





# **Crimes Legislation Amendment (Police Powers at Airports) Act 2019**

**No. 89, 2019**

**An Act to amend the *Crimes Act 1914*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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No. 89, 2019

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## An Act to amend the *Crimes Act 1914*, and for related purposes

[Assented to 28 October 2019]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Crimes Legislation Amendment (Police Powers at Airports) Act 2019*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Main amendments**

#### *Crimes Act 1914*

##### **1 Division 3B of Part IAA**

Repeal the Division, substitute:

#### **Division 3B—Identity information requirements, and move-on powers, at airports**

##### **3UL Definitions—Division 3B**

In this Division:

***government photographic identity document*** means an identity document providing photographic identification of a person that is issued by:

- (a) the government of the Commonwealth or a State or Territory;  
or
- (b) the government of a foreign country or part of a foreign country.

***identity document***:

- (a) means a document (such as a driver's licence, birth certificate, credit card or identity card) that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity; but
- (b) does not include a document prescribed by regulation for the purposes of this definition.

***major airport***: see section 3UM.

***protective service officer*** means a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

***public order and safe operation*** of a major airport: see section 3UN.

***relevant criminal activity***: see section 3UQ.

*senior police officer*: see section 3UQ.

### 3UM Meaning of *major airport*

- (1) For the purposes of this Division, each of the following airports is a *major airport*:
  - (a) Adelaide Airport;
  - (b) Alice Springs Airport;
  - (c) Brisbane Airport;
  - (d) Canberra Airport;
  - (e) Darwin International Airport;
  - (f) Gold Coast Airport;
  - (g) Hobart International Airport;
  - (h) Launceston Airport;
  - (i) Melbourne (Tullamarine) Airport;
  - (j) Perth Airport;
  - (k) Sydney (Kingsford-Smith) Airport;
  - (l) Townsville Airport;
  - (m) an airport determined by the Minister under section 3UO.
- (2) A reference in this Division to a *major airport* includes a reference to:
  - (a) for an airport mentioned in paragraphs (1)(a) to (l)—the place made up of the land described in relation to the airport in regulations made for the purposes of the definition of *airport site* in section 5 of the *Airports Act 1996*; and
  - (b) for an airport determined by the Minister under section 3UO—the place made up of the land described in the determination in relation to the airport; and
  - (c) for any airport mentioned in subsection (1)—any building, structure, installation or equipment situated on the relevant land mentioned in paragraph (a) or (b) of this subsection.

### 3UN Meaning of *public order and safe operation*

- (1) In this Division, the *public order and safe operation* of a major airport means:
  - (a) the public order of the airport, or flights to and from the airport; or

- (b) the safety of persons at the airport, or on flights to and from the airport; or
  - (c) the safe operation of the airport, or flights to and from the airport.
- (2) However, the exercise of a person's right to engage lawfully in advocacy, protest, dissent or industrial action is not, by itself, to be regarded as prejudicial to the public order and safe operation of a major airport.

### **3UO Determination of airports**

- (1) The Minister may, by legislative instrument, determine an airport for the purposes of the definition of *major airport* in section 3UM.
- (2) A determination of an airport under subsection (1) must include a description of land in relation to the airport for the purposes of paragraph 3UM(2)(b).
- (3) This Division applies in relation to an airport determined under subsection (1) only if the airport is ordinarily used for the purposes of any of the following:
  - (a) flights that start or end in a Territory;
  - (b) flights between Australia and a foreign country in which aircraft are used in the course of trade or commerce, for the carriage of passengers;
  - (c) flights between one State and another State in which aircraft are used in the course of trade or commerce, for the carriage of passengers.
- (4) This Division may apply in relation to an airport determined under subsection (1) even if the airport is also used for a purpose other than a purpose mentioned in subsection (3).

Note: See also section 3UR (move-on directions at airports—alternative constitutional scope).

### **3UP Identity information at airports**

#### *Direction to give identity information*

- (1) A constable or a protective service officer may direct a person to give the constable or officer evidence of the person's identity if:

- (a) the direction is given at a major airport; and
- (b) the constable or officer:
  - (i) suspects on reasonable grounds that the person has committed, is committing, or intends to commit an offence against a law of the Commonwealth or a Territory, or a law of a State having a federal aspect, punishable by imprisonment for 12 months or more; or
  - (ii) considers on reasonable grounds that it is necessary to give the direction to safeguard the public order and safe operation of that airport or another major airport.

*Evidence of identity*

- (2) A person must comply with a direction under subsection (1) by:
  - (a) producing a government photographic identity document issued in relation to the person; or
  - (b) if the person does not produce such a document—producing:
    - (i) another identity document in relation to the person; or
    - (ii) if so directed by the constable or officer—2 different identity documents in relation to the person; or
  - (c) if the person does not produce an identity document (or documents) under paragraph (a) or (b)—giving the constable or officer the person’s name, address and date of birth.

**3UQ Move-on directions at airports**

*When may a direction be given?*

- (1) A constable or a protective service officer may give a person a direction under this section if:
  - (a) the direction is given at a major airport; and
  - (b) one or more of the following applies:
    - (i) the constable or officer considers on reasonable grounds that the person has contravened a direction given at that airport under section 3UP (identity information at airports) or section 3US (stop and directions powers at airports), and the constable or officer is not reasonably satisfied of the person’s identity;
    - (ii) the constable or officer suspects on reasonable grounds that it is necessary to give the direction to prevent or

disrupt relevant criminal activity occurring at any major airport, or in relation to a flight to or from any major airport;

- (iii) the constable or officer considers on reasonable grounds that it is necessary to give the direction to safeguard the public order and safe operation of that airport or another major airport.

- (2) **Relevant criminal activity** is criminal activity involving the commission of an offence that is punishable by imprisonment for 12 months or more, against either of the following:
  - (a) a law of the Commonwealth or a Territory;
  - (b) a law of a State having a federal aspect.

*What type of direction may be given?*

- (3) The constable or officer may give a written direction to the person requiring the person to do either or both of the following:
  - (a) not to take a specified flight, or any flight, to or from that airport, or any specified major airport, for a specified period of no more than 24 hours after the direction is given;
  - (b) to leave the airport as soon as practicable, and not enter that airport, or any other specified major airport, for a specified period of no more than 24 hours after the direction is given.
- (4) However, a direction covering a period of more than 12 hours must be given, or authorised (orally or in writing), by a senior police officer.

Note: In addition, if, before a direction (the **later direction**) is given to a person, a direction had already been given to the same person within a period of 7 days before the later direction is given, the later direction must be given or authorised by a senior police officer even if the period covered by the later direction is 12 hours or less (see subsection (9)).

- (5) If a senior police officer orally authorises a direction under subsection (4), the senior police officer must record the authorisation in writing as soon as practicable afterwards.
- (6) A **senior police officer** is a constable:
  - (a) having the rank of sergeant or an equivalent rank, or higher;or

- (b) with formal authorisation to act as a constable having such a rank.
- (7) A direction given to a person under this section must be in a form approved in writing by the Minister.
- (8) A form approved for the purposes of subsection (7) must, without limitation, include the following to assist a person to whom a direction is given to apply for judicial review, or interlocutory orders, in relation to the giving of the direction:
  - (a) details to enable the person to contact a Federal Court registry in the State or Territory in which the direction is given, or a requirement for the constable or officer giving the direction to include such details;
  - (b) any other information the Minister considers appropriate to assist the person to make such applications, for example information relating to the procedure for urgent or expedited applications.

*Restriction on later directions within 7 days*

- (9) After a direction (the *earlier direction*) is given to a person under this section, a later direction under this section may be given to a person within 7 days after the earlier direction was given only if:
  - (a) subsection (1) applies (or continues to apply) in relation to the person at the time the later direction is given; and
  - (b) the later direction is given, or authorised (orally or in writing), by a senior police officer; and
  - (c) no more than one later direction under this section is given within that 7-day period; and
  - (d) the later direction covers a period that would end no later than 7 days after the earlier direction was given, at the same time of day at the place at which the earlier direction was given.

**3UR Move-on directions at airports—alternative constitutional scope**

Without limiting its effect apart from this section, section 3UQ also has the effect it would have if the definition of *major airport* in

section 3UM did not include an airport determined by the Minister under section 3UO.

### **3US Stop and directions powers at airports**

- (1) A constable or a protective service officer may give a person a direction under this section if:
  - (a) the direction is given at a major airport; and
  - (b) the constable or officer considers on reasonable grounds that it is necessary to give the direction to facilitate the exercise of a power under section 3UP (identity information at airports) or section 3UQ (move-on directions at airports).
- (2) The constable or officer may direct the person:
  - (a) to stop; or
  - (b) to do anything else the constable or officer considers on reasonable grounds to be necessary to facilitate the exercise of a power under section 3UP or 3UQ.

### **3UT Constables' and protective service officers' duties at airports**

#### *Scope of section*

- (1) A constable or protective service officer must comply with this section in relation to a direction given to a person under:
  - (a) section 3UP (identity information at airports); or
  - (b) section 3UQ (move-on directions at airports).

#### *Evidence of constable's or protective service officer's status or identity etc.*

- (2) The constable or officer must:
  - (a) if not in uniform—before the direction is given, show the person evidence that the constable is a constable, or that the officer is an officer; and
  - (b) if the person so requests before or after the direction is given—comply with subsection (3); and
  - (c) in any case—before the direction is given, inform the person that it may be an offence not to comply with the direction, or to give the constable or officer a false or misleading

document, or false or misleading information, in response to the direction.

- (3) The constable or officer must give the person any of the following information if requested by the person:
- (a) the constable's or officer's name;
  - (b) the address of the constable's or officer's place of duty;
  - (c) the constable's or officer's identification number (if any);
  - (d) if the constable or officer has no identification number—the constable's or officer's rank.

### 3UU Directions at airports—offences

#### *Contravening directions*

- (1) A person commits an offence if:
- (a) the person is given a direction by a constable or protective service officer under:
    - (i) section 3UP (identity information at airports); or
    - (ii) section 3UQ (move-on directions at airports); or
    - (iii) section 3US (stop and directions powers at airports);and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the direction; and
  - (d) in the case of a direction given under section 3UP or 3UQ—the constable or officer complies with section 3UT (constables' and protective service officers' duties at airports).

Penalty: 20 penalty units.

- (2) Absolute liability applies to paragraph (1)(d).

Note 1: For absolute liability, see section 6.2 of the *Criminal Code*.

Note 2: For subsection (1), a person may contravene a direction by failing to comply with the direction (see the definition of *contravene* in section 2B of the *Acts Interpretation Act 1901*).

Note 3: The following offences more serious than the offence under subsection (1) may also apply:

- (a) giving false or misleading information (see section 137.1 of the *Criminal Code*);

- (b) producing a false or misleading document (see section 137.2 of the *Criminal Code*);
- (c) obstructing a Commonwealth public official (see section 149.1 of the *Criminal Code*).

*Failure by constable or protective service officer to give status or identity information etc.*

- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under section 3UT (constables' and protective service officers' duties at airports); and
  - (b) the person engages in conduct; and
  - (c) the conduct breaches the requirement.

Penalty: 5 penalty units.

- (4) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

### **3UV Review of Division**

- (1) The Parliamentary Joint Committee on Intelligence and Security must review:
  - (a) the operation, effectiveness and implications of this Division; and
  - (b) security matters relating to major airports.
- (2) The Committee must begin the review before the end of the period of 3 years beginning on the day the *Crimes Legislation Amendment (Police Powers at Airports) Act 2019* commenced.
- (3) The Committee must report on the review to each House of the Parliament before the end of the period of 9 months beginning on the day the review commences.

## Part 2—Other amendments

### *Australian Federal Police Act 1979*

#### **2 Subsection 4(1) (subparagraph (a)(i) of the definition of *protective service offence*)**

Before “section”, insert “subsection 3UU(1) or”.

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[*Minister’s second reading speech made in—  
House of Representatives on 4 July 2019  
Senate on 12 September 2019*]

(114/19)

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