

Air Navigation Amendment Regulations 2000 (No. 2) 2000 No. 217

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 217

Issued by the Authority of the Minister for Transport and Regional Services

Air Navigation Act 1920

Air Navigation Amendment Regulations 2000 (No. 2)

The *Air Navigation Act 1920* ("the Act") provides for the regulation of civil aviation to, from and within Australia. Under subsection 26(1) of the Act, the Governor-General may make regulations for the purposes of the Act. Paragraph 26(2)(a) of the Act provides that, without limiting the generality of subsection (1), the regulations that may be made include regulations for or in relation to "aviation security".

Pre-existing regulations made under the Act - the *Air Navigation Regulations 1947* ("the primary regulations") - set out (amongst other matters) minimum standards for aviation security within Australia. The aim of aviation security is to promote a secure environment for Australian commercial aviation and to safeguard against acts of unlawful interference (such as an aircraft hijack or an act of sabotage).

The purpose of the *Air Navigation Amendment Regulations 2000* ("the Regulations") is to amend the primary regulations, in order to introduce two new legislative schemes for application during defined, high risk periods. These periods ("special event periods") are to be declared by the Minister via disallowable instruments. For example, it is intended to declare the duration of the Sydney 2000 Olympic Games as a special event period.

The first regulatory scheme (contained within the Regulations) codifies trespass for those parts of Australia's major airports other than:

- * aircraft movement and parking areas; and
- * passenger "sterile" areas.

For example, airport passenger terminal buildings are provided with codified trespass under the Regulations.

Aircraft movement areas, aircraft parking areas and sterile areas have pre-existing codified trespass, under the terms of the primary regulations. In essence, the Regulations extend this "air side" codification to the whole of the airport, during the defined special event periods. The codification of trespass at these areas involves the following general principles:

- * the relevant land-holders, or "people in charge of an area", at an airport are those people authorised by the Secretary;
- * during a special event Period, it is an offence for people to trespass once they have been directed to not enter, or once they have been directed to leave, the area by the people in charge of the area;

- * during a special event period, airport security officers may physically remove trespassing people and/or vehicles; and
- * in the event that a vehicle has been so removed, the airport operator may recover the amount reasonably spent in moving and/or storing the vehicle.

The second regulatory scheme (contained within the Regulations) provides alternative standards for the patrolling and emergency response services at Australia's major airports, in the event that the usual supplier of these services is unavailable during a special event period.

Airport patrolling and emergency response services (under the primary regulations) are ordinarily provided by the Australian Protective Service (APS). In the event that the APS is unavailable during a special event period - for example, in the event of an industrial dispute within the APS - the Regulations require the use of "security services" (private guarding firms, such as Chubb, Group 4 or SNP) as an alternative standard. To qualify (to be able to perform airport security services), the staff of these private firms must:

- * have undertaken training (to the appropriate industry standard); and
- * be licensed (by respective State and Territory Governments) as security agents.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on gazettal.

Attachment

Air Navigation Amendment Regulations 2000 (No. 2)

Regulation 1 - Name of Regulations

Regulation 1 confirms the name of the Regulations.

Regulation 2 - Commencement

The Regulations commenced on gazettal.

Regulation 3 - Amendment of Air *Navigation Regulations* 1947

The Regulations amend the Air *Navigation Regulations* 1947 (the primary regulations), as set out in Schedule 1.

Schedule 1 - Amendments

The amendments to the primary regulations introduce two legislative schemes for application during special event periods declared by the Minister. The schemes cover:

- * the codification of trespass; and
- * an alternative standard for airport patrolling and emergency response services.

Clause 1 - Subparagraph 42(2)(a)(i)

Clause 1 deletes the reference to Australian Company Numbers - within subparagraph 42(2)(a)(i) of the primary regulations - in support of the conversion to Australian Business Numbers under clause 3.

Clause 2 - Paragraph 42(2)(g)

Clause 2 replaces the full stop - at the end of paragraph 42(2)(g) of the primary regulations - with a, semi-colon, allowing the inclusion of the additional paragraph under clause 3.

Clause 3 - After paragraph 42(2)(g)

Clause 3 reflects the Government's intention for the Australian Business Number (ABN) to become the sole business identifier for Commonwealth purposes, rather than the Australian Company Number (ACN).

Accordingly, the effect of clause 3 is to delete the reference (in the primary regulations) to a company's ACN, and replace it with a reference to the company's ABN. This is achieved by means of clause 3 inserting a new paragraph (h) at the end of pre-existing subregulation 42(2).

By way of background, subregulation 42(2) deals with the applications (by companies) to become regulated agents. Recent supporting amendments to the Corporations Regulations now allow a company to quote its ABN rather than its ACN. Where a business is a company, its ABN comprises its ACN plus two check digits.

In addition, clause 3 inserts an additional new paragraph (i) at the end of pre-existing subregulation 42(2), requiring applicants to also advise their registered business name when applying to become a regulated agent.

Clause 4 - Regulation 56, after definition of *airside controlled area*

Clause 4 inserts three new definitions into the (pre-existing) global definitions provision (for the topic of trespass) of the primary regulations.

Security officer is already defined (under pre-existing regulation 27). Security officers are those officers granted special powers under the primary regulations. The effect of clause 4 is to extend this class of security officers to include members of a security service:

- * in relation to airport codified trespass (ie, "move on") powers under Division 5 of Part 7 of the primary regulations (regulations 56-70);
- * during special event periods; and
- * in the event that the airport's uniformed security force is unavailable.

Security service means a group, engaged by an airport operator to patrol the airport, whose members (when patrolling) wear a uniform and carry a transceiver and who also meet the training and qualification standards of new regulation 71A. New regulation 71 A is provided under clause 21. In summary, the security service is the alternative group, required to perform airport patrolling and emergency response services (under clauses 16, 18 and 20) in the event that the usual supplier of these services (the airport's uniformed security force) is unavailable.

Special event period means a period declared under new regulation 56A. New regulation 56A is provided under clause 5.

Clause 5 - After regulation 56

Clause 5 inserts a new regulation (regulation 56A) dealing with the declaration of special event periods. The Minister may declare such a period, by way of a disallowable instrument. As a result, the Minister's declaration is to be gazetted, laid before each House of the Parliament and subject to disallowance by the Parliament.

Clause 6 - Regulation 58

Clause 6 substitutes a new regulation 58. Currently, pre-existing regulation 58 defines those people "in charge of" aircraft movement areas, aircraft parking areas and sterile areas of airports. New regulation 58 extends this concept to the whole of the airport (including public areas, such as passenger terminal buildings).

Under new regulation 58, the Secretary may authorise people to be "in charge of an area" at a categorised airport. Once authorised, these people are empowered to make trespass decisions in relation to the area (eg, to direct people to leave the area or to direct people to not enter the area).

Clause 7 - After subregulation 59(2)

Clause 7 inserts trespass provisions for people entering an area of a categorised airport (and hence extends codified trespass to public, as well as other "land side", areas of the airport) during a special event period.

Under new subregulation 59(2A), a person must not enter the area if the person has been directed to not enter the area by the person in charge of the area.

Under new subregulation 59(2B), a person must not enter the area if the person has been directed to leave the area by the person in charge of the area.

Under new subregulation 59(2C), a direction (to leave or to not enter) may be given orally or by means of a sign or other written communication.

A maximum penalty of 10 penalty units is imposed if either subregulation 59(2A) or (2B) are contravened.

Clause 8 - Subregulation 59(3)

Clause 8 provides that new subregulations 59(2A) and (2B) are included within the infringement notice scheme of the primary regulations. Under this scheme, an infringement notice penalty of 1 penalty unit may be imposed if either subregulation 59(2A) or (2B) are contravened.

Clause 9 - After subregulation 60(2)

Clause 9 inserts trespass provisions for people driving vehicles into an area of a categorised airport (and hence extends codified trespass to public, as well as other "land side", areas of the airport) during a special event period.

Under new subregulation 60(2A), a person must not take a vehicle into the area if the person has been directed to not take the vehicle into the area by the person in charge of the area.

Under new subregulation 60(2B), a person must not leave a vehicle in the area if the person has been directed to remove the vehicle from the area by the person in charge of the area.

Under new subregulation 60(2C), a direction (to not bring the vehicle into the area or to remove the vehicle) may be given orally or by means of a sign or other written communication.

A maximum penalty of 10 penalty units is imposed if either subregulation 60(2A) or (2B) are contravened.

Clause 10 - Subregulation 60(3)

Clause 10 provides that new subregulations 60(2A) and (2B) are included within the infringement notice scheme of the primary regulations. Under this scheme, an infringement notice penalty of 1 penalty unit may be imposed if either subregulation 60(2A) or (2B) are contravened.

Clause 11 - Subregulation 61 (1)

The primary regulations (under pre-existing regulation 61) provide specified "move on" powers of security officers - to remove unauthorised people from security sensitive areas of categorised airports. Clause 11 extends these powers to areas other than a security sensitive area (and hence to the whole of the airport), during a special event period.

In accordance with the pre-existing "move on" provisions, in removing people the security officer must not use more force or subject the person to greater indignity than is necessary and reasonable. In addition, before exercising the power, the security officer must show an identity card.

Clause 12 - Subregulation 62(1)

The primary regulations (under pre-existing subregulation 62(1) also provide specified "move on" powers of security officers - to remove unauthorised vehicles (and their passengers) from security sensitive areas of categorised airports. Clause 12 extends these powers to areas other than a security sensitive area (and hence to the whole of the airport), during a special event period.

In accordance with the pre-existing "move on" provisions, in removing vehicles the security officer must not use more force or subject anyone in charge of the vehicle to greater indignity than is necessary and reasonable. In addition, before exercising the power, the security officer must show an identity card.

Clause 13 - Subregulation 62(3)

The primary regulations (under pre-existing subregulation 62(3)) also provide specified "move on" powers of security officers - to remove unauthorised and unattended vehicles from security sensitive areas of categorised airports. This power may be exercised if the security officer has made all reasonable efforts (unsuccessfully) to find the person in control of the vehicle. Clause 13 extends these powers to areas other than a security sensitive area (and hence to the whole of the airport), during a special event period.

In accordance with the pre-existing "move on" provisions, in removing vehicles the security officer must not use more force than is necessary and reasonable.

Clause 14 - After regulation 62

Clause 14 inserts (into the primary regulations) arrangements for airport operators to recover the cost of removing unauthorised (ie, trespassing) vehicles.

New regulation 62A allows the airport operator to recover, from the owner of the vehicle, the amount reasonably spent in moving and storing the vehicle. This amount is a debt recoverable in a court of competent jurisdiction. The airport operator is not required to return the vehicle to the owner before payment of this debt.

New regulation 62B also allows the airport operator to recover such costs by selling the vehicle. The airport operator may, after removing the vehicle, give notice that the operator intends to sell (or otherwise dispose of) the vehicle. The notice must be published in a daily newspaper circulating generally in the area served by the airport. If the debt is not paid within 14 days after the notice is published, the airport operator:

- * may sell (or otherwise dispose of) the vehicle;
- * may recover, from the proceeds of the sale, the amount reasonably spent in moving, storing and selling the vehicle; and
- * must give the remainder of the proceeds to the Commonwealth.

Clause 15 - Regulation 63

Clause 15 re-numbers the main body of pre-existing regulation 63 as subregulation 63(1). This is to support the insert of new subregulation 63(2) under clause 16.

Clause 16 - Regulation 63

Pre-existing regulation 63 provides for specified patrolling and emergency response services - at category 1 airports - to be performed by the airport's uniformed security force. Clause 16 inserts a new subregulation 63(2), providing an alternative standard to apply:

- * during a special event period; and
- * in the event that the airport operator is unable to provide a uniformed security force.

This alternative standard comprises the use, by the airport operator, of a security service to perform these patrolling and emergency response services.

Clause 17 - Regulation 65

Clause 17 re-numbers the main body of pre-existing regulation 65 as subregulation 65(1). This is to support the insert of new subregulation 65(2) under clause 18.

Clause 18 - Regulation 65

Clause 18 inserts new subregulation 65(2), similar to clause 16 but in relation to category 2 airports. In summary, the security service is to be provided as an alternative to the uniformed security force, during a special event period, at these airports.

Clause 19 - Regulation 66

Clause 19 re-numbers the main body of pre-existing regulation 66 as subregulation 66(1). This is to support the insert of new subregulation 66(2) under clause 20.

Clause 20 - Regulation 66

Clause 20 inserts new subregulation 66(2), similar to clause 16 but in relation to category 3 airports. In summary, the security service is to be provided as an alternative to the uniformed security force, during a special event period, at these airports.

Clause 21 - After regulation 71

Clause 21 inserts a new regulation 71 A, providing a minimum training and qualification standard for the members of a security service. To be qualified as a member of a security service, a person must:

- * hold the Certificate II training qualification that has been developed under the relevant security industry competency standard; and
- * hold a security agent licence, issued by the State or Territory Government in which the airport is located.