

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Home Affairs

Aviation Transport Security Act 2004

Aviation Transport Security (Prohibited Items) Instrument 2022

The *Aviation Transport Security Act 2004* (the Act) establishes a regulatory framework to safeguard against unlawful interference with aviation and to prevent the use of aviation in connection with serious crime. To achieve these purposes, the Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities and passengers.

Consistent with these purposes, the *Aviation Transport Security (Prohibited Items) Instrument 2022* (the Instrument) specifies a list of prohibited items for the purposes of paragraph (b) of the definition of *prohibited item* in section 9 of the Act. Prohibited items are those which may be used for unlawful interference with aviation and are prohibited on board aircraft or in the sterile areas of airports (beyond security screening points). The Instrument also specifies circumstances in which an item is not prohibited and may be carried or possessed on board aircraft or in the sterile areas of airports.

Legislative Authority

Section 9A of the Act provides that the Minister may, by legislative instrument, specify items for the purposes of paragraph (b) of the definition of *prohibited item* in section 9 of the Act.

Section 9 of the Act defines *prohibited item* as an item that:

- (a) could be used for *unlawful interference with aviation*; and
- (b) is specified in an instrument under section 9A.

Purpose

The purpose of this Instrument is to clearly set out which items are specified as *prohibited items* for the purposes of the Act to provide clarity to aviation participants and the public, while also allowing for greater flexibility to amend the instrument to respond to any emerging security risks.

Specifying items as *prohibited items* also provides for the effective application of Division 4 of Part 4 of the Act which establishes restrictions in relation to carrying or possessing prohibited items on board aircraft or in the sterile areas of airports (beyond security screening points). A person who has been authorised or permitted to have a prohibited item in their possession or under their control must comply with any conditions

that have been imposed. The control of prohibited items is an important aspect of preventing unlawful interference with aviation.

This Instrument repeals and replaces the *Aviation Transport Security (Prohibited Items) Instrument 2012* (2012 Instrument), which is due to sunset, and will cease to have effect, on 1 October 2022. Following an assessment of the Australian aviation security environment and risks, it has been determined that the content of the 2012 Instrument is still fit-for-purpose, and is required. It is therefore appropriate in the circumstances to repeal and replace the 2012 Instrument with an updated instrument.

On this basis, consistent with the 2012 Instrument, this Instrument specifies that the following are to be *prohibited items*:

- Sporting goods, kitchen utensils, tools, and other items with sharp edges or points capable of injuring a person;
- Sharp items capable of causing harm by penetration;
- Blunt Items (other than walking sticks, crutches, or other mobility aids, or dressing sticks designed to assist a person to dress or undress) that are able to be used to bludgeon or threaten to bludgeon a person;
- Household flammable goods;
- Items capable of being used to restrain a person; and
- A knife or knife-like item strong enough to be used as a weapon.

Items that are replicas or imitations of such items are also prohibited.

The Instrument also specifies circumstances in which an item is not prohibited and may be carried or possessed on board aircraft or in the sterile areas of airports.

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

The Instrument commences on the day after it is registered on the Federal Register of Legislation and is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

When consulted, industry did not raise any concerns with the approach of repealing and replacing the 2012 Instrument with this Instrument, given the content of both is substantively the same.

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: OBPR22-03125).

A Statement of Compatibility with Human Rights in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* is included at Attachment A. The overall assessment is that the Instrument is compatible with human rights.

Details of the Instrument are set out in Attachment B.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Aviation Transport Security (Prohibited Items) Instrument 2022

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*.

The *Aviation Transport Security Act 2004* (the Act) establishes a regulatory framework to safeguard against unlawful interference with aviation and to prevent the use of aviation in connection with serious crime. To achieve these purposes, the Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities and passengers.

Consistent with these purposes, the *Aviation Transport Security (Prohibited Items) Instrument 2022* (the Instrument) specifies a list of prohibited items. Prohibited items are those which may be used for unlawful interference with aviation and are prohibited on board aircraft or in the sterile areas of airports (beyond security screening points). The Instrument also specifies circumstances in which an item is not prohibited and may be carried.

The *Aviation Transport Security (Prohibited Items) Instrument 2022* (the Instrument), specifies the list of items that are prohibited on board aircraft or in the sterile area of airports (that is, areas beyond security screening points).

The purpose of this Instrument is to clearly set out which items are specified as a *prohibited item* for the purposes of the Act to provide clarity to aviation participants and the public, while also allowing for greater flexibility to amend the instrument to respond to any emerging security risks.

Specifying items as a *prohibited item* also provides for the effective application of Division 4 of Part 4 of the Act, which establishes restrictions in relation to carrying or possessing prohibited items on board aircraft or in the sterile areas of airports. A person who has been authorised or permitted to have a prohibited item in their possession or under their control must comply with any conditions that have been imposed. The control of prohibited items is an important aspect of preventing unlawful interference with aviation.

This Instrument repeals and replaces the *Aviation Transport Security (Prohibited Items) Instrument 2012* (2012 Instrument), which is due to sunset, and will cease to have effect, on 1 October 2022. Following an assessment of the security environment and risks, it has

been determined that the content of the 2012 Instrument is still fit-for-purpose, and is required.

On this basis, consistent with the 2012 Instrument, this Instrument specifies that the following are to be *prohibited items*:

- Sporting goods, kitchen utensils, tools, and other items with sharp edges or points capable of injuring a person;
- Sharp items capable of causing harm by penetration;
- Blunt Items (other than walking sticks, crutches, or other mobility aids, or dressing sticks designed to assist a person to dress or undress) that are able to be used to bludgeon or threaten to bludgeon a person;
- Household flammable goods;
- Items capable of being used to restrain a person; and
- A knife or knife-like item strong enough to be used as a weapon.

Items that are replicas or imitations of such items are also prohibited.

The Instrument also specifies items that are not prohibited items, including hypodermic needles carried by a person who shows proof that it is medically necessary.

The Instrument does not omit or include any new items that were not identified as prohibited under the 2012 Instrument.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- The right to life in Article 6(1) of the *International Covenant on Civil and Political Rights* (ICCPR); and
- The right to freedom of thought, conscience and religion or belief in Article 18 of the ICCPR.

The right to life

Article 6(1) of the ICCPR states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

To the extent that the Instrument prohibits dangerous items capable of causing harm or injury to a person on board aircraft or in the sterile area of airports, the Instrument may be said to positively engage the right to life by reducing the risk of harm or threat to life by a prohibited item.

The right to freedom of thought, conscience and religion or belief

Article 18 of the ICCPR relevantly states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.

....

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

....

The Instrument engages the right to freedom of thought, conscience and religion or belief as the possession of some religious attire and articles of faith in sterile zones of airports and on board aircraft may be prohibited.

The Kirpan is a curved, single-edged dagger or knife carried by Sikhs that vary in size. Kirpans are one of five articles of faith that must be worn at all times by baptised Sikhs, symbolising their sacred duty to stand up against injustice. The Kirpan has been an integral part of Sikhism since its inception and is considered a sacred article. A Kirpan is a prohibited item under the Instrument, as it is a knife or knife-like item (whether or not made of metal) strong enough to be used as a weapon. Various other religions have similar articles of faith that, depending on the size and description of that item, could be prohibited items.

Any limitation that the Instrument imposes on the right to freedom of religion or religious beliefs by prohibiting the possession of such items while in the sterile area of an airport or while on board an aircraft is reasonable as the limitation to this right is only for the duration of the flight (or time in the sterile area of an airport) and the limitation is necessary and proportionate to protect the physical safety and right to life of all people beyond the security screening points and on board aircraft.

Conclusion

This Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Clare O'Neil MP
Minister for Home Affairs**

ATTACHMENT B

Notes on Sections

Section 1 – Name of Instrument

The name of the Instrument is the *Aviation Transport Security (Prohibited Items) Instrument 2022*.

Section 2 – Commencement

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

Section 3 – Repeal

Section 3 provides that, by the Instrument being made, the *Aviation Transport Security (Prohibited Items) Instrument 2012* (F2015C00564) is repealed.

Section 4 – Definitions

This section provides the definition of terms used in the Instrument.

The term *Act* is defined to mean the *Aviation Transport Security Act 2004*.

The term *Regulations* is defined to mean the *Aviation Transport Security Regulations 2005*.

Section 5 – Prohibited Items

The prohibited items specified in this section replicate the categories and content previously specified in the *Aviation Transport Security (Prohibited Items) Instrument 2012*.

Prohibited items are, in the specific context of aviation security, defined as items which may be used to interfere with aviation unlawfully and so are prohibited from being possessed or carried by persons at airports or on aircraft.

Subsection 5(1)

Subsection 5(1) specifies in a table the types of items that are prohibited items for the purposes of paragraph 9(b) of the definition of *prohibited item* in section 9 of the Act and provides examples of item types.

Table item 1

Table item 1 of the table in subsection 5(1) specifies that sporting goods, kitchen utensils, tools, and other items with sharp edges or points capable of injuring a person are prohibited items.

Examples of these types of items include axes, hatchets and similar items, box cutters, crampons, darts, drills, ice axes or ice picks, ice skates, meat cleavers, metal cutlery, and open razors (also called straight razors), rock climbing equipment such as pitons, hooks, hammers and bolts, saws, scalpels, screwdrivers, crowbars, hammers, pliers and wrenches, ski poles and utility knives.

The note following table item 1 states that some items of the kind listed are excluded under subsections 7(1), (2) and (5) of the Instrument.

Table item 2

Table item 2 of the table in subsection 5(1) specifies that sharp items that are not weapons but are capable (with or without modification) of causing harm by penetration are prohibited items.

Examples of these types of items include letter openers, pointed metal scissors, manicure scissors and scissors with blades more than 6 cm long, razor blades, and unless paragraph 7(1)(e) applies, hypodermic needles (whether or not attached to syringes).

The note following table item 2 states that some items of the kind listed are excluded under subsections 7(1), (2) and (5) of the Instrument.

Table item 3

Table item 3 of the table in subsection 5(1) specifies that blunt items (other than walking sticks, crutches, or other mobility aids, or dressing sticks designed to assist a person to dress or undress) that are able to be used to bludgeon or threaten to bludgeon a person are prohibited items.

Examples of these types of items include baseball, softball, and cricket bats and any similar item used in sport, hockey and lacrosse sticks and any similar item used in sport, billiard, pool or snooker cues, golf clubs, and any other piece of wood, metal or any other substance that could be used to threaten a person with.

Any blunt object capable of being used to cause injury are included in this category, with exception to mobility devices and aids.

The exception to the prohibited items list relating to mobility aids has been included in the description of item 3 in the table of prohibited items in the instrument.

The note following table item 3 states that some items of this kind are excluded under subsection 7(5) of the Instrument.

Table item 4

Table item 4 of the table in subsection 5(1) specifies that household flammable goods are prohibited items.

Examples of these types of items include aerosol containers, including cans of spray paint, petrol and any other flammable liquid, fireworks, toy caps.

The note following table item 4 states that some items of this kind are excluded under subsections 7(3) and (6) of the Instrument.

These types of items are specified because any explosive or highly combustible substances, in any shape or form of liquid, solid or in mixture, which could cause injury or death, or pose a risk to the health of passengers, crew and public or the security/safety of aircraft or property are some of the most dangerous items for aviation security. All parts, elements or chemical material which could be used as essential components of an explosive or flammable device would also be included in this category.

A similar risk is posed by chemical or toxic substances, in any shape or form, which could cause injury or death, or pose a risk to the health of passengers and crew or the security/safety of aircraft, property or environment. All parts, elements or chemical material which could be used as essential components of a chemical or toxic device would also be included in this category.

Table item 5

Table item 5 of the table in subsection 5(1) specifies that items capable of being used to restrain a person that are not authorised under a provision of the Act, the Regulations or this Instrument are prohibited items.

Examples of these types of items include cable ties and handcuffs.

Any item capable of being used to restrain another individual would be included in this category.

The note following table item 5 states that some items of this kind are excluded under subsection 7(5) of the Instrument.

Table item 6

Table item 6 of the table in subsection 5(1) specifies that a knife or knife-like item (whether or not made of metal) strong enough to be used as a weapon is a prohibited item.

Any pointed or bladed or sharp edged item capable of being used to cause injury or death would be included in this category. Items of this type are some of the most dangerous items for aviation security.

The note following table item 5 states that some items of this kind are excluded under subsections 7(1), (2) and (5) of the Instrument.

This instrument does not specify firearms or guns as prohibited items. A firearm or gun is any object capable, or appearing capable, of discharging a projectile or causing injury or death. Firearms and guns are included in paragraph (a) of the definition of *weapon* in section 9 of the Act, and it is an offence for a person who is not authorised or permitted to carry a weapon through a screening point under section 47 of the Act or to have a weapon on board an aircraft under section 48 or 49 of the Act. Ammunitions and parts or elements of firearms, guns and weapons are included in paragraph (a) of the definition of *weapon*.

As a consequence, firearms and guns and other items generally accepted as only being weapons rather than having another use are not listed in this instrument.

Subsection 5(2)

Subsection 5(2) provides that an item that is a replica or imitation of an item in the table in subsection 5(1) is also specified as a *prohibited item*.

Subsection 5(2) is followed by two notes. The first note makes clear that examples of items that are set out in the table are not exhaustive, and references section 15AD of the *Acts Interpretation Act 1901*. This note is intended as a reminder that other items that are not listed but have similar qualities to the listed items are also prohibited items if they meet the general description of the particular item.

The second note makes clear that an item that is a *prohibited item* under this instrument and is also a *weapon* under regulation 1.09 of the the Regulations, is a *weapon* for the purposes of the Regulations, and is prompted to see subregulation 1.09(5) of the Regulations. This note is intended as a reminder that weapons are prohibited items in their own right.

Section 6 – Application of other laws

This section operates to provide that, to avoid doubt, nothing in this Instrument implies that an item not mentioned in the table in subsection 5(1) is permitted to be carried by air if its carriage would be prohibited by another law.

The note following this section is a reference, in particular, to section 23 of the *Civil Aviation Act 1988* and Part 92 of the *Civil Aviation Safety Regulations 1998*, in relation to the carriage of dangerous goods. This note is intended as a reminder that the carriage of items, other than those items listed in subsection 5(1) of the Instrument, by air may be prohibited under civil aviation legislation.

Section 7 – Items that are not prohibited items

This section outlines the items that are, for paragraph (b) of the definition of *prohibited item* in section 9 of the Act, not considered to be prohibited items and sets out any applicable conditions which must be met for the items to not be considered prohibited

items. This section has been categorised under four headings – household and personal items, metal cutlery knives, flammable goods, and aircraft stores.

Household and personal items

Subsection 7(1) lists kinds of household or personal items that are not considered to be prohibited items. They are:

- a plastic cutlery knife;
- a fork with square-ended or round-ended tines and a handle that is round-ended and non-detachable;
- blunt-ended or round-ended scissors with blades less than 6 cm long;
- a safety razor;
- a hypodermic needle carried by a person who shows proof that it is medically necessary for the person's use or the use of another person under the person's care.

The purpose of this subsection is to provide exemption for specific items that have been designed to perform their intended functions with their conventional dangers removed, or that are medically necessary. This subsection also provides exemption for the carriage of hypodermic needles on the condition that it is medically necessary for a person's use or the use of another person under the person's care.

Metal cutlery knives

Subsection 7(2) specifies that a metal cutlery knife is not a prohibited item if the knife is round-ended with no sharp points and:

- it is in the possession of a person on an aircraft for use on that aircraft; or
- it is in the possession of a person in a landside security zone for use in that zone; or
- it is in the possession of a person in an airside security zone and either:
 - is to be used in the course of, or for the purposes of, carrying on a business requiring the use of cutlery in a landside security zone; or
 - is for use by persons on an aircraft; or
- it is in a person's possession when the person passes through a screening point and either:
 - is to be used in the course of, or for the purposes of, carrying on a business requiring the use of cutlery in a landside security zone; or
 - is for use by persons on an aircraft in accordance with an arrangement with the aircraft operator for the supply of cutlery.

The purpose of this subsection is to provide exemption for metal cutlery knives that are round-ended with no sharp points, in certain circumstances.

Flammable goods

Subsection 7(3) lists particular types of flammable goods that are not prohibited items if they do not exceed the limits mentioned in subsection 7(4). These items are:

- alcohol (including alcoholic beverages);
- perfume;
- matches and lighters;
- lighter fluid;
- an aerosol container for personal (including cosmetic) use or a medical application (such as an asthma inhaler).

The note after subsection 7(3) states that the carriage of some of these items may be regulated as dangerous goods, and refers the reader in particular to section 23 of the *Civil Aviation Act 1988* and Part 92 of the *Civil Aviation Safety Regulations 1998*.

Subsection 7(4) outlines the limits for particular types of flammable goods referred to in subsection 7(3). They are:

- the total volume of all liquid items must not exceed 5 litres;
- the volume of liquid items, other than alcohol or perfume, must not exceed 2 litres;
- the total mass of all non-liquid items must not be greater than 2 kilograms.

The purpose of these subsections is to provide exemption for the specified flammable goods on the condition that the liquid items not exceed certain volumes.

Aircraft stores etc.

Subsection 7(5) provides that an item that is part of an aircraft's stores or emergency equipment, or of an airline operator's or airport operator's emergency equipment, is not a prohibited item if it is not readily accessible to passengers or the public. The purpose of this subsection is to ensure that necessary equipment is not prohibited on aircraft.