

EXPLANATORY STATEMENT

Issued by Authority of the Delegate of the Secretary of the Department of Home Affairs

Subject - *Aviation Transport Security (Incident Reporting) Instrument 2018*

Aviation Transport Security Act 2004

The *Aviation Transport Security Act 2004* (the Act) establishes a regulatory framework to safeguard against unlawful interference with aviation. A part of that regulatory framework is the requirement (set out in Part 6 of the Act) to report aviation security incidents. Section 99 of the Act defines each of the following as an aviation security incident:

- (a) a threat of unlawful interference with aviation;
- (b) an unlawful interference with aviation.

Subsection 104(1) of the Act provides that airport operators must report aviation security incidents in accordance with section 104. In particular, paragraph 104(4)(a) provides that an aviation security incident that relates to the airport of the airport operator must be reported to the Secretary of the Department of Home Affairs (the Secretary).

Subsection 105(1) provides that aircraft operators must report aviation security incidents in accordance with section 105. In particular, paragraph 105(4)(a) provides that an aviation security incident that relates to an aircraft of the aircraft operator must be reported to the Secretary.

Subsection 106(2) provides that other persons with incident reporting responsibilities (identified in subsection 102(4)) must also report aviation security incidents to the Secretary.

Section 107 of the Act sets out how reports are to be made. Subsection 107(1) of the Act provides that the Secretary may, by legislative instrument, specify either or both of the following:

- (a) information that must be included in a report required by Part 6 of the Act;
- (b) the way in which the report must be made.

Subsection 107(3) of the Act provides that if a report is made under Part 6 of the Act and the report does not comply with the requirements of the legislative instrument made under subsection 107(1), then that report is taken not to have been made.

Subsection 127(1) of the Act enables the Secretary to delegate all or any of the Secretary's powers and functions under the Act to, among others, a Senior Executive Service (SES) employee in the Department of Home Affairs (the Department). On 9 April 2018, the Secretary delegated the power under subsection 107(1) of the Act to, among others, the SES Band 2 of the Aviation and Maritime Security Division of the Department.

The Aviation Transport Security (Incident Reporting) Instrument 2018 (the Instrument) repeals and replaces the *Aviation Transport Security (Incident Reporting) Instrument 2015*

(the Principal Instrument). The Instrument sets out the information that must be included in a report to the Secretary under Part 6 of the Act. The information includes, for example, the date, time and location of the aviation security incident; the name of the person reporting the incident; the aviation industry participant to which the incident directly relates; and a description of the incident, including an indication of whether the incident was a threat of unlawful interference with aviation or an unlawful interference with aviation.

The Instrument also states that a report is to be made to the Department in writing, or orally and followed up in writing, within 24 hours.

Information contained in such reports allows the Department to capture and efficiently monitor aviation security incidents. The reports also provide information to enable the Australian Government to comply with its international obligations to report aviation security incidents to the International Civil Aviation Organization.

The Department notified aviation industry participants at industry forums such as the Aviation Security Advisory Forum (ASAF) and Regional Industry Consultative Forum (RICM) that the Instrument would be remade in substantially the same form as the Principal Instrument and that the primary purpose of remaking the Instrument is to address administrative issues such as out-of-date contact information following machinery of government changes. The Department will be issuing industry participants with updated guidance in October 2018 and will be presenting on incident reporting at the combined ASAF and RICM forum in November 2018.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the making of the Instrument. OBPR has advised that a Regulation Impact Statement is not required to remake the instrument (OBPR ID: 23791).

A Statement of Compatibility with Human Rights is set out at Attachment A.

The Act does not specify any conditions that need to be satisfied before the power to make the Instrument may be exercised.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

<u>Authority:</u>	Subsection 107(1) and section 127 of the <i>Aviation Transport Security Act 2004</i>
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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aviation Transport Security (Incident Reporting) Instrument 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument is a new Instrument setting out what is to be included in aviation security incident reports made under the *Aviation Transport Security Act 2004* and how those reports are to be made. The Legislative Instrument substantially replicates the *Aviation Transport Security (Incident Reporting) Instrument 2015*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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