

EXPLANATORY STATEMENT

STATUTORY RULES 1990 NO.

Issued by the authority of the Minister for  
Shipping and Aviation Support

Air Navigation Act 1920

Air Navigation (Aircraft Noise) Regulations (Amendment)

Subsection 26(1) of the Air Navigation Act 1920 (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

In particular, the Governor-General may make regulations for the purpose of carrying out and giving effect to any Annex to the Chicago Convention on International Civil Aviation (the Convention) relating to international standards and recommended practices (being an Annex adopted in accordance with the Convention).

Previous existing aircraft import controls were removed in anticipation of the beginning of airline deregulation on 31 October 1990 by the repeal of regulation 4N of the Customs (Prohibited Imports) Regulations. Regulation 4N, in essence, provided that the importation into Australia of an aircraft, airframe or aircraft engine was prohibited unless permission in writing had been granted by the Secretary to the Department of Transport and Communications. In the absence of other controls it had then become possible for 'old generation' (i.e. noisy) aircraft to be imported and operated in Australia.

The amendments to the Air Navigation (Aircraft Noise) Regulations (the Regulations) provide a mechanism to prevent such noisy aircraft from being operated in, and thus being imported into, Australia.

Previously, the Regulations applied only to aircraft as defined by the then regulation 2. That is, aircraft to which Chapters 2, 3, 5, 6, 8 or 10 of Part II of Volume I (Aircraft Noise) of Annex 16 (the Annex) to the Convention apply. There are, however, certain aircraft which are excluded from the noise requirements laid down in these chapters; these include old generation aircraft. As a result of these amendments, no type of aircraft, other than state aircraft (i.e. military aircraft), certain foreign registered aircraft and aircraft that are specifically designed for aerobatic, fire fighting or agricultural purposes, are excluded from the Regulations.

These amendments have extended the ambit of the Regulations to include foreign registered aircraft which are operating in Australia for a continuous period of one month or more. Previously, the Regulations did not apply to any foreign registered aircraft. The amendments to the Regulations provide that, under regulation 9, a foreign registered aircraft which has been in Australian territory for one continuous month or more will not be allowed to fly unless a noise certificate in relation to that aircraft is currently in force.

The amended Regulations also provide the Secretary or an authorised officer with the power to exempt an aircraft from the need to be noise certificated in special circumstances. This decision is reviewable by the Administrative Appeals Tribunal.

Details of the amendments are in the Attachment.

The amending Regulations commenced on the date of their notification in the Gazette.

DETAILS OF AIR NAVIGATION (AIRCRAFT NOISE) REGULATIONS  
(AMENDMENT)

Regulation 1 - Amendment

This regulation provides that the Air Navigation (Aircraft Noise) Regulations are to be amended as set out in the amending Regulations.

Regulation 2 - Regulation 2 (Interpretation)

This regulation inserts a new definition of 'aircraft'. The previous definition included aircraft covered in the Annex to the Convention, excluding all state and foreign aircraft. The new definition includes all aircraft, whether covered by the Annex or not, excluding state aircraft, foreign registered aircraft that have been in Australia for a continuous period of less than one month and aircraft that have been specifically designed for aerobatic, fire fighting or agricultural purposes.

In addition, this regulation modifies definitions for 'authorised officer' and 'noise certificate' and also amends drafting style in accordance with the current policy of the Office of Legislative Drafting of the Attorney-General's Department by changing the spelling of 'authorized' to 'authorised\*.

Regulation 3 - Regulation 3 (Application)

This regulation modifies subregulation 3(2) to provide that the Regulations are not to apply to aircraft which, before the date of commencement of these amending Regulations, were, and continue to be, registered under the Air Navigation Regulations or the Civil Aviation Regulations. This exemption only applies providing these aircraft have not been modified, since the date of commencement of these amending Regulations, in such a way so as to result in a significant increase in their noise level emissions.

Regulation 4 - Regulation 4 (Authorised officer)

This regulation amends the drafting style of regulation 4 in accordance with the current policy of the Office of Legislative Drafting of the Attorney-General's Department by changing the spelling of 'authorized' to 'authorised' and by adding 'or her' after the occurrence of 'him'.

Regulation 5 - Regulation 5 (Applications by owner or operator of an aircraft)

This regulation modifies subregulation 5(1) to provide that the owner or operator of an aircraft may apply to the Secretary or an authorised officer for a noise certificate

for that aircraft, or for permission under regulation 9A for that aircraft to fly without a certificate. Previously, subregulation 5(1) made provision only for an application for a noise certificate. This regulation also amends drafting style in accordance with the current policy of the Office of Legislative Drafting of the Attorney-General's Department by changing the spelling of 'authorized\*' to 'authorised'.

Regulation 6 - Regulation 6 (Issue of a noise certificate)

This regulation amends subregulation 6(1) to provide that a noise certificate will be issued for an aircraft where the aircraft complies with the applicable noise standards set out in the Annex. This subregulation is made subject to new regulation 6A, which applies the noise standards of the Annex to all aircraft which are not covered by the Annex. The previous subregulation 6(1) provided for the issuing of a noise certificate for an aircraft which was covered by the Annex only. This regulation also amends drafting style in accordance with the current policy of the Office of Legislative Drafting of the Attorney-General's Department by changing the spelling of 'authorized\*' to 'authorised' and by adding 'or her\*' after the occurrence of 'him'.

Regulation 7 - New regulation 6A (Issue of noise - certificate for aircraft of a type specified in the Schedule)

This regulation inserts new regulation 6A. This new regulation provides that a noise certificate will be issued for an aircraft of the type specified in column 2 of the Schedule if that aircraft complies with the noise standards stipulated in the paragraphs of the Annex which are specified in the corresponding column 3 of the Schedule. The method of establishing the aircraft's noise level emission is set out in the paragraphs and appendices of the Annex specified in the corresponding column 4 of the Schedule.

Subregulation 6A(3~) provides that if an aircraft falls within more than one of the categories offered in column 2 of the Schedule, then, so long as it is capable of complying with the noise standards specified in the paragraphs of the Annex referred to in any one of the corresponding items in column 3 of the Schedule, that aircraft is not taken to breach the Regulations by reason only of its non-compliance with the noise standards of the Annex specified in any other corresponding column 3.

Subregulation 6A(4) provides that written notice of a decision of the Secretary or of an authorised officer refusing to issue a noise certificate must be given to the applicant for the certificate. Subregulation 6A(5) provides that words and expressions used in the Schedule

and Volume I of the Annex have the same meaning as they do in Volume I of the Annex.

Regulation 8 - Regulation 7 (Contents of a noise certificate)

This regulation amends subregulation 7(1), which previously read 'a noise certificate issued under regulation 6', to read 'a noise certificate issued under these Regulations'. Prior to these amendments, a noise certificate could only be issued under regulation 6. It is now proposed that a noise certificate could be issued under regulation 6, for an aircraft covered by the Annex, and under regulation 6A, for all other aircraft (i.e. those falling within the categories offered in column 2 of the Schedule).

This regulation also amends paragraph 7(1)(a) to provide that the contents of a noise certificate shall include, amongst other things, a certification that the aircraft, if it is of a type specified in column 2 of the Schedule, complies with the standards in respect of noise stipulated in the paragraphs of the Annex specified in the corresponding, column 3 of the Schedule. Where the aircraft does not fall within one of the categories offered in column 2 of the Schedule, then the certificate shall certify that the aircraft complies with the noise standards expressed in the Annex as being applicable to that aircraft.

Regulation 9 - Regulation 9 (Aircraft not to fly unless noise certificate **in** force)

This regulation amends subregulation 9(1), which deals with aircraft flying without a noise certificate, by including a reference **to new** regulation 9A. Regulation 9A provides a mechanism **to exempt** certain aircraft from the requirement of being noise certificated to fly.

Regulation 9 also amends paragraph 9(2)(a) to provide that an aircraft may fly without a noise certificate if it is undergoing **testing** by an inspector to establish whether it, if it is **an aircraft** defined in column 2 of the Schedule, conforms with the standards of noise stipulated in the **paragraphs of the Annex** specified in the corresponding column 3 of the Schedule **or**, if the aircraft is not covered by the Schedule (i.e. it is covered by the Annex), whether the aircraft conforms with the standards of noise that are expressed **in the Annex** as **being** applicable to that aircraft.

Regulation 10 - New regulation 9A (Aircraft that are permitted to engage in air navigation without a noise certificate)

This regulation inserts new regulation 9A which provides a mechanism to permit **certain aircraft**, which would otherwise

not meet the noise standards of these Regulations, to fly without a noise certificate. Subregulation **9A(1)** provides that the owner or operator of such an aircraft may apply in writing to the Secretary or an authorised officer for permission for the aircraft to fly without a certificate.

Subregulation 9A(2) provides that the Secretary or an authorised officer may give permission in writing for the aircraft to fly if he or she is satisfied that the amount by which the aircraft fails to meet the required noise standards is not substantial, or if he or she is satisfied that the aircraft is of such historical significance that it should fly, or if he or she is satisfied that the aircraft's use will be wholly in the public's interest.

Subregulation 9A(3) provides that when the permission granted in subregulation 9A(2) is solely based on the public interest criterion, then the written permission must specify the purpose for which the aircraft is to be used as well as the time period (which is to be not greater than one month) during which the aircraft may fly.

Regulation 11 - Regulation 10 (Revocation of noise certificate)

This regulation amends subregulation 10(1) and paragraph 10(2)(a) which deal with the written notification of an intention to revoke a noise certificate and the written notification revoking a noise certificate respectively. Both provisions are amended to include reference to, in the case of an aircraft which falls within a category offered in column 2 of the Schedule, the noise standards stipulated in the paragraphs of the Annex which are specified in the corresponding column 3 of the Schedule. For all other aircraft, the noise standards remain in these provisions as they were prior to these amendments; viz, the standards in respect of noise expressed in the Annex to be applicable to aircraft of the class to which the aircraft belongs, or the requirements of a relevant law. Relevant law, as defined in regulation 2, "means a law of a contracting State (i.e., a country, other than Australia, that is a party to the Convention) relating to the control of aircraft noise, being a law-

- fa) the requirements of which are incapable of being complied with by an aircraft that does not satisfy the requirements of the Annex with respect to noise certification; or
- (b) compliance with the requirements of which has been determined by the Secretary or an authorised officer, by notice published in the Gazette, to be sufficient compliance with the requirements of the Annex with respect to noise certification".

This regulation also amends drafting style in accordance with the current policy of the Office of Legislative Drafting of the Attorney-General's Department by changing the spelling of 'authorized' to 'authorised'.

#### Regulation 12 - Regulation 11 (Inspectors)

This regulation amends subregulations 11(1), 11(2) and 11(3) and inserts new subregulations 11(2A) and 11(3A).

Subregulation 11(1) provides that the Secretary or an authorised officer may, in writing, appoint a staff member of the Civil Aviation Authority or a person who is skilled in the area of aircraft noise emissions measurement as an inspector for the purposes of the Regulations.

Subregulation 11(2) provides that a photographic identity card must be issued to the appointed inspector and that the card should state that the person is an inspector appointed under these Regulations.

Subregulation 11(2A) provides that a person who ceases to be an inspector must as soon as practicable, unless there is a reasonable excuse, return his or her identity card to the Secretary. A penalty of \$100 is provided for a breach of this provision.

Subregulation 11(3), which provides the powers of an inspector to inspect an aircraft, is amended to provide that the inspector may inspect an aircraft, if it is an aircraft which falls within one of the categories of column 2 of the Schedule, to determine whether it complies with the standards in respect to noise stipulated in the paragraphs of the Annex referred to in the corresponding column 3 of the Schedule, or, for all other aircraft, the standards in respect to noise expressed in the Annex which are applicable to that aircraft or the requirements of a relevant law.

Subregulation 11(3A) provides that an inspector may not inspect an aircraft or require that an aircraft be made available for inspection if the inspector fails to produce his or her identity card when requested to do so.

#### Regulation 13 - Regulation 13 (Review by the Administrative Appeals Tribunal)

This regulation amends regulation 13 to provide an avenue to apply to the Administrative Appeals Tribunal for review of a decision by the Secretary or authorised officer refusing to grant permission for an aircraft to engage in air navigation without a noise certificate under new regulation 9A. This regulation also amends paragraph 13(1)(a) to provide an avenue to apply to the Administrative Appeals Tribunal for review of a decision refusing to issue a noise certificate under new regulation

6A. A decision to refuse to issue a noise certificate under regulation 6 and a decision to revoke a noise certificate under subregulation 10(2) are both reviewable as they were prior to these amendments.

Regulation 14 - (New Schedule)

This regulation adds a new Schedule. Column 2 of the new Schedule sets out all of the categories of aircraft which are not covered by the Annex but which are intended to be covered by the Regulations. Corresponding to each of these aircraft categories, in column 3, is a reference to particular paragraphs in the Annex which stipulate the noise levels for these aircraft. The corresponding column 4 of the Schedule sets out the particular paragraphs and appendices of the Annex which stipulate the proper test procedures that are to be used when determining the noise levels emitted from an aircraft.