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Aviation Transport Security Amendment (2009 Measures No. 2) Bill 2009

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Aviation Transport Security Amendment (2009 Measures No.2) Bill 2009

Date introduced: 29 October 2009

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government.

Commencement: Schedule 1: single day to be fixed by proclamation, however if any of the provisions do not commence within 6 months of Royal Assent, then they commence on the day after that period. Sections 1-3 and anything else not covered: on Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Aviation Transport Security Amendment (2009 Measures No.2) Bill 2009 (the Bill) is to amend the *Aviation Transport Security Act 2004* (the ATSA) so as to enhance security earlier in the supply chain of cargo, and to enable certification of cargo at the appropriate point in the supply chain.

Background

Australia's current aviation security framework came into effect in March 2005 following the commencement of the ATSA and the subsequent making of the Aviation Transport Security Regulations. The ATSA has been amended a number of times since its enactment to improve its operation. These amendments reflect points of improvement identified as part an ongoing review of the framework, so as to maintain its relevance in terms of deterrence, detection and prevention on unlawful interference with an aircraft.¹

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1. Mr Anthony Albanese, Minister for Infrastructure, Transport, Regional Development and Local Government, 'Second Reading Speech: Aviation Transport Security Amendment (2009 Measures No.2) Bill 2009', House of Representatives, *Hansard*, 29 October 2009, p.11463.

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Financial implications

The Explanatory Memorandum states that the Bill will have no significant financial impact on Government expenditure.²

Main provisions

Schedule 1—Amendments

Item 1 – Section 9 Definition of ‘cargo’

This item repeals the current definition of cargo and replaces it with a more expansive definition to include goods that are ‘reasonably likely’³ to be transported by aircraft. This therefore ensures that each party in the supply chain is subject to regulation and are obliged to apply relevant measures at each stage, consistent with their operations. Cargo would mean goods (other than baggage or stores) that are:

- transported by aircraft, or
- intended to be transported by aircraft, or
- in accordance with the regulations, are regarded as being reasonably likely to be transported by aircraft.

Paragraphs 44C(1)(b) and (c) of the ATSA provide for the establishment of scheme under which those in the business of handling or arranging for transport of cargo are categorised as Regulated Air Cargo Agents (RACA)⁴ or accredited as Accredited Air Cargo Agents (AACA).⁵ Because the decision to use air transport for cargo is often made belatedly, under the current scheme, it is not always easy to establish whether a good is cargo and hence, whether the AACA and RACA schemes apply to it. The broadening of the

2. Explanatory Memorandum, Aviation Transport Security Amendment (2009 Measures No.2) Bill 2009, p. 1.

3. It will be left to the regulations to specify under what circumstances goods will be considered to be ‘reasonably likely’ to be transported by aircraft.

4. The RACA scheme requires air cargo to be security cleared prior to loading on an aircraft and includes a range of security clearance measures, which are applied to verify the cargo and ensure its physical integrity at all points prior to loading on an aircraft. Department of Infrastructure, Transport, Regional Development and Local Government, *Fact Sheet 5: Air Cargo Security; the background*, 20 December 2007.

5. The main impetus for the introduction of AACA at the end of 2008 was to supplement the RACA scheme by tightening security over the land transportation of cargo that may be carried on an aircraft. The AACA scheme is geared towards a broader range of industry participants and establishes uniform security requirements for the security of air cargo in the supply chain before being loaded on an aircraft. Department of Infrastructure, Transport, Regional Development and Local Government, *Fact Sheet 5: Air Cargo Security; the background*, 20 December 2007.

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definition of cargo is designed to provide greater capture so as to avoid uncertainty and basically promote greater risk management.

Item 2 – Section 9 Definition of ‘certified’

The amended definition of ‘certified’ will enable a greater class of relevant industry participants to be able to certify cargo for carriage on an aircraft (i.e. RACAs and AACAs). The practical operational effect of this change is that the person who examines the cargo may also contemporaneously certify that cargo.

Item 3 – paragraph 44C(2)(g) currently provides the Secretary of the Department with regulation-making powers to prescribe the circumstances in which cargo may be *certified*. Under amended **paragraph 44C(2)(g)**, by regulation, the list of industry participants who will be able certify cargo will be expanded to include RACAs and AACAs.

Item 4 – paragraph 44C(3)

Related to the operation of amended **paragraph 44C(2)(g)**, this amendment provides the Secretary of the Department to be able to issue a notice specifying the *circumstances* in which cargo may be certified. The effect of this would be that the Secretary will be able to adjust criteria in a more timely manner in response to new developments in terms of advances in technology and evolving international obligations.

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