

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 317

Issued by the Authority of the Minister for Transport and Regional Services

Aviation Transport Security Act 2004
Aviation Transport Security Amendment Regulations 2007 (No. 4)

The *Aviation Transport Security Act 2004* (the Act) establishes a regulatory framework to protect the security of civil aviation in Australia.

Section 133 of the Act provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Paragraphs 44(1)(a), (b) and (c) and 44(2)(aa) (b) and (c) of the Act provide that matters that may be dealt with by regulations include screening, receiving clearance, the circumstances in which persons or goods are required to be cleared, things that must not pass through a screening point, the things to be detected by screening and the procedures for dealing with things detected by screening.

The *Aviation Transport Security Regulations 2005* (the Principal Regulations) prescribe the persons who may enter a sterile area, and under what conditions without being screened and the circumstances in which goods and carry-on baggage must be cleared.

The Regulations restrict the quantity of liquids, aerosols and gels (LAGs) which can pass through a LAGs screening point at which passengers travelling on an international air service (including any domestic sectors of such a service) are screened for LAGs products. The quantity of LAG products which passengers may take on board is restricted to 100ml or less per container sealed inside a resealable transparent plastic bag of no more than 80 cms around the perimeter. The quantity based restriction reduces the risk of liquid explosive material being potentially used to destroy an aircraft.

The Regulations would prescribe 200 penalty units in regulation 4.22E and 4.22F, 200 penalty units may be prescribed in regulations for an offence committed by an airport operator or an aircraft operator. The LAGs cleared area as defined is at a number of airports as the same as the sterile area, non compliance for establishment of a landside security zone in regulation 3.20(5) is 200 penalty units. A sufficient deterrent is also required to ensure operators of inbound international aircraft apply LAG measures to reduce the risks posed to Australia from inbound international aircraft which are not screened in accordance with the regulations.

The Regulations contain three strict liability offences: 4.22G - LAG product passing through LAGs screening point; 4.22H - more than 1 LAGs bag; and 4.22O - not screening for more than 1 LAGs bag.

The penalty for each of these offences is 20 penalty units for an individual. This is less than the 60 penalty units the Senate Scrutiny of Bills Committee says appears to be a reasonable maximum. It is necessary to ensure the integrity of the regulatory regime, i.e. that LAGs should be excluded from certain areas of airports and on board aircraft.

The Regulations will allow that an infringement notice may be issued for these offences. The scheme to regulate LAGs is not complex or detailed and breaches will be reduced by the provision of clear signage visible to persons prior to the screening point where they may commit an offence.

The offence contained in regulation 4.22O - not screening for more than 1 LAGs bag, is only applicable to persons who are trained screeners, or who have other roles at airports and would be expected to have knowledge of security arrangements. Therefore, strict liability depends on the actions or lack of action of those who are actually liable for an offence.

Attachment A outlines the scope of the Regulations.

Further details of the Regulations are set out in Attachment B.

The Regulations will commence on 30 September 2007.

ATTACHMENT A

Aviation Transport Security Amendment Regulations 2007 (No. 4)

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required as the proposed arrangements are of a minor or machinery nature and do not substantially alter existing arrangements.

COMPLIANCE COSTING

The proposed regulations are to be reviewed within 18 months of coming into force at which time a Business Cost Calculator and Regulation Impact Statement will be required.

A review of the total costs incurred by business will be undertaken during the review phase.

REVISED LAGs ARRANGEMENTS

The proposed regulations amend the *Aviation Transport Security Regulations 2005* (the Principal Regulations) to specify that items which are liquid at room temperature, aerosols, gels, creams or pastes, in containers 100ml or less can be taken through LAGs screening points, on board international air services to and from Australia.

The items must be placed inside a resealable, transparent, plastic bag which measures no more than 80 cms around the perimeter enclosed by the resealing mechanism.

The proposed regulations provide exemptions for the following categories:

- a) infants or toddlers;
- b) medical products to treat medical conditions (e.g. insulin);
- c) therapeutic products (non-prescription medication) in quantities that are reasonable given the duration of the flight;
- d) contents of a bag being used to treat a medical condition (e.g. a colostomy bag);
- e) things to be used in the course of carrying on a business in a landside security zone (e.g. items sold in a restaurant airside);
- f) items which are tools of trade (e.g. cleaning products for cleaning contractors); and
- g) items exempted in a notice given by the Secretary of the Department of Transport under Regional Services under Regulation 4.22Q.

The proposed regulations specify that all passengers travelling on an international air service must be screened and that LAG products which are not in LAGs containers in a sealed LAGs bag in will not be permitted to pass through LAGs screening points.

The proposed regulations create offences for screening authorities for the following: dealing with LAG products detected by screening; not screening passengers before

boarding; not preventing entry to a LAGs cleared area; not screening for LAG products; and not screening for more than one LAGs bag.

The proposed regulations create an offence provision for operators of an international air service that do not put in place appropriate procedures to ensure that passengers do not have in their possession LAG products which are greater than 100ml per container, unless these items were: collected by the passenger after passing through the screening point, or supplied to the passenger in flight.

The proposed regulations provide that the Secretary may by written notice specify that a thing or class of things is not taken to be a LAG product. This notice making power may apply to a thing, a class of things carried by a particular person or class of persons or that is taken on a particular flight.

ATTACHMENT B

Details of the Aviation Transport Security Amendment Regulations 2007 (No. 4)

Regulation 1 - Name of Regulations

The title of the Regulations is the *Aviation Transport Security Amendment Regulations 2007 (No. 4)*

Regulation 2 - Commencement

The Regulations commence on 30 September 2007.

Regulation 3 - Amendment of Aviation Transport Security Regulations 2005

The *Aviation Transport Security Regulations 2005* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 - Amendments

Item [1] – Regulation 1.03 (after definition of ASIC)

This amendment clarifies that for the purpose of the Principal Regulations, Australia includes Christmas Island, Cocos (Keeling) Island and the Territory of Norfolk Island.

Item [2] – Regulation 1.03 (after definition of *domestic air service*)

This amendment defines exempt countries as New Zealand or the United States of America. These countries are exempt from the requirement to conduct secondary screening for inbound international air services to Australia, recognising that the security arrangements deployed at these airports are equivalent to Australian international airport security measures. It also provides that passengers may purchase duty free LAGs if they are (1) collected at the boarding gate; and (2) are in a sealed plastic bag with proof of purchase affixed to the bag or enclosed in the bag.

Item [3] - Regulation 1.03 (after definition of *jet*)

The amendment defines LAGs bag to mean a transparent plastic bag that may be sealed and unsealed using a resealing mechanism that is part of the bag (i.e. bags sealed using rubber bands or string are not permitted); and the area enclosed by the resealing mechanism which has a perimeter of 80 centimetres or less (this is to meet the international requirement for a bag of no more than one litre).

It also provides that a LAGs cleared area means an area of a security controlled airport that is entered through a LAGs screening point. As the restrictions only apply to international passengers a separate cleared area must be established to ensure that all departing passengers are screened for LAGs products at airports where there is mixed domestic and international departures.

LAGs container means a container that has a capacity of 100ml or less.

LAG product is defined in Regulation 4.22C.

LAGs screening point means a screening point at a security controlled airport at which passengers travelling on an international air service (including any domestic sectors of such a service) are screening for LAGs products.

Item [4] – Regulation 1.03 (after definition of *Migration Act*)

This amendment inserts a definition of non-exempt country. Non-exempt countries are those countries for which secondary screening is required for flights to Australia.

Item [5] - Sub regulation 4.04(3)

This amendment specifies that LAGs screening is to detect LAGs products at Subdivision 4.1.1A as inserted by item [6] below).

Item [6] - Subdivision 4.1.1A Liquid, aerosol and gel products

Regulation 4.22A - Definitions

This new regulation specifies that exempt persons are those who may pass through a screening point without being screened under Regulation 4.10. This Regulation also exempts aviation security inspectors and representatives of screening authorities lawfully testing security screening.

This proposed regulation also clarifies that international air service does not include a closed charter service.

Regulation 4.22B – Meaning of *exempt LAG item*

This new regulation defines exempt LAG item. An item is an exempt LAG item if it is in the possession of the passenger; the passenger passed through a screening point for international passengers in the exempt country; the passenger obtained the item after passing through the screening point; and the passenger did not disembark in a non-exempt country during the international air service.

Regulation 4.22C – Meaning of *LAG product*

Sub regulation (1)

This new subregulation defines LAG product to include a substance that is a liquid when at room temperature; an aerosol; a gel; a cream or a paste.

Sub regulation (2)

This new subregulation provides that the following things are not LAG products: if the person is an infant or toddler – a baby product that is in a quantity that is reasonable having regard to the duration of the flight; a medical product for the person (e.g insulin); a therapeutic product (e.g non-prescription medication) for the person in a quantity that is reasonable for the duration of the flight; the contents of a bag used to manage a medical condition of the person (such as a colostomy bag); and biological tissues, blood products, blood cultures, samples and substances used for medical research or reproductive health.

Sub regulation (3)

This new subregulation provides that an item in subregulation (1) that is taken through a LAGs screening point is not a LAGs product if: the thing is to be used by the person in the course of carrying on a business in a landside security zone, and the

thing is not for the personal use of the person (e.g. bottles of water to be sold in a shop).

Sub regulation (4)

This new subregulation provides that an item in subregulation (1) that is taken through a LAGs screening point is not a LAGs product if: the thing taken by a person specified in column 2 of regulation 4.62; and the thing is a tool of trade for that person (e.g. cleaning products for cleaning contractors). This is to enable business who operate on the landside area of an airport before the LAGs screening point to continue operations within a landside security zone at an airport.

Sub regulation (5)

This new subregulation provides that an item in subregulation (1) that is taken through a LAGs screening point is taken not be a LAG product if the thing is the subject of a notice by the Secretary under regulation 4.22Q, some of these products would be rendered useless if subject to screening and therefore may require an exemption from screening.

Sub regulation (6)

This new subregulation provides that an item is a baby product if used in the care of an infant or toddler, including infant formula. In this subregulation medical product means a product supplied on prescription to a person, therapeutic product means a product, other than a medical product, that is used for the treatment or management of a person's medical condition (e.g. cough medicine).

Regulation 4.22D – Offence – not establishing a LAGs screening point

This new regulation specifies an offence for a screening authority where an international air service operates from the airport and the screening authority does not establish a LAGs screening point at the airport. The maximum penalty for this offence is 50 penalty units.

Regulation 4.22E – Offence – operator of inbound flight from exempt country

This new regulation specifies an offence for the operator of an aircraft operating an inbound international air service where: the aircraft is flying to Australia from an airport in an exempt country; and the aircraft operator does not put in place procedures to ensure that passengers do not have LAG products in their possession. Exemptions are made if the LAG product is in a sealed LAGs bag, the item is an exempt LAG item, or the LAG product was supplied to the passenger by the aircraft operator during the flight. The maximum penalty for this offence is 200 penalty units.

Regulation 4.22F – Offence – operator or inbound flight from non-exempt country

This new regulation specifies an offence for the operator of an aircraft operating an inbound international air service where: the aircraft is flying to Australia from an airport in a non-exempt country and the aircraft operator does not put in place procedures to ensure that passengers do not have LAG products in their possession.

Exemptions are made if the LAG product is in a sealed LAGs bag, the item is an exempt LAG item, or the LAG product was supplied to the passenger by the aircraft operator during the flight. The maximum penalty for this offence is 200 penalty units.

Regulation 4.22G – Offence – LAG product passing through LAGs screening point

This new regulation specifies an offence for a person passing through a LAGs screening point and the person is not an exempt person and the person has a LAG product in his or her possession and the LAG product is not in a sealed LAGs bag. The maximum penalty for this offence is 20 penalty units.

Regulation 4.22H – Offence – more than one LAGs bag

Subregulation (1)

This new subregulation specifies an offence for a person passing through a LAGs screening point and the person is not an exempt person; and the person has more than one LAGs bag in their possession, unless they are carrying the bag on behalf of an infirm person or child.

Subregulation (2)

This new subregulation defines a care bag in relation to a person being 1 LAGs bag containing LAG products that are in LAGs containers for use by, or for the care of an infirm person or child who the person is accompanying through a LAGs screening point. The maximum penalty for this offence is 20 penalty units.

Regulation 4.22I – Things to be detected by screening

This new regulation specifies that LAGs products are to be detected by screening at a LAGs screening point unless it is not technically possible to do so.

Regulation 4.22J – Dealing with LAG product surrendered during screening

This new regulation specifies that a screening authority must put in place appropriate procedures to ensure that LAG products surrendered as a result of screening are destroyed. Screening authorities must also ensure that where a law applies to the destruction of LAG products that these products are destroyed in accordance with the applicable law. A LAG product surrendered under this subregulation must be handled and destroyed in accordance with the procedures under the regulation. The maximum penalty for this offence is 50 penalty units.

Regulation 4.22K – Offence - preventing destruction of surrendered LAG product

This new regulation specifies a person commits an offence if the screening authority has put in place procedures for the destruction of LAG products, the product has been surrendered as a result of screening and the person prevents the destruction. This new subregulation will ensure that all LAG products surrendered as a result of screening are destroyed. The maximum penalty for this offence is 20 penalty units.

Regulation 4.22L – Offence - not screening passengers before boarding

This new regulation specifies an offence for a screening authority where an international air service operates from the airport and the screening authority has not put in place reasonable measures to ensure that persons who pass through the LAGs screening point have been screened. The maximum penalty for this offence is 50 penalty units.

Regulation 4.22M – Offence - not preventing entry to a LAGs cleared area

Sub regulation (1)

This new subregulation specifies an offence for a screening authority where an international air service operates from the airport and the screening authority has not put in place reasonable measures to prevent entry into the cleared area without being screened unless the person is an exempt person, where the sterile area is the same as the LAGs cleared area the person is permitted under regulation 4.11 to enter the sterile area without being screened, or the person has entered the sterile area from an airside area of the airport after disembarking from a LAGs screened air service.

Sub regulation (2)

This new subregulation defines a LAGs screened air service to be: an aircraft that departed from a place inside Australia, and only carried passengers that were screened for LAG products before boarding the service. The maximum penalty for this offence is 50 penalty units.

Regulation 4.22N – Offence – not screening for LAG products

This new regulation specifies an offence for a screening authority where an international air service operates from the airport and the screening authority has not put in place appropriate procedures to ensure that a person does not carry a LAG product through the LAGs screening point unless they are an exempt person, or the LAG product is in a LAGs container in a sealed LAGs bag. The maximum penalty for this offence is 50 penalty units.

Regulation 4.22O – Offence not screening for more than 1 LAGs bag

Subregulation (1)

This new subregulation specifies an offence for a screening authority where an international air service operates from the airport and the screening authority has not put in place appropriate procedures to ensure that a person does not carry more than 1 LAGs bag unless permitted to do so under these regulations.

Subregulation (2)

This new subregulation specifies that subregulation (1) is an offence of strict liability.

Subregulation (3)

This new subregulation defines a care bag in relation to a person being 1 LAGs bag containing LAG products that are in LAGs containers for use by, or for the care of an infirm person or child who the person is accompanying through a LAGs screening point. The maximum penalty for this offence is 20 penalty units.

Regulation 4.22P – Offence – sign at LAGs screening point

This new regulation specifies the sign which must be posted at the LAGs screening point. The maximum penalty for this offence is 50 penalty units.

Regulation 4.22Q – Notices

This new regulation provides that for subsection 44(3) of the Act, the Secretary may by written notice specify that a thing or class of things is not taken to be a LAG product. This notice making power may apply to a thing, a class of things carried by a particular person or class of persons or that is taken on a particular flight.