

# **Aviation Crimes Amendment Bill**

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Aviation Security Legislation Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- This bill, comprising Part 1
  - The Civil Aviation Amendment Bill (No 2), comprising Part 2 and the Schedule.
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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (unanimous)

Subject to this Act,	Text struck out unanimously
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#### New (unanimous)

Subject to this Act,	Text inserted unanimously
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<del><i>(Subject to this Act,)</i></del>	Words struck out unanimously
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<u>Subject to this Act,</u>	Words inserted unanimously
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### As reported from the committee of the whole House

#### New

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<u>Subject to this Act,</u>	Words inserted
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*Hon Harry Duynhoven*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Aviation Crimes Amendment Act **2007**.

## 2 Commencement

- (1) **Sections 3, 4(2) and (3), 5, and 6** come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing different provisions into force on different dates. 5

## 3 Principal Act amended

**Sections 4 to 8** amend the Aviation Crimes Act 1972.

## 4 Interpretation 10

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**foreign in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990
- “**in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 15
- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**security enhanced area** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 20
- (3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**sterile area** has the same meaning as in section 2 of the Civil Aviation Act 1990”.

### Struck out (unanimous)

- (4) Section 2 is amended by adding the following subsection: 25
- “(4) For the purposes of this Act, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.”

## 5 Taking firearms, explosives, etc, on to aircraft 30

- (1) The heading to section 11 is amended by adding “**or into sterile area or security enhanced area**”.

(2) Section 11(1) is amended by adding “; or” and the following paragraph:

“(e) an imitation of an item or substance specified in paragraphs (a) to (d).”

(3) Section 11 is amended by inserting the following subsections after subsection (1): 5

“(1A) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, takes, or attempts to take, into a sterile area or a security enhanced area an item or substance specified in subsection (1). 10

“(1B) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who— 15

“(a) has the intention of causing bodily injury or of doing any act that would constitute a crime under section 3, 4, 5, or 5A; and

**Struck out (unanimous)**

“(b) takes on board an aircraft or into a sterile area or a security enhanced area an item or substance that is capable of causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance. 20

**New (unanimous)**

“(b) takes on board an aircraft or into a sterile area or a security enhanced area an item or substance that is capable of— 25

“(i) causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance; or

“(ii) activating another item or substance that is capable of causing bodily injury or of endangering the safety of an aircraft or an airport.” 30

(4) Section 11 is amended by adding the following subsections:

“(3) For the purposes of this section, **dangerous or offensive weapon** means any item or substance capable of being used to endanger the safety of an aircraft or cause bodily injury.”

**6 New section 12 substituted**

Section 12 is repealed and the following section substituted: 5

**“12 Search of passengers, baggage, and cargo**

- “(1) Any member of the police, any aviation security officer, any Customs officer, or any employee or agent of the carrier authorised by the carrier for the purpose may, with the consent of the passenger, search a passenger and the passenger’s baggage for the purpose of detecting any item or substance that could pose a threat to aviation safety and security (including, but not limited to, any item or substance specified in section 11(1)), before the passenger boards any aircraft in New Zealand pursuant to a contract providing for the carriage of the passenger by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere). 10
- “(2) If the passenger declines to allow himself or herself or his or her baggage to be searched, the carrier must refuse to carry— 15
- “(a) the passenger: 20
- “(b) his or her baggage.

**Struck out (unanimous)**

- “(3) A carrier is not liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part of the fare, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or herself or his or her baggage to be searched. 25

**New (unanimous)**

- “(3) A carrier is not liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part of the fare, by reason of the fact that the carrier has refused to carry— 30

**New (unanimous)**

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|--------|---|----|
|        | <p>“(a) a passenger who has declined to allow himself or herself or his or her baggage to be searched:</p> <p>“(b) the baggage of a passenger who has declined to allow himself or herself or his or her baggage to be searched.</p>  |    |
| “(4)   | With respect to a search made under <b>subsection (1)</b> ,—  | 5  |
| “(a)   | by an employee or agent of the carrier authorised by the carrier for the purpose, the passenger must not be required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched:  | 10 |
| “(b)   | by a member of the police, an aviation security officer, or a Customs officer, the passenger must, if directed to do so,—   |    |
| “(i)   | remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the passenger is wearing to enable the search to be carried out, except where the passenger has no other clothing, or only underclothing, under the outer clothing:  | 15 |
| “(ii)  | remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories:   | 20 |
| “(iii) | allow a member of the police, an aviation security officer, or a Customs officer to carry out a ( <i>rub-down</i> ) <u>pat down</u> search:   | 25 |
| “(c)   | by a member of the police, an aviation security officer, a Customs officer, or an employee or agent of the carrier authorised by the carrier for the purpose, a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.   | 30 |
| “(5)   | Any aviation security officer, or any employee or agent of the carrier authorised by the carrier for the purpose, may examine any cargo before the cargo is loaded onto any aircraft in New Zealand pursuant to a contract providing for the carriage of the cargo by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere). | 35 |

**New (unanimous)**

“(5A) ~~((With))~~ Subject to **subsection (5B)**, with respect to a search made under **subsection (1) or (5)**, a member of the police, an aviation security officer, or a Customs officer may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

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**New**

“(5B) Despite **subsection (5A)**, with respect to a person searched under **subsection (1)**, a member of the police, an aviation officer, a Customs officer, or an agent of the carrier authorised by the carrier for the purpose may not use an aid or device that produces an unclothed image of the person.

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“(6) For the purposes of this section, ~~(rubdown)~~ pat down search—

“(a) means a search of a clothed person in which the person conducting the search may do all or any of the following:

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“(i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person:

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“(ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:

“(iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely:

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“(A) open his or her mouth:

“(B) display the palms of his or her hands:

“(C) display the soles of his or her feet:

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“(D) lift or rub his or her hair; and

“(b) includes the authority to search—

“(i) any item or substance carried by, or in the possession of, the person; and



- “(ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
- “(iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.”

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**New (unanimous)**

**6A Search of persons declining to allow search**

- (1) Section 13(1) is amended by omitting “paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of section 11 of this Act” and substituting “paragraph (a), (b), (c), (d), or **(e)** of section 11(1)”.
- (2) Section 13 is amended by adding the following subsection after subsection (3):
- “(4) With respect to a search made under subsection (1), a member of the police may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.”

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**6B Evidence of offences**

Section 14(1) is amended by inserting “or sections 80, **80B, and 80C** of the Civil Aviation Act 1990” after “section 13 of this Act”.

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**7 Powers of aircraft commander**

- (1) Section 15(6) is amended by omitting “of this section” and substituting “or to enable an in-flight security officer to deliver a person under **section 15D(4)**”.
- (2) Section 15(7) is amended by omitting “of this section” and substituting “or intends to enable an in-flight security officer to deliver a person under **section 15D(4)**”.

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**8 New sections 15A to 15G inserted**

The following sections are inserted after section 15:

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**“15A Commissioner of Police may authorise members of police to be in-flight security officers**

- “(1) The Commissioner of Police may authorise any member of the police to be an in-flight security officer.

- “(2) When providing authorisation under **subsection (1)**, the Commissioner of Police must have regard to the views of the Director of Civil Aviation.

**New (unanimous)**

- “(3) When forming his or her views, the Director of Civil Aviation must, as he or she considers appropriate, have regard to the views of representative groups in the aviation industry.

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**“15B In-flight security officers may possess, carry, and use firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances**

Despite section 11, an in-flight security officer may, on board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules, possess, carry, and use a firearm, weapon, ammunition, or other equipment that the Director of Civil Aviation has approved under **section 77D of the Civil Aviation Act 1990** if—

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- “(a) the officer is on duty; and  
“(b) the aircraft is in flight.

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**“15C In-flight security officers may take action or measures reasonably necessary to restore or preserve control of aircraft**

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**Struck out (unanimous)**

Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 15, an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the commander’s control of the aircraft (including, but not limited to, the use of force or assistance that is necessary and reasonable in the circumstances).

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**New (unanimous)**

Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 15,

**New (unanimous)**

an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the commander's control of the aircraft, including, but not limited to, the use of—

- “(a) reasonable force; or
- “(b) assistance that is reasonably necessary in the circumstances.

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**“15D In-flight security officers may arrest persons in certain circumstances**

“(1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person—

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- “(a) without a warrant:

**Struck out (unanimous)**

“(b) with the use of force or assistance that is necessary and reasonable in the circumstances.

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**New (unanimous)**

“(b) with the use of—

- “(i) reasonable force; or
- “(ii) assistance that is reasonably necessary in the circumstances.

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“(2) Despite **subsection (1)**, an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.

“(3) If an in-flight security officer arrests a person without the prior approval of the commander of an aircraft, the in-flight security officer must—

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- “(a) inform the commander of the arrest as soon as practicable; and
- “(b) seek the commander's approval to keep the person under arrest.

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- “(4) An in-flight security officer who arrests a person under this section must, as soon as practicable, deliver the person to a—
- “(a) member of the police, if the arrested person is in New Zealand; or
  - “(b) person exercising the functions corresponding to those of a member of the police, if the arrested person is in a country, other than New Zealand, that is a party to the Tokyo Convention. 5
- “(5) To avoid doubt, nothing in this section limits the justifications for the use of force under sections 39, 40, 41, and 48 of the Crimes Act 1961. 10

**“15E In-flight security officers may restrain persons under arrest in certain circumstances**

- “(1) An in-flight security officer may, with the use of reasonable force, or assistance that is *(necessary and reasonable)* reasonably necessary in the circumstances, restrain a person arrested under **section 15D** until the person is delivered as required under **section 15D(4)**. 15
- “(2) Despite **subsection (1)**, an in-flight security officer may not restrain a person without the prior approval of the commander of an aircraft unless— 20
- “(a) seeking prior approval is not practicable; or
  - “(b) the in-flight security officer has reasonable grounds to believe that the person must be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft. 25
- “(3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer must— 30
- “(a) inform the commander of the restraint as soon as practicable; and
  - “(b) seek the commander’s approval to keep the person under restraint.

**“15F In-flight security officers may search certain persons and seize items or substances in certain circumstances** 35

- “(1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is

likely to commit an offence under this Act, the in-flight security officer may, with the use of reasonable force, or assistance that is reasonably necessary in the circumstances,—

**Struck out (unanimous)**

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|--|---|
| <p>“(a) search—</p> <p>    “(i) the person:</p> <p>    “(ii) any property on board the aircraft; and</p> <p>“(b) take possession of any item that has been or may be used to commit an offence under this Act.</p> | 5 |
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**New (unanimous)**

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| <p>“(a) search—</p> <p>    “(i) the person for any item or substance that has been, is being, or may be used to commit an offence under this Act:</p> <p>    “(ii) any property on board the aircraft for any item or substance that has been, is being, or may be used to commit an offence under this Act; and</p> <p>“(b) seize that item or substance.</p> | 10<br><br><br>15 |
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- “(2) Despite **subsection (1)**, an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- “(3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer must inform the commander of the search as soon as practicable.

**New (unanimous)**

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| <p>“(4) With respect to a search made under <b>subsection (1)</b>, an in-flight security officer, may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.</p> | 25 |
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**“15G Circumstances in which person assisting in-flight security officer may use reasonable force**

A person assisting an in-flight security officer under **section 15D, 15E, or 15F** is justified in using force if—

- “(a) the person acts in good faith; and
- “(b) the force (*used*) is (*necessary and*) reasonable (*in the circumstances*).”

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**Legislative history**

11 September 2007

Divided from Aviation Security Legislation Bill (Bill 110–2) by committee of the whole House as Bill 110–3A

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