

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Aviation Transport Security Act 2004

*Aviation Transport Security Amendment (Air Cargo Security Declaration)
Regulations 2023*

The *Aviation Transport Security Act 2004* (the Aviation Act), and the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) operate to safeguard aviation transport facilities against acts of terrorism, unlawful interference and, since the passage of the *Transport Security Amendment (Serious Crime) Act 2021*, the use of aviation in connection with serious crime.

To achieve this purpose, the Aviation Act has established a regulatory framework and set, or provided for another instrument to set, minimum security requirements for the Australian aviation industry by imposing obligations on persons engaged in certain aviation-related activities.

Legislative Authority

Subsection 133(1) of the Aviation Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Aviation Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Aviation Act.

Overview of the *Aviation Transport Security Amendment (Air Cargo Security Declaration) Regulations 2023*

The Aviation Regulations prescribe a set of minimum requirements to which relevant persons must comply with when issuing a security declaration after clearance following the examination and clearance of cargo. The clearance of cargo is communicated through a security declaration to confirm that the cargo does not contain unauthorised explosives. Security declarations are used to identify and track the security cleared status of cargo through the supply chain and includes the process of clearance and the intended destination of the cargo.

The *Aviation Transport Security Amendment (Air Cargo Security Declaration) Regulations 2023* (the Amending Regulations) require relevant persons to provide a unique identifier when clearing cargo and a statement that the cargo is consolidated if the cargo is consolidated. Including a unique identifier in the security declaration is a long-standing industry practice formalised by the Amending Regulations. The unique identifier will help track and trace cleared air cargo through the supply chain in the event that the cargo needs to be found, such as if intelligence indicates that certain cargo represents a risk of unlawful interference with aviation. The Amending Regulations also simplify reporting requirements for air cargo examining entities.

Through compliance activities and industry consultation, it has become apparent that the current requirement for security declarations is overly specific and is inconsistent with international standards for consolidated cargo that may contain multiple individual items.

Consultation

Consultation was undertaken with industry through the Air Cargo Security Industry Advisory Forum, which established a Working Group to address the low industry compliance with the prescribed requirement to provide a “general description of the contents of the cargo” for consolidated loads of cargo. International partners including the Netherlands, the UK, Singapore and peak bodies including the Global Express Association and the International Air Transport Association were also consulted to establish international best practices for air cargo security declarations. All parties to the forum and consultation were supportive of the proposed changes.

Other matters

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

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Amending Regulations, and determined that no Regulation Impact Statement for the Amending Regulations is required (**OBPR22-03115**).

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 Amending Regulations are compatible with human rights.

Details of the Amending Regulations are set out in Attachment B.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulations commence on 1 July 2023.

Authority:

Subsection 133(1) of the
Aviation Transport Security Act 2004

Statement of Compatibility with Human Rights

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

Aviation Transport Security Amendment (Air Cargo Security Declaration) Regulations 2023

This Disallowable 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 Disallowable Legislative Instrument

The *Aviation Transport Security Act 2004* (the Aviation Act) and the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) establish a regulatory framework for the purpose of safeguarding aviation transport facilities against acts of terrorism, unlawful interference, and since the passage of the *Transport Security Amendment (Serious Crime) Act 2021*, the use of those entities and assets in connection with serious criminal influence and activities.

The Aviation Regulations sets out the minimum requirements that must be included on a security declaration that is issued by Regulated Air Cargo Agents, Cargo Examining Aircraft Operators and Known Consignors after cargo has received clearance. The clearance of the cargo is communicated on the security declaration to confirm that the cargo does not contain unauthorised explosives. Security declarations are used to establish, identify and track the security cleared status of cargo through the supply chain, and includes such things as how the cargo received clearance and the intended destination of the cargo.

The *Aviation Transport Security Amendment (Air Cargo Security Declaration) Regulations 2023* (the Amending Regulations) amend the Aviation Regulations to simplify the requirements for Regulated Air Cargo Agents, Cargo Examining Aircraft Operators and Known Consignors when these entities issue a security declaration for cleared air cargo.

The Aviation Regulations prescribed that a security declaration must include “a general description of the contents of the cargo” regardless of whether the cargo is for one item of cargo or a consolidation of hundreds of items of different commodity types.

Consultations with industry revealed that this requirement, as it is currently worded in the Aviation Regulations, is too specific and restrictive to meet industry needs and does not reflect the standards accepted by international partners, particularly for consolidated loads of cargo which contain hundreds of individual items.

Schedule 1 of the Amending Regulations amend the Aviation Regulations to require Regulated Air Cargo Agents, Cargo Examining Aircraft Operators and Known Consignors to include either a general description of the individual contents of the cargo or, if the cargo is a consolidation, a statement that the cargo is consolidated. Additionally, a security declaration must also include a unique identifier for the cargo

or, if the cargo is consolidated, for the consolidated cargo. The Amending Regulations apply to security declarations issued on or after 1 July 2023

The requirement to include a unique identifier in the security declaration is not new but a long-standing industry practice that will be formalised by the Amending Regulations. The Amending Regulations provide certainty to industry and aligns local Australian practices with internationally recognised best-practice that balances business practicalities with security outcomes that are set out in Annex 17 of the *Convention on International Civil Aviation*.

Human rights implications

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

Conclusion

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

The Honourable Clare O’Neil MP
Minister for Home Affairs

Details of the *Aviation Transport Security Amendment (Air Cargo Security Declaration) Regulations 2023*

Section 1 – Name

This section provides that the name of the Amending Regulations is the *Aviation Transport Security Amendment (Air Cargo Security Declaration) Regulations 2023* (the Amending Regulations).

Section 2 – Commencement

This section provides for the commencement of the Amending Regulations, as set out in the table in subsection 2(1).

Column 2 of the Table in subsection 2(1) provides for the whole of the Amending Regulations to commence on 1 July 2023.

Section 3 – Authority

This section provides that the Amending Regulations are made under the *Aviation Transport Security Act 2004* (the Aviation Act).

Section 4 – Schedules

This section provides for each instrument in the Schedule to be amended as set out in the Schedule to the Amending Regulations. The instrument to be amended is:

- the *Aviation Transport Security Regulations 2005* (the Aviation Regulations).

Schedule 1—Amendments

Schedule 1 to the Amending Regulations provides for the amendments to the Aviation Regulations.

Aviation Transport Security Regulations 2005

Item [1] – Subparagraph 4.41D(1)(c)(iv)

This item repeals subparagraph 4.41D(1)(c)(iv) and substitute it with new subparagraphs 4.41D(1)(c)(iv) and 4.41D(1)(c)(iva) so that the following matters are to be included in a security declaration:

- either a general description of the contents of the cargo, or if the cargo is consolidated, a statement that the cargo is consolidated (subparagraph (iv));
- a unique identifier for the cargo or, if the cargo is consolidated, for the consolidated cargo (subparagraph (iva)).

Current subparagraph 4.41D(1)(c)(iv) provides that a security declaration is to include a general description of the contents of the cargo. New subparagraph 4.41D(1)(c)(iv) provides a security declaration is to include either a general description of the contents of the cargo, or if the cargo is consolidated, a statement that the cargo is consolidated.

New subparagraph 4.41D(1)(c)(iva) requires that a security declaration is to include a unique identifier for the cargo or for the consolidated cargo. The unique identifier can be any form of identification that is unique and relevant to the cargo, such as an air waybill number, purchase order or other another form of identification. The inclusion of the unique identifier will help track and trace cleared air cargo through the supply chain in the event that the cargo needs to be found, such as if intelligence indicates that certain cargo represents a risk of unlawful interference with aviation.

The amendments allow for a distinction to be made between individual items of cargo and consolidated items of cargo on a security declaration. The amendments also simplify reporting requirements for air cargo examining entities to describe the contents of cargo, fulfil their obligations under Division 4.1A and to clearly identify cleared cargo for tracking purposes.

Item [2] – Part 10

This item inserts a new Division 24 in Part 10. The purpose and effect of this item is to specify the date to which the new reporting requirements will apply to the air cargo examining entities.

New regulation 10.55 provides that the amendment to paragraph 4.41D(1)(c) will apply to security declarations issued on or after 1 July 2023.