

Air Navigation Regulations (Amendment) 1996 No. 113

EXPLANATORY STATEMENT

Statutory Rules 1996 No. 113

Issued by the authority of the Minister for Transport and Regional Development

Air Navigation Act 1920

Air Navigation Regulations (Amendment)

The Regulations institute a number of minor amendments to the Air Navigation Regulations. The amendments fall into four categories:

1. extension of the ban on smoking in aircraft, in line with a resolution of the Assembly of the International Civil Aviation Organisation (ICAO);
2. an amendment allowing imposition of conditions on authorisations under a regulation pertaining to aviation security;
3. amendments consequential upon the enactment of Part 2A of the *Air Navigation Act 1920* on 16 December 1995; and
4. amendments consequential upon the repeal of regulation 192 on 7 October 1992.

Extension of Smoking Ban

In 1992, the Assembly of the International Civil Aviation Organisation adopted a resolution co-sponsored by Australia urging States to prohibit smoking on all international passenger flights from 1 July 1996.

Prior to these amendments, subregulation 246(5) of the Air Navigation Regulations prohibited smoking on domestic scheduled passenger air services, passenger air services operated by scheduled foreign carriers between airports in Australia and all passenger air services operated by Australian carriers on direct flights between Australia, Canada and the United States of America (that is, on all "prescribed aircraft", as defined by subregulation 246(10)).

The amendments change the definition of "prescribed aircraft" in subregulation 246(10). This has the effect of prohibiting smoking on:

- * all passenger flights by Australian carriers; and
- * all passenger flights between airports in Australia by foreign carriers;

other than VIP flights and private-hire charter flights.

The amendments also eliminate the requirement for the notice prohibiting smoking on aircraft to be in an illuminated form.

Conditional Approval

The amendments clarify an existing power of the Secretary relating to aviation security. Under regulation 297P of the Air Navigation Regulations, the Secretary may make an administrative decision to authorise the carriage, on board commercial aircraft, of persons in lawful custody.

These regulations ensure that the Secretary's power includes the ability to authorise such carriage subject to conditions (where the conditions are necessary in the interests of aviation security).

Amendments Consequential upon Enactment of Part 2A

Part 2A of the *Air Navigation Act* was inserted by *Transport Legislation Amendment Act (No.3) 1995*, which Act commenced on 16 December 1995. Part 2A deals with the investigation of aircraft accidents and incidents, and the investigation of safety deficiencies in the civil aviation industry, by the Bureau of Air Safety Investigation (BASI). It replaces the provisions of Part XVI of the *Air Navigation Regulations*.

Part XVI of the *Air Navigation Regulations* is repealed by the proposed amendments. A definition of "Director", being the Director of Air Safety Investigation, is inserted into subregulation 5(1), and the Director is given the power to certify, by written notice, certain matters under Part 2A of the Act.

Amendments Consequential upon Repeal of Regulation 192

Regulation 192 of the *Air Navigation Regulations* was repealed by *Air Navigation Regulations (Amendment)*, Statutory Rules No.316 of 1992, following it being remade as section 13A of the *Air Navigation Act*. However, owing to an oversight, references in the *Air Navigation Regulations* to regulation 192 were not updated at the time. The amendments make the required changes.

Details on individual clauses appear as an Attachment to this Minute.

The amendment to subregulation 246(10) commences on 1 July 1996, in line with the ICAO resolution. The other amendments commence on gazettal.

The Minute recommends that Regulations be made in the form proposed.

ATTACHMENT

Air Navigation Regulations (Amendment)

Clause 1 - Commencement

The Air Navigation Regulations (Amendment) will commence on gazettal, other than subregulation 4.2, which commences on 1 July 1996.

Clause 2 - Amendment

This clause provides that the Air Navigation Regulations are amended as set out in these regulations.

Clause 3 - Regulation 5 (interpretation)

This clause inserts a definition of 'Director' into the Air Navigation Regulations which is consistent with the use of that term in Part 2A of the *Air Navigation Act 1920*.

Clause 4 - Regulation 246 (Smoking in aircraft)

Subclause 4.1 replaces current subregulation 246(9), effectively removing paragraph (c) from the minimum requirements of a "no smoking" notice. The amendment has the effect that "no smoking" signs in aircraft need not be permanently illuminated, but nevertheless, must remain legible and conspicuous.

Subclause 4.2 replaces current subregulation 246(10), effectively extending the definition, of 'prescribed aircraft' for the purposes of regulation 246. Under the new definition of 'prescribed aircraft', smoking will be banned on regular public transport or open-use charter aircraft engaged in either carriage of passengers between airports in Australian territory, or Australian international carriage.

An 'open-use charter aircraft' means an aircraft engaged in a charter operation (as defined in subsection 3(1) of the *Air Navigation Act 1920*) other than:

- (a) an aircraft carrying non-paying passengers according to a fixed schedule (typically VIP flights); or
- (b) an aircraft chartered for a flight for which tickets are not available for purchase by the general public ("private-hire" or "own-use" charters).

'Australian international carriage' is defined by reference to subsection 27(2) of the *Air Navigation Act*, and encompasses the carriage of passengers by Australian designated international airlines or by aircraft operated by Australian operators.

Clause 5 - Part XVI (Accident and incident inquiry)

This clause repeals Part XVI of the Air Navigation Regulations. Part XVI, which deals with the investigation of aircraft accidents and incidents by the Secretary of the Department of Transport & Regional Development, has been superseded by Part 2A of the Air Navigation Act 1920. Part 2A was inserted into the Act by the Transport Legislation Amendment Act (No. 3) 1995, which commenced on 16 December 1995.

Clause 6 - Regulation 297P (Persons in lawful custody on an aircraft)

Regulation 297P of the Air Navigation Regulations currently provides the Secretary with the power to authorise the carriage, on board commercial aircraft, of persons in lawful custody.

Clause 6 ensures that the Secretary's power includes the ability to authorise such carriage subject to conditions. For example, minimum security measures for the carriage of the persons in lawful custody may be adopted and implemented as conditions of the Secretary's authorisation.

Under clause 6, such conditions must be:

- * in writing (as must the rest of the authorisation) and specified within the terms of the authorisation; and
- * necessary, in the opinion of the Secretary, for the interests of aviation security.

Clause 7 - Regulation 311D (Aircraft flying to or from Iraq-prohibition)

This clause updates the reference to regulation 192 in subregulation 311D(7) to subsection 13A(1) of the Air Navigation Act 1920. Subsection 13A(1), like subregulation 192 before it, requires that Secretarial approval be granted before Australian aircraft can fly international charters. Regulation 311D prohibits flights to or from Iraq without Secretarial approval, in line with a United Nations Security Council Resolution. Therefore, a charter flight to or from Iraq requires two approvals from the Secretary.

Clause 8 - Regulation 311E (Aircraft flying to or from Libya - prohibition)

This clause updates the reference to regulation 192 in subregulation 311E(4) to subsection 13A(1) of the Air Navigation Act 1920. Subsection 13A(1), like subregulation 192 before it, requires that Secretarial approval be granted before Australian aircraft can fly international charters. Regulation 311E prohibits flights to or from Libya without Secretarial approval, in line with a United Nations Security Council Resolution.

Clause 9 - Regulation 311F (Aircraft flying to or from the Federal Republic of Yugoslavia (Serbia and Montenegro - prohibition)

This clause updates the reference to regulation 192 in subregulation 311F(5) to subsection 13A(1) of the *Air Navigation Act* 1920. Subsection 13A(1), like subregulation 192 before it, requires that Secretarial approval be granted before Australian aircraft can fly international charters. Regulation 311F prohibits flights to or from Serbia and Montenegro without Secretarial approval, in line with a United Nations Security Council Resolution.

Clause 10 - Regulation 320 (Evidence)

This clause amends regulation 320 to ensure consistency with the operation of Part 2A of the *Air Navigation Act* and the repeal of Part XVI of the Air Navigation Regulations.

Subclause 10.1 inserts a new subregulation 320(1) which allows the Director of Air Safety Investigation to certify that no report of an aircraft accident or incident has been received by him or her in accordance with the requirements of sections 19BA or 19BC of the *Air Navigation Act*. Subregulation 320(1A) allows the Secretary to certify that a licence or document has not been surrendered, that a copy of the Convention on International Civil Aviation or an Annex thereto is a true copy, and that a copy of a licence or other document published, given or issued under the Act or Regulations is a true copy.

Subclause 10.2 updates the reference in subregulation 320(2) consequent upon the amendment in subclause 10.1.

Clause 11 - Schedule 1A (Prohibition on smoking on international passenger services)

Clause 11 repeals Schedule 1A of the Air Navigation Regulations. Schedule 1A stipulated those countries between which the smoking ban in regulation 246 was in force, and was made following the signing of a trilateral agreement between Australia, the United States and Canada in respect of smoking on international flights. With the extension of the smoking ban to all international flights by Australian operators, Schedule 1A is no longer necessary.

Clause 12 - Schedule 2 (Fees and charges)

Clause 12 updates Schedule 2 of the Air Navigation Regulations following the repeal of regulation 192. As well as changing the references to regulation 192 to subsection 13A(1), the clause makes a correction of a typographical error in Item 4 of the Schedule, by replacing the word "for" with "or".