



**SPECIAL SUB-COMMITTEE OF THE LEGAL COMMITTEE
FOR THE MODERNIZATION OF THE TOKYO CONVENTION
INCLUDING THE ISSUE OF UNRULY PASSENGERS**

SECOND MEETING

Montréal, 3 – 7 December 2012

**BACKGROUND PAPER
THE IMPLEMENTATION OF THE TOKYO CONVENTION IN AUSTRALIAN LAW**

(Submitted by Australia)

1. BACKGROUND

1.1 This Background Paper has been prepared to assist deliberations at the Second Meeting of the Special Sub-Committee of the Legal Committee for the Modernization of the Tokyo Convention including the issue of unruly passengers, in response to a call from the Secretariat that States provide information on the domestic context of these issues.

1.2 Australia is one of a small number of States which exercise state of landing jurisdiction over offences committed on board foreign-registered aircraft. This exercise of jurisdiction is reflected in the *Crimes (Aviation) Act 1991* (Cth).¹ Accordingly, the Australian experience may provide assistance to those States who are yet to assert such jurisdiction.

2. AUSTRALIAN TREATY-MAKING PRACTICE AND DOMESTIC IMPLEMENTATION

2.1 The Australian Government's policy is that action to bring a treaty into force will not be taken until any necessary implementing legislation has been enacted, either by the Commonwealth or by State or Territory Governments. Accordingly, Australia requires implementing legislation as a condition precedent to ratifying a treaty.

¹ The *Crimes (Aviation) Act 1991* can be found at <http://www.comlaw.gov.au/Series/C2004A04214>.

3. **CRIMES (AVIATION) ACT 1991 (CTH)**

3.1 Australia became a Party to the *Convention for the Suppression of Unlawful Seizure of Aircraft* (the Hague Convention) on 9 November 1972, the *Convention on Offences and Certain other Acts committed on Board Aircraft* (the Tokyo Convention) on 20 September 1970, and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (the Montreal Convention) on 12 July 1973.

3.2 Australia passed the *Crimes (Aviation) Act 1991* on 27 September 1991 to consolidate several pieces of legislation which gave effect to its obligations under these Conventions. Prior to the *Crimes (Aviation) Act*, Australia's obligations under these Conventions were implemented in three separate Acts.² As there is some overlap of obligations under these Conventions, the aim of the *Crimes (Aviation) Act* was to consolidate and simplify these obligations into a single piece of legislation.

4. **JURISDICTION UNDER THE ACT**

4.1 The *Crimes (Aviation) Act* provides for broad jurisdiction to be asserted by Australia, including state of landing jurisdiction in relation to certain offences. The offences are contained in Divisions 1 to 5 of Part 2 of the Act.

4.2 Division 1 of Part 2 gives effect to Australia's obligations under the Hague Convention by criminalising hijacking and other related conduct in certain circumstances. Consistent with Article 4(1)(b) of the Hague Convention,³ those offences attract state of landing jurisdiction, as well as nationality and territoriality jurisdiction.⁴

4.3 Division 2 of Part 2 gives effect to Australia's obligations under Article 1(1)(a) of the Tokyo Convention by criminalising general domestic offences committed on certain aircraft. The provisions in Division 2 adopt broad domestic jurisdiction (including state of landing jurisdiction)⁵ to allow Australia to receive and prosecute persons believed to have committed a relevant offence, regardless of the nationality of the aircraft.⁶

4.4 Division 3 of Part 2 gives effect to Australia's obligations under Article 1(1)(b) of the Tokyo Convention by criminalising 'acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.' These provisions also adopt broad jurisdiction over flights on which such offences occur⁷ in order to allow Australia to receive and prosecute relevant persons, regardless of the nationality of the aircraft.⁸

² The *Crimes (Hijacking of Aircraft) Act 1972* gave effect to Australia's obligations under the Hague Convention, the *Civil Aviation (Offenders on International Aircraft) Act 1970* gave effect to Australia's obligations under the Tokyo Convention, and the *Crimes (Protection of Aircraft) Act 1973* gave effect to Australia's obligations under the Montreal Convention.

³ Article 4(1)(b) of the Hague Convention provides: "Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases: ... (b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board."

⁴ See section 13 of the *Crimes (Aviation) Act*.

⁵ See definition of a 'Division 2 aircraft' is section 3 of the *Crimes (Aviation) Act*.

⁶ See Article 9(1) of the Tokyo Convention.

⁷ See definition of a 'Division 3 aircraft' is section 3 of the *Crimes (Aviation) Act*.

⁸ See Article 9(1) of the Tokyo Convention.

4.5 Divisions 4 and 5 of Part 2 give effect to Australia's obligations under the Montreal Convention and its Protocol by criminalising acts listed in Article 1 of the Montreal Convention and Article II of the Protocol. Consistent with Article 5(1)(c) of the Montreal Convention,⁹ these provisions adopt state of landing jurisdiction, as well as nationality and territoriality bases of jurisdiction.¹⁰

5. OFFENCES COMMITTED ON BOARD AIRCRAFT

5.1 Division 1 – Hague Convention offences

5.1.1 The offences in Division 1 implement Article 1 of the Hague Convention, which requires States Parties to create offences for hijacking and related acts of violence.

section 13: hijacking an aircraft

section 14: acts of violence against passengers or crew (if the act would be an offence under a defined criminal law of Australia)

5.2 Division 2 – Tokyo Convention offences

5.2.1 The offences in Division 2 implement Article 1(1)(a) of the Tokyo Convention, which requires States Parties to enact legislation prohibiting acts on aircraft that would otherwise be offences against domestic penal law.

section 15: where a person does or omits to do a thing and the act or omission would be an offence against a defined criminal law of Australia

5.3 Division 3 – Tokyo Convention offences

5.3.1 The offences in Division 3 implement Article 1(1)(b) of the Tokyo Convention, which requires States Parties to prohibit 'acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.'

section 16: taking or exercising control of an aircraft

section 17: intentionally destroying an aircraft

section 18: destruction of an aircraft with the intention of causing anyone's death, or reckless as to the safety of anyone's life

section 19: doing anything capable of prejudicing the safe operation of an aircraft, with the intention of prejudicing the safe operation of that aircraft

section 20: doing anything capable of prejudicing the safe operation of an aircraft, with the intention of prejudicing the safe operation of that aircraft and with the intention of causing anyone's death, or reckless as to the safety of anyone's life

section 20A: assaulting, threatening with violence or intimidating a member of the crew of an aircraft

⁹ Article 5(1)(c) provides: "Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases: ... (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board."

¹⁰ See section 25 of the *Crimes (Aviation) Act*.

- section 21: assaulting, threatening with violence or intimidating a member of the crew of an aircraft in a manner that results in interference with the member's performance of functions or duties connected with the operation of the aircraft
- section 22: doing any act on board an aircraft reckless as to whether it will endanger the safety of the aircraft
- section 22A: doing any act on board an aircraft reckless as to whether it will endanger the safety of the aircraft and that act is likely to endanger a person's life or cause serious harm to a person
- section 23: carrying or placing dangerous goods¹¹ on board an aircraft, or delivering dangerous goods to anyone else with the intention of placing the goods on board an aircraft, or having dangerous goods in his or her possession on board an aircraft.¹²
- section 23A: committing an offence against section 23 where the act constituting the offence is likely to endanger a person's life or cause serious harm to a person
- section 24(1): threatening to destroy, damage or endanger the safety of an aircraft, or to kill anyone on board an aircraft
- section 24(2): making false statements regarding taking control of or destroying an aircraft or harming those on board.

5.4 **Division 4 – Montreal Convention offences**

5.4.1 The offences in Division 4 give effect to Article 1 of the Montreal Convention, which requires States Parties to create offences relating to various acts that would be likely to endanger the safety of an aircraft in flight.

- Section 25: committing an act of violence against anyone on board the aircraft, or destroying an aircraft in service, or placing or causing to be placed on an aircraft in service a substance or thing that is likely to destroy the aircraft or cause damage to the aircraft which renders it incapable of flight or which is likely to endanger its safety in flight, or destroys or damages any navigation facilities or interferes with their operation in a way that is likely to endanger the safety of the aircraft in flight, or communicates information which he or she knows to be false, thereby endangering the safety of an aircraft in flight if certain requirements for establishing jurisdiction are met.

6. **AUSTRALIA'S BASIS FOR EXERCISING JURISDICTION OVER THESE OFFENCES**

6.1 As a matter of Australian domestic law, the Australian Government's ability to legislate with respect to the offences at issue derives from a number of the heads of power under sections 51 and 52 of *The Constitution*. Indeed, many singular offences rely on an array of multiple heads of power to establish coverage. The primary heads of power relied on for the *Crimes (Aviation) Act 1991* include:

- section 51(i): trade and commerce with other countries, and among the States
- section 51(vi): the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth

¹¹ 'Dangerous goods' are defined in section 3 of the *Crimes (Aviation) Act* to mean firearms, ammunition, weapons and explosive substances, or any substance that, because of its nature or condition, may endanger the safety of the aircraft or of people on board an aircraft.

¹² There are a number of exceptions to this offence, set out in section 23(2).

section 51(xx): foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth

section 51(xxix): external affairs

section 52(i): all places acquired by the Commonwealth for public purposes

7. AUSTRALIA'S EXPERIENCE IN PROSECUTING OFFENCES UNDER THIS LEGISLATION

7.1 Between 1 January 2012 and 2 October 2012, Australian Federal Police (AFP) data shows that 48 incidents occurred within the Australian jurisdiction in relation to inbound international flights. These incidents included verbal and physical assault and aggressive behaviour against crew. In most cases, the AFP arrested the offenders or issued infringement notices. Some examples of these incidents are reflected below:

- a) On the 21st of January 2012, a male passenger aboard an international flight inbound into Sydney assaulted a female crew member and was aggressive to other crew and passengers. He was issued with a notice to attend Court by the AFP.
- b) On the 24th of March 2012, a male passenger aboard an international flight inbound into Perth verbally assaulted a female crew member. The passenger was subsequently arrested by the AFP.
- c) On the 10th of April 2012, a male passenger aboard an international flight into Melbourne refused to wear a seat belt and behaved aggressively, in contravention of the directions of crew. He was subsequently issued with an infringement notice.
- d) On the 22nd of April 2012, a male passenger aboard an international flight inbound into Brisbane was aggressive and refusing to accept the directions of crew. He was subsequently arrested by the AFP.
- e) On the 23rd of April 2012, a male passenger aboard an international flight inbound into Perth was intoxicated and abusive toward crew. He was subsequently issued with an infringement notice.
- f) On the 11th of May 2012, a female passenger was assaulted by a male passenger aboard an international flight into Melbourne. AFP are investigating this incident.
- g) On the 10th of June 2012, a male passenger aboard an international flight into Sydney became disruptive and forced his way to the upper deck on a Boeing 747 aircraft and was restrained by crew attempting to force his way into the cockpit. He was restrained by crew and subsequently arrested by the AFP.
- h) On the 24th of June 2012, a female passenger aboard an international flight preparing for departure assaulted a crew member and police. She was arrested by the AFP.
- i) On the 25th of June 2012, a male passenger aboard an international flight inbound into Sydney was offensive and disruptive to crew and other passengers. He was subsequently arrested by the AFP.

- j) On the 11th of August 2012, a male passenger aboard an international flight into Sydney was arrested for indecent assault on a female passenger.
- k) On the 14th of September 2012, a female passenger aboard an international flight to Perth was restrained by crew and an off duty AFP member for a number of offences including offensive behaviour. She was handcuffed and later charged by the AFP.
- l) On the 17th of September 2012, a male passenger aboard an international flight into Sydney was arrested for indecent assault on a female passenger.
- m) On the 24th of September 2012, a female passenger aboard an international flight arrived into Sydney and reported an indecent assault by a male passenger. The AFP are currently investigating this incident.

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