



ANALYSIS

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2007, No. 25

An Act to amend the Aviation Offences Act 1973 by providing for offences in relation to unruly passengers

(7 September 2007)

1. Short Title - This Act may be cited as the Aviation Offences Amendment Act 2007 and shall be read together with and deemed part of the Aviation Offences Act 1973 (hereinafter referred to as “the principal Act”).

2. Interpretation - Section 2 of the principal Act is amended by inserting after the definition of “The Tokyo Convention”, the following new definition -

“unruly passenger offence” means an offence under any of sections 5D to 5M of this Act;”

3. Unruly passenger offences - The principal Act is amended by inserting after section 5, the following new sections -

“5A. Application of sections relating to unruly passenger offences - Sections 5B to 5M apply to any unruly passenger offence committed -

- (a) on an aircraft in the Cook Islands, regardless of the nationality of the aircraft;

- (b) outside the Cook Islands on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is in the Cook Islands.

5B. Liability for offences despite extraterritoriality - (1) Any person who commits an act or omission on an aircraft in flight outside the Cook Islands that would, if it occurred in the Cook Islands be an offence against sections 95 (riotous etc. behaviour in public place), 96 (fighting in public place), 99 (profane, indecent or obscene language) 216 (common assault), 321 (wilful damage), or 137A (indecent exposure) of the Crimes Act 1969, is liable under that Act as if the act or omission had occurred in the Cook Islands.

(2) To avoid doubt, any person who commits an act or omission on an aircraft that would be an offence against sections 95, 96, 99 or 137A of the Crimes Act 1969 is liable under that Act as if the reference to public place in any of those provisions includes an aircraft.

5C. Foreign aircraft outside the Cook Islands - (1) Proceedings may be commenced for an unruly passenger offence committed on a foreign aircraft outside the Cook Islands if -

- (a) the commander -
 - (i) makes a written request to the Director or Deputy Director of Civil Aviation appointed under the Civil Aviation Act; and
 - (ii) provides a written undertaking that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other State; and
- (b) the Attorney-General consents.

(2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested without warrant, charged, remanded in custody, or released on bail before the Attorney-General decides whether or not to consent to proceedings.

(3) Notwithstanding subsection (1)(b), proceedings for an unruly passenger offence committed on a foreign aircraft outside of the Cook Islands may be commenced without the Attorney-General's consent if the defendant requests a hearing in respect of the alleged offence.

(4) In any proceedings for an offence under this Part, the pilot-in-command's written request and undertaking may in the Court's discretion be -

- (a) admissible in evidence; and
- (b) in the absence of proof to the contrary, sufficient evidence of the matters stated therein.

5D. Proceedings for offences - (1) Notwithstanding section 12 of the Criminal Procedure Act 1980-81, any information for an unruly passenger offence may be laid at any time within 12 months after the date of the offence.

(2) The fact that a person may be charged or convicted on an unruly passenger offence does not affect the liability of any person under any other enactment.

5E. Disruptive conduct towards crew member - (1) Every person commits an offence who, while in an aircraft, -

- (a) uses any threatening, offensive, or insulting words towards any person; or
- (b) behaves in a threatening, offensive, insulting, or disorderly manner towards any person; or
- (c) behaves in a manner that interferes with the performance by a crew member of his or her duties; or
- (d) intentionally interferes with the performance by a crew member of his or her duties.

(2) Every person who commits an offence against subsections (1)(a) or (b) or (c) is liable to a fine not exceeding \$5,000.

(3) Every person who commits an offence against subsection (1) (d) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

5F. Interference with aircraft - (1) Without limiting the application of section 5, every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, a smoke detector.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$10,000.

5G. Intoxicated persons on aircraft - (1) Every person (except a person under medical care) commits an offence who -

- (a) is intoxicated and boards an aircraft; or
- (b) becomes intoxicated on an aircraft.

(2) Every person who commits an offence against -

- (a) subsection (1)(a) is liable to a fine not exceeding \$5,000;
- (b) subsection (1)(b) is liable to a fine not exceeding \$3,000.

(3) For the purposes of this section, a person is intoxicated if the commander or senior flight attendant has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to -

- (a) be incapable of properly looking after himself or herself; or
- (b) actively present a hazard to the aircraft or to persons on the aircraft; or
- (c) offend against the good order and discipline required on an aircraft.

(4) For the purposes of this section, "person under medical care" means a person who -

- (a) is under the supervision of an attendant; and
- (b) has become intoxicated as a result of taking medication in accordance with a prescription issued by a medical practitioner.

5H. Non-compliance with commands given a pilot-in-command - (1) Every person commits an offence who fails to comply with any command given to the person directly by the pilot-in-command, or indirectly by the commander through a crew member, in accordance with his or her duties as such.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$5,000.

5I. Portable electronic devices not to be operated - (1) Every person commits an offence who operates a portable electronic device on board an aircraft contrary to any instructions or request by the commander either directly or indirectly through a crew member.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

5J. Non-compliance with seating and seatbelt instructions - (1) Every person commits an offence who fails to comply with an instruction given by a crew member, passenger information sign or placard to -

- (a) occupy any or a particular seat or berth; or
- (b) fasten and keep fastened about the person, any installed safety belt or safety harness.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

5K. No smoking - (1) Every person commits an offence who while on any aircraft that is carrying passengers -

- (a) ignites a flame by using a match, lighter or any other means; or
- (b) smokes any cigarette, pipe or other utensil when instructed not to smoke by a crew member, passenger information sign or placard.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

(3) In subsection (1), "smokes" means to smoke, hold or otherwise have control over an ignited product including tobacco, weed or other plant.

5L. Dangerous and obnoxious goods - (1) Every person commits an offence who carries or causes to be carried on an aircraft any goods prescribed by as dangerous goods or which are in the opinion of the commander or the operator of the aircraft, dangerous goods.

(2) Every person commits an offence who carries or causes to be carried on an aircraft any goods prescribed as obnoxious goods or which in the opinion of the pilot-in-command or the operator of the aircraft, constitute obnoxious goods being goods that in the opinion of the commander are likely to cause physical discomfort to crew or passengers or taint by smell, discolouring or otherwise, the aircraft.

(3) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

(4) Every person who commits an offence against subsection (2) is liable to a fine not exceeding \$1,000 plus the actual cost of removing any smell, discolouring or other taint.

(5) This section does not apply to dangerous or offensive goods carried with the knowledge of, and in accordance with the requirements of the commander or of the operator of the aircraft.

5M. Procedure for unruly passenger offences - (1) If the commander at the time of an alleged offence has reasonable cause to suspect that a person has committed any unruly passenger offence the commander may require the person to give his or her full name, address, and date of birth.

(2) If the commander has reasonable grounds to suspect that any details provided under subsection (1) are false or misleading, the commander may require the person to give such verification of those details as it is reasonable in the circumstances.

(3) If the person without reasonable excuse refuses or fails to comply with a request under subsection (1) or subsection (2), and persists that in that refusal or failure after being warned by the commander that he or she may be arrested for committing an offence by that refusal or failure, a member of the police may arrest that person without warrant.

(4) Every person commits an offence and is liable to a fine not exceeding \$1,000 who, without reasonable excuse, -

- (a) refuses or fails to comply with a request under subsection (1) or subsection (2); or
- (b) gives details that are false or misleading in a material respect to the commander in response to such a request.

(5) Evidence produced to the pilot-in-command under subsection (2) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.

(6) In this section -

- (a) "commander" includes a crew member authorised by the commander; and
- (b) "inspection" includes the taking of a photocopy within a reasonable time after the commander has access to copying equipment."

4. Powers of aircraft commander - Section 14 of the principal Act is amended by deleting from subsection (8) the words "\$400" and substituting the words "\$2,000".

5. Savings - (1) Nothing in sections 5A to 5M as inserted by this Act applies to any -

- (a) proceedings commenced before the commencement of this Act; or
- (b) cause of action that arose before the commencement of this Act; or
- (c) act or omission that occurred before the commencement of this Act.

(2) All proceedings commenced under any other enactment for an offence which in the opinion of the Court is similar to an unruly passenger offence and which is committed before the commencement of this Act may be continued and completed under that other enactment as if this Act had not come into force.

This Act is administered by the Civil Aviation Division of the Ministry of Transport