

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 377

Issued by the Authority of the Minister for Infrastructure, Transport, Regional
Development and Local Government

Aviation Transport Security Act 2004

Aviation Transport Security Amendment Regulations 2009 (No. 5)

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 that the Governor-General may make regulations, not inconsistent with the Act, 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.

More specifically, section 62 of the Act provides, in part, that the regulations may, for the purposes of safeguarding against unlawful interference with aviation, prescribe requirements in relation to baggage that is loaded, or is intended to be loaded, onto a prescribed aircraft.

The *Aviation Transport Security Regulations 2005* (the Principal Regulations) require that items of checked baggage be removed from an aircraft following a flight diversion, where the passenger who checked the baggage in does not re-board or remain onboard the aircraft. However, where it can be demonstrated that a passenger could not have influenced a flight diversion, there is no security impediment for the baggage to remain on board the aircraft without the passenger (owner of the baggage) also onboard.

The *Aviation Transport Security Amendment Regulations 2009* (the Regulations) amend the Principal Regulations to permit an operator of a prescribed air service to keep an item of checked baggage onboard an aircraft following diversion of the flight from its scheduled destination to an alternative destination, where the passenger who checked the baggage in does not re-board, or remain on board the aircraft.

The Regulations apply in those circumstances where an aircraft has been diverted by the pilot in command due to:

- meteorological conditions;
- aircraft or equipment malfunction;
- a direction given by air traffic control, the Civil Aviation Safety Authority or the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government (the Secretary);
- an emergency at the destination airport;
- curfew restrictions; or,
- concerns with the aircraft's fuel supply.

Limiting the provision of the Regulations to these circumstances satisfies security considerations, because the passengers on the flight do not have the opportunity to influence the decision to divert the flight. The Secretary also has the power to approve, on a case-by-case basis, items of checked baggage that may remain onboard an aircraft following a flight diversion.

A Regulation Impact Statement is not required for the Regulations because they have low or no impact on business.

The Regulations have been settled in consultation with aircraft operators.

Details of the amendment to the Principal Regulations are set out Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

ATTACHMENT A

Details of the Aviation Transport Security Amendment Regulations 2009 (No. 5)

Regulation 1 – Name of Regulations

The title of the Regulations is *the Aviation Transport Security Amendment Regulations 2009 (No. 5)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of Aviation Transport Security Regulations 2005

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

Schedule 1 – Amendments

Item [1] – Regulation 1.03

This amendment inserts the definition for “air traffic control”.

Item [2] – Subparagraph 2.38(a)(ii)

Regulation 2.38 prescribes what an aircraft operator’s Transport Security Program must include for passenger and baggage reconciliation. This amendment inserts subparagraph 2.38(a)(ii) which permits checked baggage to remain onboard aircraft in certain circumstances.

Item [3] – Paragraph 4.21(4)(c)

This amendment is a minor drafting amendment which replaces the word *connect* with *match*.

Item [4] – Paragraph 4.21(7)(b)

This amendment is a minor drafting amendment and is consequential to Item [5] below.

Item [5] – After paragraph 4.21(7)(b)

This amendment inserts subparagraph 4.21(7)(c) which expands the passenger to checked baggage reconciliation requirements to include the new provision inserted by Item [6] below.

Item [6] – After regulation 4.21

Prior to the commencement of these Regulations, in cases of flight diversions, an aircraft operator had to remove items of checked baggage no matter what the reason for the diversion, if the passenger who checked the baggage in did not re-board or remain onboard the aircraft. In circumstances where a passenger has no control over an aircraft diverting to an alternative airport there are no security reasons for the removal of such checked baggage. Item [6] inserts a new regulation 4.21A which rectifies this anomaly.

This regulation permits an operator of a prescribed air service to keep an item of checked baggage onboard an aircraft following diversion of the flight from its scheduled destination to an alternative destination, where the passenger who checked the baggage in does not re-board, or remain on board, the aircraft. This will apply only where a flight has diverted due to:

- meteorological conditions;
- aircraft or equipment malfunction;
- a direction given by air traffic control, the Civil Aviation Safety Authority or the Secretary;
- an emergency at the destination airport;
- curfew restrictions; or,
- concerns with the aircraft's fuel supply.

If a flight has diverted for any other reason, the Secretary may give an approval for an item of checked baggage to remain onboard provided there are no safety or security concerns. This approval must be given prior to the aircraft departing from the airport to which the flight has diverted. In all other cases such items of checked baggage must be removed from the aircraft prior to departure.