

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 85

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

Subject: *Aviation Transport Security Act 2004*

Aviation Transport Security Amendment Regulations 2009 (No. 2)

Section 133 of the *Aviation Transport Security Act 2004* (the ATSA) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the ATSA to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the ATSA.

Further, sections 41 and 42 of the ATSA provide, in part, that the regulations may, for the purposes of providing access to aircraft, areas and zones at an airport that may be restricted to persons, goods and vehicles that have received clearance, prescribe requirements in relation to screening and clearing of people and goods.

The purpose of the Regulations is to amend the provisions of the *Aviation Transport Security Regulations 2005* (the ATSR) relating to screening and clearing of VIPs.

The proposed Regulations would:

- simplify the current categories of VIPs exempt from screening and clearing by limiting the categories of dignitaries exempt from screening to:
 - a Head of State of a country recognised by Australia and members of his or her immediate family;
 - a Head of the government of a country recognised by Australia and members of his or her immediate family; and
 - a Minister responsible for foreign affairs of the government of a country recognised by Australia and members of his or her immediate family;
- clarify the requirements for screening exemptions of dignitaries and their carry-on baggage and extend this screening exemption to the dignitaries' immediate family; and
- make minor technical drafting amendments.

Details of the amendment to the ATSR are set out in Attachment A.

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

The Regulations commence on the day after the day on which they are registered on the Federal Register of Legislative Instruments.

The amendments were developed in consultation with relevant Commonwealth agencies.

ATTACHMENT A

Details of the Aviation Transport Security Amendment Regulations 2009 (No. 2)

Regulations 1 – Name of Regulations

The title of the Regulations is the *Aviation Transport Security Amendment Regulations 2009 (No. 2)*.

Regulations 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* (the Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Regulation 1.03, after definition of *checked in*

The purpose of item [1] is to define the term ‘child’ used in the Regulations. Item [1] would insert a definition for ‘child’ to regulation 1.03 to mean a person who has not turned 18 years of age.

Item [2] – Regulation 1.03, after definition of *grey ASIC*

The purpose of item [2] is to define the term ‘immediate family’ used in the Regulations. Item [2] inserts a definition for ‘immediate family’ to regulation 1.03 to mean the following individuals if they are travelling with the person: the person’s spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*); the person’s child (including an adopted child); and a child for whom the person is a legal guardian. Members of the ‘immediate family’ are not considered exempt from screening if they are only farewelling the person at the airport.

Item [3] – Regulations 3.20(3)(e)

The purpose of item [3] is to add a reference to paragraph 3.20(3)(e) to include regulations 4.11 or 4.12A. This enables a person to enter a sterile area without being screened if he or she is of a class of persons under regulation 4.10, 4.11, 4.12 or 4.12A.

Item [4] – Regulation 4.09(2)(b)

The purpose of item [4] is to add a reference to paragraph 4.09(2)(b) to include that he or she receives clearance under regulation 4.10, 4.11, 4.12 or 4.12A. This enables a person to enter a

sterile area without being screened if he or she is of a class of persons under regulation 4.10, 4.11, 4.12 or 4.12A.

Item [5] – Regulations 4.12

The purpose of item [5] is to substitute regulation 4.12 with new regulations 4.12 and 4.12A. Item [5] would provide for a limited category of foreign dignitaries to receive clearance at a screening point without being screened and receive clearance to enter a cleared area, a cleared zone, or a cleared aircraft other than through a screening point.

Subregulation 4.12(1) provides for the following categories to receive clearance at a screening point without being screened:

- a Head of State of a country recognised by Australia and members of his or her immediate family;
- a Head of the government of a country recognised by Australia and members of his or her immediate family; and
- a Minister responsible for foreign affairs of the government of a country recognised by Australia and members of his or her immediate family.

Subregulation 4.12(1) and (2) provides for the exempt foreign dignitary's and his or her immediate family's carry-on baggage to pass through a screening point with the person without being screened.

Subregulation 4.12A to provide for the following categories to receive clearance to enter a cleared area, a cleared zone or a cleared aircraft other than through a screening point if they are accompanied by a law enforcement officer, who is a member of the Australian Federal Police or an officer of the Australian Customs Service who meets the requirements of subregulations 4.11(4) and 4.11(1) respectively, and is taken to the aircraft using the most direct, secure and convenient route:

- a Head of State of a country recognised by Australia and members of his or her immediate family;
- a Head of the government of a country recognised by Australia and members of his or her immediate family; and
- a Minister responsible for foreign affairs of the government of a country recognised by Australia and members of his or her immediate family.

Subregulation 4.12A(3) provides for the exempt foreign dignitary's and his or her immediate family's carry-on baggage to enter a cleared area, cleared zone or cleared aircraft with the person without being screened.

Item [6] – Regulation 4.15, at the foot

The purpose of item [6] is to provide for clearance of foreign dignitary's and their immediate family's carry-on baggage. Item [6] inserts a Note that provides for the clearance of carry-on baggage for foreign dignitaries specified in subregulations 4.12(2) or 4.12A(3).

Item [7] – Regulations 4.36

Item [7] omits regulation 4.36 that currently provides for the screening and clearing of VIPs. New rules dealing with screening and clearing of dignitaries are now contained under regulations 4.12 and 4.12A.