

## QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 21-22 MAY 2012

IMMIGRATION AND CITIZENSHIP PORTFOLIO

**(BE12/0173) Program: Internal Product**

Senator Xenophon asked:

In international aviation law, local laws do not generally apply to activities occurring within a foreign-operated and foreign-registered aircraft until such time as the aircraft doors are opened at the end of a flight. Is this the case for the application of Australian immigration laws?

*Answer:*

Some legislation, notably the Crimes (*Aviation*) Act 1991, defines the end of a flight as the opening of the doors. This reflects provisions of certain international agreements, such as those relating to hi-jacking. However, there is no general rule of Australian or international law that prevents Australian laws from applying to conduct on board foreign-operated or foreign-registered aircraft in airspace above, or on the ground in, Australian territory, before the aircraft doors are opened at the end of a flight.

As a matter of statutory interpretation, Commonwealth legislation is presumed to apply in Australian territory, including the coastal sea, and in the airspace above Australian territory and the coastal sea, unless the contrary intention appears. Whether a particular provision of the *Migration Act 1958* (the Act) or the *Migration Regulations* (the Regulations) applies on foreign aircraft depends on the terms of the provision.