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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Aviation Transport Security Bill 2003

(Government)

(1) Clause 3, page 3 (after line 17), at the end of the clause, add:

(5) It is not a purpose of this Act to prevent lawful advocacy, protest, dissent or industrial action that does not compromise aviation security.

[purposes of Act]

(2) Clause 4, page 4 (lines 4 and 5), omit "directions in circumstances that require security measures beyond those otherwise provided", substitute "security directions and control directions in certain circumstances".

[control directions]

(3) Clause 4, page 4 (lines 11 to 13), omit all the words from and including "Part" to and including "that information", substitute "Part 7 allows the Secretary to require aviation industry participants to provide security compliance information".

[information-gathering]

(4) Clause 8, page 5 (lines 19 and 20), omit subclause (2), substitute:

(2) A reference in this Act to an aviation industry participant does not include a reference to:
- (a) the Australian Defence Force; or
- (b) the Australian Federal Police; or
- (c) the Australian Protective Service; or
- (d) the police force of a State or Territory; or
- (e) an Agency of the Commonwealth prescribed in the regulations.

[application]

(5) Clause 9, page 6 (after line 6), after the definition of ***acquisition of property***, insert:

Agency has the same meaning as in the *Public Service Act 1999*.

[application]

(6) Clause 9, page 6 (line 3) to page 11 (line 17), insert:

Australian aircraft has the same meaning as in the *Air Services Act 1995*.

Australian territory means:

(a) the territory of Australia and of every external Territory; and

(b) the territorial sea of Australia and of every external Territory; and

(c) the air space over any such territory or sea.

[control directions]

(7) Clause 9, page 7 (after line 7), after the definition of ***aviation industry participant***, insert:

aviation security incident has the meaning given by section 99.

[control directions]

(8) Clause 9, page 7 (after line 32), after the definition of ***cleared zone***, insert:

compliance control direction has the meaning given by subsection 74B(2).

[control directions]

(9) Clause 9, page 8 (lines 7 to 10), omit the definition of ***Departmental official***.

[information-gathering]

(10) Clause 9, page 8 (lines 18 and 19), omit the definition of ***excepted circumstances***.

[information-gathering]

(11) Clause 9, page 8 (after line 21), after the definition of ***frisk search***, insert:

incident control direction has the meaning given by subsection 74D(3).

[control directions]

(12) Clause 9, page 9 (lines 26 and 27), omit the definition of ***protected information***.

[information-gathering]

(13) Clause 9, page 9 (line 28), omit the definition of ***protected person***.

[information-gathering]

(14) Clause 9, page 10 (lines 20 and 21), omit the definition of ***security compliance information***, substitute:

security compliance information has the meaning given by subsection 109(1).

[information-gathering]

(15) Clause 10, page 12 (after line 24), at the end of the clause, add:

(2) However, ***unlawful interference with aviation*** does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action of a kind mentioned in paragraphs (1)(a) to (h).

[definition of unlawful interference with aviation]

(16) Page 12, at the end of Part 1 (after proposed subclause 10(2)), add:

Division 6—General defences

10A General defences

Decisions of pilot in command

(1) A person does not commit an offence against this Act if:
  (a) a physical element of the offence exists (whether directly or indirectly) because the pilot in command of an aircraft engaged in conduct in the operation or control of the aircraft; and
  (b) without the existence of that physical element the person would not commit the offence; and
  (c) the pilot engaged in the conduct to protect the safety or security of:
    (i) the aircraft; or
    (ii) the aircraft's cargo; or
    (iii) a person (whether on board the aircraft or not); or
    (iv) another aircraft; or
    (v) an airport, or an airport facility or other installation within an airport; and
  (d) the conduct was reasonable in the circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

Special security directions

(2) If:
  (a) a person is required to comply with a special security direction; and
  (b) compliance with the direction would mean that the person commits an offence against, or otherwise contravenes a requirement of, this Act;

the person, in complying with the security direction, is taken not to have committed the offence or contravened the requirement.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Control directions

(3) If:
  (a) a person is required to comply with a compliance control direction or an incident control direction; and
  (b) compliance with the direction would mean that the person commits an offence against, or otherwise contravenes a requirement of, this Act;

the person, in complying with the control direction, is taken not to have committed the offence or contravened the requirement.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

[defences]

(17) Clause 19, page 19 (line 11), omit "operator", substitute "participant".

[transport security programs]

(18) Clause 19, page 19 (line 16), omit "operator", substitute "participant".

[transport security programs]

(19) Clause 21, page 20 (line 31), omit “operator”, substitute “participant”.

[transport security programs]

(20) Clause 22, page 21 (line 8), omit “(the ***existing program***)”.

[transport security programs]

(21) Clause 31, page 26 (line 28), omit subparagraph (i), substitute:

(i) air traffic control facilities;

[airside security zones]

(22) Clause 31, page 26 (after line 32), after subparagraph (v), insert:

(va) fire stations and other emergency service facilities;

[airside security zones]

(23) Clause 33, page 27 (line 31), omit subparagraph (i), substitute:

(i) air traffic control facilities;

[landside security zones]

(24) Clause 33, page 28 (after line 4), after subparagraph (v), insert:

(va) fire stations and other emergency service facilities;

[landside security zones]

(25) Clause 39, page 35 (after line 14), at the end of the clause, add:

; (g) control directions (Division 8).

[control directions]

(26) Clause 53, page 48 (line 10), omit “parallel”, substitute “are similar to”.

[prohibited items]

(27) Clause 54, page 48 (line 15), omit “area”, substitute “security zone”.

[prohibited items]

(28) Clause 54, page 48 (after line 16), after paragraph (a), insert:

(aa) the airside security zone or landside security zone is of a kind prescribed in the regulations for the purposes of this paragraph; and

[prohibited items]

(29) Clause 54, page 48 (line 25), omit “area”, substitute “security zone”.

[prohibited items]

(30) Clause 54, page 49 (line 3), omit “area”, substitute “security zone”.

[prohibited items]

(31) Clause 54, page 49 (after line 4), after paragraph (a), insert:

(aa) the airside security zone or landside security zone is of a kind prescribed in the regulations for the purposes of this paragraph; and

[prohibited items]

(32) Clause 54, page 49 (line 13), omit “area”, substitute “security zone”.

[prohibited items]

(33) Clause 64, page 55 (after line 11), at the end of the clause, add:

(2) The reference in subsection (1) to another Act includes a reference to a law of a State or Territory.

[persons in custody]

(34) Page 61 (after line 2), at the end of Part 4, add:

Division 8—Control directions

74A Simplified overview of Division

Control directions can be used to control the movement of aircraft, and may be given to pilots in command or aircraft operators.

Compliance control directions, given by aviation security inspectors, are used to ensure compliance with this Act. They may only be given in relation to aircraft that are not in flight.

Incident control directions, given by the Secretary, may only be given in response to aviation security incidents.

Failing to comply with a control direction is an offence.

74B Compliance control directions

(1) An aviation security inspector may direct the aircraft operator for, or the pilot in command of, a prescribed aircraft that:
   (a) is in Australian territory; and
   (b) is not in flight;

   to take specified action in relation to the aircraft.

(2) A direction under subsection (1) is a ***compliance control direction***.

(3) However, an aviation security inspector must not give a compliance control direction unless the direction is necessary for ensuring compliance with this Act.

(4) The action that an aircraft operator or pilot in command may be directed to take under subsection (1) includes, but is not limited to, the following:
   (a) holding the aircraft in a particular position until specified actions are taken or until a specified event occurs;
   (b) taking particular actions, or ensuring that particular actions are taken, on or in relation to the aircraft;
   (c) taking particular actions, or ensuring that particular actions are taken, in relation to a person or thing on, or to be carried by, the aircraft;
   (d) allowing an aviation security inspector to inspect the aircraft.

(5) The regulations may prescribe requirements for, or in relation to, the giving of compliance control directions.

74C Failure to comply with compliance control directions

(1) A person commits an offence if:
  (a) a compliance control direction is given to the person; and
  (b) the person fails to comply with the direction.

Penalty: For an aircraft operator—200 penalty units.

For a pilot in command—50 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

74D Incident control directions

Australian aircraft

(1) The Secretary may direct the aircraft operator for, or the pilot in command of, an Australian aircraft to take specified action in relation to the aircraft.

Foreign aircraft

(2) The Secretary may direct the aircraft operator for, or the pilot in command of, an aircraft that:
  (a) is not an Australian aircraft; and
  (b) is in Australian territory;

to take specified action in relation to the aircraft.

(3) A direction under subsection (1) or (2) is an ***incident control direction***.

(4) However, the Secretary must not give an incident control direction unless the Secretary reasonably believes that the direction is an appropriate or necessary response to an aviation security incident.

(5) The action that an aircraft operator or pilot in command may be directed to take under subsection (1) or (2) includes, but is not limited to, the following:
  (a) taking particular actions, or ensuring that particular actions are taken, on or in relation to the aircraft;
  (b) taking particular actions, or ensuring that particular actions are taken, in relation to a person or thing on, or to be carried by, the aircraft;
  (c) holding the aircraft in a particular position or within a particular area until specified actions are taken or until a specified event occurs;
  (d) ensuring that the aircraft leaves a particular place or a particular area;
  (e) ensuring that the aircraft lands at a particular place or within a particular area;
  (f) ensuring that the aircraft lands outside a particular area.

(6) The regulations may prescribe requirements for, or in relation to, the giving of incident control directions.

74E Failure to comply with incident control directions

(1) A person commits an offence if:

(a) an incident control direction is given to the person; and
(b) the person fails to comply with the direction.

Penalty: For an aircraft operator—1,000 penalty units.

For a pilot in command—100 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

[control directions]

(35) Clause 75, page 62 (lines 8 and 9), omit "All of these matters are covered by this Part.".

[control directions]

(36) Clause 80, page 65 (after line 13), after subclause (1), insert:

Note: Aviation security inspectors are also able to give compliance control directions: see section 74B.

[control directions]

(37) Clause 84, page 68 (line 24), after "Penalty", insert "for an offence against this subsection".

[powers of officials]

(38) Clause 85, page 69 (line 18), after "Penalty", insert "for an offence against this subsection".

[powers of officials]

(39) Clause 86, page 69 (line 31), after "Penalty", insert "for an offence against this subsection".

[powers of officials]

(40) Clause 88, page 70 (line 12), omit "believes", substitute "suspects".

[powers of officials]

(41) Clause 93, page 73 (line 5), after "clothing", insert "or undergo a frisk search".

[powers of officials]

(42) Clause 95, page 74 (lines 12 and 13), omit paragraph (c), substitute:

(c) the person refuses:
(i) to be screened in a private room by a screening officer of the same sex as the person; or
(ii) to remove the item of clothing during that screening; and

[powers of officials]

(43) Page 74 (after line 17), after clause 95, insert:

95A Screening powers—frisk search as an alternative screening procedure

If a person chooses to undergo a frisk search as an alternative to another screening procedure, a screening officer may frisk search the person to the extent necessary to screen the person properly.

[powers of officials]

(44) Page 74, after proposed clause 95A, insert:

95B Screening powers—frisk search as an additional screening procedure

(1) If:
  (a) a person undergoes a screening procedure; and
  (b) the results of that procedure indicate that additional screening procedures are necessary in order to screen the person properly;

a screening officer may request the person to undergo a frisk search.

(2) If a screening officer conducts a frisk search following a request under subsection (1), the screening officer may conduct the search only to the extent necessary to complete the proper screening of the person.

(3) A screening officer must not:
  (a) require a person to undergo a frisk search; or
  (b) conduct a frisk search of a person without the person's consent; or
  (c) contravene subsection (2).

Penalty: 50 penalty units.

(4) Subsection (3) does not apply if the officer has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) Subsection (3) is an offence of strict liability.

(6) If:
  (a) a screening officer requests a person to undergo a frisk search under subsection (1); and
  (b) the person refuses to comply with the request; and
  (c) the person refuses:
    (i) to be screened in a private room by a screening officer of the same sex as the person; or
    (ii) to undergo a frisk search during that screening; and
  (d) the refusals mean that it is not possible to screen the person properly;

the screening officer must refuse to allow the person to pass through the screening point.

[powers of officials]

(45) Clause 102, page 79 (line 26) to page 80 (line 6), omit subclause (4), substitute:

(4) Each of the following is a ***person with incident reporting responsibilities***:
  (a) an aviation security inspector;
  (b) an airport security guard;
  (c) a screening officer;
  (d) an aviation industry participant other than a participant who is:
    (i) an airport operator; or
    (ii) an aircraft operator; or
    (iii) an employee (within the definition of ***employee*** in section 9) of another aviation industry participant.

[reporting aviation security incidents]

(46) Part 7, clauses 108 to 115, page 84 (line 2) to page 88 (line 23), omit the Part, substitute:

Part 7—Information-gathering

Division 1—Simplified overview of Part

108 Simplified overview of Part

> It is important, for aviation security, for the Secretary to be able to collect certain information.
>
> Division 2 gives the Secretary the power to require security compliance information but limits the use of the information in certain proceedings.

Division 2—Secretary may require security compliance information

109 Secretary may require security compliance information

(1) Information that relates to compliance, or failure to comply, with this Act is ***security compliance information***.

(2) If the Secretary believes, on reasonable grounds, that an aviation industry participant has security compliance information, the Secretary may, by written notice given to the participant, require the participant to give the information to the Secretary.

(3) The information must be given within the period and in the form and manner specified in the notice. The period must not be less than 14 days.

(4) Without limiting subsection (3), the Secretary may specify in the notice any one or more of the following ways for the participant to give the information:
   (a) orally;
   (b) in writing;
   (c) by electronic transmission.

(5) A person commits an offence if the person fails to comply with a notice under subsection (2).

   Penalty for an offence against this subsection: 45 penalty units.

110 Self-incrimination

(1) A person is not excused from giving security compliance information under section 109 on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(2) However, if the person is a natural person:
   (a) the information; and
   (b) the giving of the information; and
   (c) any information, document or thing obtained as a direct or indirect consequence of giving the information;

   are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code* that relates to the giving of the information.