the making of regulations in relation to each type of landside event zone. This means that a different set of regulations might be prescribed for managing each type of landside event zone.

New subsection 38A(2) specifies a non-exhaustive range of matters that may be prescribed in regulations that deal with landside security zones. These regulations are subject to the purpose for which a landside security zone is created (see new section 31B(2)).

New subsection 38A(3) permits the regulations to prescribe offences for matters related to a landside event zone. The most serious penalties (up to 200 penalty units, currently $22,000) apply to airport operators and aircraft operators, with a middle range of penalties (up to 100 penalty units, currently $11,000) for aviation industry participants, and the lowest range of penalties (up to 50 penalty units, currently $5,500) for other persons.

Items 17, 18, 19, 20, 21 – section 44 (Requirements for screening and clearing) – subparagraphs 44(2)(d)(ii), 44(2)(e)(ii), 44(2)(f)(ii), 44(2)(g)(ii), 44(2)(h)(ii)

Items 17, 18, 19, 20, 21 ) are technical consequential amendments to existing subparagraphs 44(2)(d)(ii), 44(2)(e)(ii), 44(2)(f)(ii), 44(2)(g)(ii), 44(2)(h)(ii) to include references to the new landside event zones and airside event zones. Section 44 specifies requirements for screening and clearing of persons, goods and vehicles. The amendments mean that the regulations may prescribe clearance requirements for airside and landside event zones.

Item 22 – section 45 (Weapons – simplified overview of Division 3 of Part 4)

Item 22 amends section 45, which provides an overview of weapons offences, to include references to the new airside event zones and landside event zones alongside the existing references to airside security zones and landside security zones.

Items 23, 24, 25, 26 – section 46 (Weapons in airside areas, landside security zones and landside event zones) – paragraph 46(1)(a), subparagraph 46(1)(c)(iii), paragraph 46(3)(a), subparagraph 46(3)(c)(iii)
Items 23, 23, 25 and 26 are consequential amendments to paragraph 46(1)(a), subparagraph 46(1)(c)(iii), paragraph 46(3)(a) and subparagraph 46(3)(c)(iii) respectively and ensure that weapons in the new landside event zones are treated in the same way as weapons in the existing airside and landside security zones.

**Item 27 – paragraph 52(2)(a) (Other weapons requirements)**

Item 27 amends paragraph 52(2)(a) to include references to the new airside and landside event zones. Section 52(2) as amended will then permit regulations to be made to authorise the carriage of weapons within an airside or landside event zone, and to regulate the use of such weapons within the zone. Some authorised uses of weapons in an event zone might include the control of vermin, or the exhibition of inoperable weapons at an international airshow.

**Items 28, 29, 30, 31, 32, 33 – section 54 (Prohibited items in airside security zones, airside event zones, landside security zones and landside event zones)**

Items 29-33 amend paragraph 54(1)(a), paragraph 54(1)(aa), subparagraph 54(1)(c)(iii), paragraph 54(3)(a), paragraph 54(3)(aa) and subparagraph 54(3)(c)(iii) respectively and ensure that prohibited items in the new landside event zones are treated in the same way as prohibited items in the existing airside and landside security zones.

**Item 34 – paragraph 60(2)(a) (Other prohibited items requirements)**

Item 34 amends paragraph 60(2(a) to include references to the new airside and landside event zones. Section 52(2) as amended will then permit regulations to be made to authorise the carriage of prohibited items within an airside or landside event zone, and to regulate the use of such items within the zone.

**Item 35– subparagraph 92(1)(b)(ii) (Airport security guards’ power to physically restrain persons)**

Item 35 amends subparagraph 92(1)(b)(ii) to give airport security guards the power to physically restrain persons for the strictly limited purpose of maintaining the integrity of airside and landside event zones. Airport security guards already have exactly the same powers with respect to security zones.

Airport operators rely very heavily on airport security guards to maintain control of screening points and to patrol the perimeter of airport zones in order to prevent unlawful entry into more secure or sensitive areas of an airport. The amendments to section 92 are strictly limited and the extension of a security guard’s power to restrain a person will only operate where the security guard reasonably suspects that a person is committing, or has committed, an offence against the Act and where the security guard reasonably believes that restraining a person is necessary to maintain the integrity of an event zone.
SCHEDULE 2 – AMENDMENTS RELATING TO CARGO

Aviation Transport Security Act 2004


Overview of Schedule 2

Part 1—Main amendments

Schedule 2 amends the Aviation Transport Security Act 2004 (‘the Principal Act’) to create a general legal framework that will enable regulations to be made dealing specifically with the security process to which cargo (both domestic and international) is to be subjected before it is taken onto an aircraft.

Currently Division 2 of Part 4 of the Principal Act deals with the ‘screening’ of people, goods (including cargo) and vehicles. However, the processes of checking cargo for security purposes are quite different from those used for the screening of people and their baggage, and it is considered preferable for a different concept – that of examination – to be introduced for cargo. (Cargo is defined in section 9 of the Principal Act. That definition will remain).

For this reason, it is proposed to amend the Principal Act by removing cargo from the scope of Division 2 of Part 4, and inserting a new Division 2A dealing exclusively with powers to create a regulatory system to deal with the security of cargo. Division 2 of Part 4 will continue to deal with the screening and clearance of people, goods other than cargo, and vehicles that are to be carried on an aircraft.

The proposed new Division follows the same basic structure as existing Division 2 of Part 4. That Division establishes the concepts of screening and clearing and then provides that the detail of the requirements for these concepts be set out in regulations made under section 44. Similarly, Division 2A would establish the concepts of examination and clearing for cargo, and provide that the detail be set out in regulations made under section 44C.

Currently, under section 44, there is a power to establish a scheme under which persons engaged in the business of handling air cargo can be designated as regulated air cargo agents (RACAs). RACAs are aviation industry participants for the purposes of the Act and this means they are subject to the requirement to operate under a transport security program (TSP).

Proposed section 44C will provide power for the establishment of a scheme which still allows for designation as a RACA, but also allows for creation of a sub-category of air cargo agents, to be known as accredited air cargo agents (AACAs). This will allow for a degree of administrative flexibility. It is envisaged that the power will be used to distinguish between RACAs – those who have premises for storing and handling cargo, or who make arrangements linking particular cargo with particular flights, or those who for some other security reason should be subject to maximum security requirements - and AACAs, who are further down the supply chain, and need not bear the same degree of responsibility for security.

In practice, the AACA, RACA and aircraft operator form the supply chain in conveying cargo from the originating customer to the aircraft. The aircraft operator will always be the last link in the chain, whether the cargo is delivered for loading by a RACA, an AACA, or directly by the originating customer.
For these reasons, it is envisaged that there may be a need for regulations setting out the rules to be followed by aircraft operators when they accept cargo, and proposed section 44C expressly provides for this.

The new provisions will allow for the establishment of a system that is tailored to the particular circumstances of air cargo operations, and will maximise the ability to deter and detect unauthorised explosive devices in cargo at any point in the supply chain.

**Part 2—Amendments consequential on amendments made by Schedule 1**

These amendments are consequential on amendments made by Schedule 1 and by this Schedule. They are placed in a separate Part because they may need a different commencement date from the rest of Schedule 2.

**PART 1 OF SCHEDULE 2—Main amendments**

**Item 1 – Subsection 3(3) (Purposes of this Act)**

Item 1 repeals subsection 3 (3) of the Act. Section 3 sets out the purposes for the Act.

The repealed subsection states that the role of the Secretary is to regulate aviation industry participants. This is too limited a statement of the role of the Secretary under the Act.

**Item 2 – Section 4 (Simplified overview of this Act)**

Item 2 amends section 4 of the Principal Act to include in the simplified overview of the Act the new concepts of examination and certification.

**Item 3 – Section 9 (definition of accredited air cargo agent)**

Item 3 inserts a definition for the new term *accredited air cargo agent*.

An accredited air cargo agent (AACA) is a person accredited as such an agent, in accordance with the regulations made under proposed new section 44C of the Act.

**Item 4 – Section 9 (definition of certified)**

Item 4 inserts a definition for the new term *certified*.

*Certified*, in relation to cargo, means certified by an aircraft operator for transport by aircraft in accordance with regulations made under proposed new section 44C of the Act.

**Items 5 and 6 – Section 9 (definition of cleared)**

In respect of the definition of *cleared*, items 5 and 6 exclude cargo from the definition of cleared goods for the purposes of subsection 42(3) of the Act and provide that *cleared* in relation to cargo has the meaning given by subsection 44B(3).
Item 7 – Section 9 (definition of employee)

Item 7 amends the definition of employee contained in section 9 of the Act, consequential on the introduction of the concept of an AACA.

Item 8 – Section 9 (definition of examined)

Item 8 inserts a definition for the new term examined. When used in relation to cargo, the word has the meaning given by proposed new subsection 44B(1) of the Act.

Items 9–12 – Section 9 (definitions of receive clearance, regulated air cargo agent and screened)

Items 9 to 12 make amendments to a number of definitions contained in section 9 as a consequence of removing the regulation of cargo from Division 2 of Part 4 of the Act and introducing it into the proposed new Division 2A of the Part.

Items 13–20 – Sections 35, 36, 37 and 38

Items 13 – 20 make consequential amendments to section 35 (which deals with the regulation of airside areas), section 36 (airside security zones), section 37 (landside areas) and section 38 (landside security zones). The amendments:

- allow regulations to be made relating to the entry of cargo into these areas; and
- make clear that the concept of screening no longer applies in relation to cargo.

Item 21 – Section 39 (Simplified overview of Part)

Item 21 amends section 39 of the Principal Act (simplified overview of Part 4) to insert a reference to new Division 2A of the Act.

Item 22 – Section 40 (Simplified overview of Division)

Item 22 amends the simplified overview of Division 2 of Part 4, to reflect the fact that cargo is to be regulated by the proposed new Division 2A of the Act.

Items 23–30 - Sections 42 and 44 (Screening and clearing)

Items 23 - 30 make amendments to sections 42 and 44 of the Act, as a consequence of removing the regulation of cargo from Division 2 of Part.

Item 31 – Division 2A (Examining, certifying and clearing cargo)

Item 31 inserts the new Division 2A of Part 4 of the Act. The new Division follows the same basic structure of Division 2 of Part 4.

New section 44A

New section 44A inserts a simplified overview of the new Division.
New section 44B
New section 44B defines the concepts of examination and clearance in relation to cargo. This mirrors existing section 42.

Subsection 44B(1) provides that cargo is examined when it has undergone examination before being taken onto an aircraft, in accordance with regulations made under new section 44C of the Act.

Subsection 44B(2) provides that cargo receives clearance if either:

• after being examined according to the regulations, it is certified by an aircraft operator for transport by aircraft; or
• it is certified by an aircraft operator for transport by aircraft, and the regulations, or a written notice of the Secretary, permits the certification of cargo without previous examination. This mirrors existing paragraph 42(2)(b) and allows for regulations, or a Secretarial notice, to be made to deal with exceptional circumstances.

Subsection 44B(3) provides that cargo is cleared if it has received clearance, and has been dealt with in accordance with regulations made under the new section 44C. This mirrors existing subsection 42(3).

Subsection 44B(4) clarifies that the Secretary may by written notice provide that a class of cargo may be certified. This mirrors existing subsection 42(5).

New section 44C
New section 44C creates a head of power to make regulations on how cargo is to be examined for security purposes and then cleared to be taken onto an aircraft.

Subsection 44C(1) allows for regulations to be made to:

• prescribe requirements in relation to the examination of cargo, certification of cargo for transport by aircraft, receiving clearance for cargo and the circumstances in which cargo is required to be cleared;
• establish a scheme that permits the designation of people carrying on businesses that include the handling or making arrangements to the transport of cargo as RACAs;
• establish a scheme that permits the accreditation of people carrying on businesses that include the handling or making arrangements to the transport of cargo as being an AACA; and
• prescribe conditions for RACAs, AACAs and aircraft operators (or one or more classes of, or one or more of a RACA, AACA or aircraft operator)
• require reports of aviation security incidents to be provided by AACAs. This provision does not extend to RACAs and aircraft operators as they are already required to provide such reports through their status as aviation industry participants under the Principal Act.
• prohibit someone from carrying on so much of their business as includes handling cargo or making arrangements for the transport of cargo, unless they are a RACA, an ACCA or an aircraft operator.

However, such regulations can only be made for the purposes of safeguarding against unlawful interference with aviation.

Subsection 44C(2) lists 10 specific areas in which regulations can be made. The list is not exhaustive.

Subsection 44C(3) allows that in respect of three areas listed in 44C(2) being:

• the examination of cargo;

• the procedures for dealing with examined cargo; and

• the methods, techniques and equipment to be used for examination

Regulations can be made providing that those issues be dealt with in a manner specified in a notice given by the Secretary. The notice may be given to those persons (or classes of persons) specified in the notice.

Where the notice deals with sensitive security information such as what examination methods might be used or how examination may be conducted, there is a public interest in restricting the circulation of this information. Publication of this information may compromise aviation security. This is consistent with the regulatory regime that is currently in place for screening and clearing in section 44 of the Act.

Subsection 44C(4) permits the regulations to prescribe offences for a breach of regulations made under this Part. The provision is similar to existing subsection 44(4). The most serious penalties (up to 200 penalty units, currently $22,000) apply to aircraft operators, with a middle range of penalties (up to 100 penalty units, currently $11,000) for other aviation industry participants, including RACAs, and the lowest range of penalties (up to 50 penalty units, currently $5,500) for other persons, including AACAs.

**Item 32 – Subsection 79(2) (Powers of aviation security inspectors - general)**

Item 32 repeals and substitutes subsection 79(2) of the Act. The subsection sets out the powers that aviation security inspectors can exercise at security controlled airports, or at the premises of aviation industry participants, to determine whether a person is complying with the Act, or in investigating a possible contravention of the Act.

The new proposed subsection 79(2) retains the powers that inspectors were granted by Parliament in 2004, and extends them to AACAs.

As the Explanatory Memorandum for the Aviation Transport Security Bill 2004 explained, these powers are essential to the capacity to audit and investigate compliance with the regulatory scheme.
Item 33 – Paragraph 79(3)(b) (Powers of aviation security inspectors - general)

Item 33 is an amendment consequential on the amendment made by item 32. It inserts a reference to an AACA so as to ensure that the limits on an aviation security inspector’s powers apply in relation to AACAs as well as to aviation industry participants.

Item 34 – Regulations

Item 34 allows for the Governor-General to make regulations dealing with transitional matters, if these should be needed. The regulations may prescribe matters required or permitted by the Schedule 2, or necessary or convenient to give effect to the Schedule. It also allows for regulations made under the unamended Act to continue to have effect (with any alterations needed) for the purposes of the amended Act, and for other transitional measures in relation to the transition from the unamended Act to the Act as amended by Division 2A of Part 4.

PART 2 OF SCHEDULE 2—Amendments consequential on amendments made by Schedule 1

Items 35–38 – Sections 36A and 38A
(Requirements for airside event zones and landside event zones)

Items 35-38 are amendments that are consequential on amendments made by Schedule 1 and by Schedule 2. The amendments are contained in a separate part of the Schedule because they cannot be commenced until both Schedule 1 and Part 1 of this Schedule have commenced.

SCHEDULE 3 – AMENDMENTS RELATING TO TRANSPORT SECURITY PROGRAMS

Aviation Transport Security Act 2004


Item 1 – new section 23A (Secretary may approve alterations to programs)

Section 12 of the Aviation Transport Security Act 2004 (the Principal Act) requires certain aviation industry participants to have a transport security program. A transport security program is normally valid for a period of 5 years. Section 22 of the Principal Act permits an aviation industry participant to apply to the Secretary to approve a revision of an existing transport security program. A revised transport security program will be in force for a period of 5 years from the time when the revision is approved.

New section 23A has been designed to provide an alternative way of making simple changes to a transport security program without increasing the life of the transport security program by a further 5 years (which is the case if the change is made by means of a revision under section 22).

New subsection 23A(1) provides that an aviation industry participant may make a written request to the Secretary to approve proposed alterations to a transport security program. Regulations may be made under section 133 to prescribe the format of such a request and any accompanying documents: for example, regulations could provide that the request to alter a
transport security program must be accompanied by a marked up electronic copy of the transport security program as it would appear if the Secretary were to approve the alterations.

New subsections 23A(2) and 23A(3) operate in parallel. Subsection 23A(2) applies if the Secretary ultimately decides to approve alterations to a transport security program, and subsection 23A(3) applies if the Secretary ultimately decides to refuse to approve alterations to a transport security program.

New paragraphs 23A(2)(a) and 23A(3)(a) require the Secretary to consider whether it is appropriate to deal with a request under section 23A. This provision gives the Secretary a broad discretion to inform the aviation industry participant that the proposed changes to the transport security program must be pursued as a revision under existing section 22. It is not possible to specify the precise circumstances in which the Secretary may decide that it is not appropriate to proceed under section 23A to consider a proposed alteration to a transport security program. In general terms, section 23A will only be appropriate if both the aviation industry participant and the Secretary are in agreement that the proposed alteration is relatively simple and that the change should not have the effect of extending the life of the transport security program for a further 5 years.

New paragraphs 23A(2)(b) and 23A(3)(b) require the Secretary to be satisfied that a transport security program as altered will satisfy the requirements of Part 2 Division 4 of the Principal Act which deals with the content and form of transport security programs. This same requirement also applies to the existing process for making a formal revision to a transport security program (in existing subsection 19(1)).

New subsection 23A(4) authorises the Secretary, when considering whether to approve alterations to a transport security program, to take into account existing circumstances related to aviation security. This ensures that the Secretary is authorised to take into account any relevant security matters that extend beyond the immediate operation of the transport security program that is being considered.

New subsection 23A(5) and subsection (6) control when an alteration to a transport security program comes into force. This is either at the time specified in the notice of approval (subsection (5)), or when the notice is given to the aviation industry participant (if the notice does not specify a time, or if the time specified in the notice is before the time that the notice is given) (subsection (6)).

New subsection 23A(7) provides that the Secretary is taken to have refused to approve an alteration to a transport security program if the Secretary fails to make a decision within 60 days of receiving the request. This is significant because a refusal decision will be reviewable by the Administrative Appeals Tribunal.

**Item 2 – new paragraph 126(1)(ca) (Review of decisions by Administrative Appeals Tribunal)**

Section 126 of the Principal Act specifies the decision that are made under the Principal Act that are reviewable by the Administrative Appeals Tribunal. This item inserts new paragraph 126(1)(ca) so that the Secretary’s decision under new section 23A to refuse to approve an alteration to a transport security program will be reviewable by the Administrative Appeals Tribunal.
SCHEDULE 4 – TECHNICAL AMENDMENTS

Aviation Transport Security Act 2004


Items 1–7 – subsections 35(2), 36(2), 37(2), 38(2), 44(2), 51(2) & 60(2)

Schedule 4 is purely technical in nature. The Aviation Transport Security Act currently employs two different formulas for specifying a non-exhaustive list of matters that can be the subject of regulations. These amendments ensure that all such non-exhaustive lists in the Act will be expressed in exactly the same way (using the formula that is already used in subsections 65(2) and 133(2)), thereby ensuring that no one is misled into thinking that the various provisions were intended to operate differently because they have been expressed in different language.