

EXPLANATORY STATEMENT

Select Legislative Instrument No. 145, 2015

(Issued by the Authority of the Minister for Infrastructure and Regional Development)

Subject - *Air Navigation Act 1920*

Air Navigation (Aviation Security Status Checking) Repeal Regulation 2015

The *Air Navigation Act 1920* (the Act) gives effect to the Chicago Convention. The Act is an important element in international civil aviation operations and approvals and in ensuring Australia's aviation laws are consistent with International Civil Aviation Organization practices.

The *Air Navigation (Aviation Security Status Checking) Regulations 2004* (the Principal Regulations) were made under subsection 26(1) of the Act and commenced on 9 July 2004.

Subsection 26(1) of the Act provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act, and regulations in relation to air navigation, being regulations with respect to any other matter which the Parliament has power to make laws. Paragraph 26(2)(a) of the Act provides that without limiting the generality of subsection 26(1), regulations may be made for or in relation to aviation security.

In November 2003, the Government decided that pilots should be subject to background checking from 1 July 2004. The Principal Regulations gave effect to this decision, in particular to ensure that certain persons may be excluded from applying for a flight crew licence where they are deemed to have an adverse security status.

The *Aviation Transport Security Act 2004* (ATSA) and the *Aviation Transport Security Regulations 2005* (ATSR) establish a regulatory framework to safeguard against unlawful interference with civil aviation in Australia. The ATSR also establishes the regulatory framework for the aviation security identification cards, including the requirements for the background checking.

In 2004, parts of the aviation security regulatory framework, including checking applicants for flight crew licenses, transferred from the Principal Regulations to the ATSA and the ATSR. The transfer process included the repeal of the specific power to make regulations under the Act with respect to aviation security. However, the Principal Regulations were not automatically repealed as a result of a technical error when the specific regulation-making power was repealed. There was also no consequential amendment to expressly repeal the Principal Regulations after commencement of the ATSA and the ATSR.

As the ATSA and the ATSR fully cover matters contained in the Principal Regulations, the Principal Regulations are no longer required and have been repealed. The repeal is part of the Government's deregulation policy. The repeal does not have any adverse impact on the aviation industry or on current identity security arrangements and the aviation security identification framework.

Consultation has occurred with the Civil Aviation Safety Authority. The Office of Best Practice Regulation (OBPR) was consulted in relation to the repeal of the Principal Regulations. The OBPR advised that the Regulatory Impact Statement is not required (OBPR ID: 18858).

A Statement of Compatibility with Human Rights is set out at Attachment A.

The *Air Navigation (Aviation Security Status Checking) Repeal Regulation 2015* (the Regulation) repeals the Principal Regulations.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

Details of the Regulation are set out at Attachment B.

The Regulation commences on the day after it is registered.

Authority: Subsection 26(1) of the
Air Navigation Act 1920

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Air Navigation (Aviation Security Status Checking) Repeal Regulation 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument repeals the *Air Navigation (Aviation Security Status Checking) Regulations 2004*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

WARREN TRUSS

Minister for Infrastructure and Regional Development

Details of the *Air Navigation (Aviation Security Status Checking) Repeal Regulation 2015*

Section 1 – Name of Regulation

Section 1 provides that this Regulation is the *Air Navigation (Aviation Security Status Checking) Repeal Regulation 2015*.

Section 2 – Commencement

Section 2 provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

Section 3 provides that the Regulation is made under the *Air Navigation Act 1920*.

Section 4 – Schedule(s)

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Repeals

Item [1] – the whole of the Regulations

Item 1 repeals the whole of the *Air Navigation (Aviation Security Status Checking) Regulations 2004*.