

EXPLANATORY STATEMENT

STATUTORY RULES NO. 158

**ISSUED BY THE AUTHORITY OF THE MINISTER
FOR TRANSPORT AND COMMUNICATIONS**

CIVIL AVIATION ACT 1988

Civil Aviation Regulations

Legislative Provisions

The Civil Aviation Act 1988 (the Act) establishes a Civil Aviation Authority in Australia with functions relating to the safety of civil aviation, and for related purposes. The safety regulation of civil air operations and the provision of associated facilities and services formerly were undertaken by the Department of Transport and Communications.

Section 98 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Background

These functions became the responsibility of the Authority from 1 July 1988.

The transfer of functions to the Authority necessitates the making of civil aviation regulations which, together with the Act and any Civil Aviation Orders issued under the regulations, provide the necessary framework for the Authority to conduct its activities.

Essentially, these regulations are the former Air Navigation Regulations, amended where necessary to transfer responsibilities from the Minister or Secretary to the Authority. In view of the review of air safety regulation recently established by the Minister, changes have been kept to a minimum, consistent with the requirements which the Act imposes.

Changes to existing regulatory framework

The Act has introduced air operators' certificates in lieu of the air service licencing arrangements which existed previously for civil air operations for commercial purposes within Australia. These certificates will attest to an operator's competence to perform particular operations within certain limits which the Authority may wish to impose, and will be based on safety considerations only.

The concept of an air operator's certificate has been addressed in guidance material issued by the International Civil Aviation Organization since 1963. The introduction of this concept now aligns Australia with a number of the major European countries and the United States.

Certificates will be issued also to cover the safety aspects of international regular public transport operations, and it will be possible for the Authority to cover programs of international charters in this manner if it so wishes. The Act also provides other powers to regulate international non-scheduled operations.

The Department of Transport and Communications will continue to issue airline licences regulating the economic aspects of scheduled international operations. This is consistent with the Commonwealth's constitutional powers, and the bilateral air services agreements which Australia has entered into with other countries.

Another change which has occurred is with the administration of the statutory liens provisions previously incorporated in the Air Navigation (Charges) Act 1952 (as amended), and the Air Navigation (Charges) Regulations.

The administration of statutory liens in future will be undertaken by the Authority. It also will apply liens on behalf of the Department as requested by the Secretary or an authorised officer, and relevant provisions have been included in the Civil Aviation Act 1988 to reflect this change. Regulations supporting the Act's provisions may be found at Part XV of the proposed Civil Aviation Regulations. The decisions to impose the statutory lien, to deregister the aircraft and to sell the aircraft are all subject to appeal under the Administrative Appeal's Tribunal Act 1975.

Transitional arrangements

Transitional provisions have been included in the Regulations to ensure that any Air Navigation Order, instrument or any other act done, step taken or decision made under the provisions of the Air Navigation Regulations, being provisions to which provisions of the Civil Aviation Regulations correspond, is preserved.

Detailed notes on the proposed regulations are attached.

The regulations are effective from 1 July 1988.

S.R. 133/88

ATTACHMENT

Civil Aviation Regulations

PART 1 - PRELIMINARY

Regulation 1 cites the regulations as the Civil Aviation Regulations.

Regulation 2 provides an interpretation of the various terms appearing throughout the regulations as they relate to the regulations generally or to specific Divisions.

Regulation 3 defines the application of the regulations, consistent with the Commonwealth's constitutional powers in relation to the safety of air navigation.

PART 11 - ADMINISTRATION AND ORGANISATION

Regulation 4 establishes the Authority's responsibility to administer the regulations, subject to the directions of the Minister, and to maintain close liaison with the Department of Defence in matters of common interest.

Regulation 5 provides for the Authority to establish Civil Aviation Orders, consistent with these regulations.

Regulation 6 empowers the Authority to appoint persons as "authorised persons" for the purposes of performing specified functions in connection with the regulations.

Regulation 7 empowers the Authority to delegate to a person its powers and functions under these regulations.

PART 111 - REGISTRATION AND MARKING OF AIRCRAFT

Regulations 8 to 20 inclusive outline the responsibilities of the Authority to maintain a register of Australian aircraft, its powers in relation to registration and applications for registration, and the standards applying to registration markings.

These regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART 1V - AIRWORTHINESS REQUIREMENTS

Regulations 21 to 54 inclusive outline the airworthiness standards to apply to Australian aircraft and provide a framework for the implementation of those standards by way of the issue of certificates of type approval, airworthiness certificates, certificates of approval for personnel and maintenance engineer

licences, and requirements in relation to the manufacture and maintenance of aircraft. Division 3 of this Part empowers the Authority to issue directions and take certain actions in respect of foreign aircraft which have suffered major damage or have developed a major defect while within Australian territory.

These regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART V - LICENCES AND RATINGS OF OPERATING CREW

Regulations 55 to 74 inclusive outline the standards to apply to the operating crew of Australian aircraft and provide a framework for the implementation of those standards by way of a system of licences and ratings issued for limited periods of time to members of a flight crew.

These regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART VI - FLYING TRAINING

The Air Navigation Regulations required a school or organisation imparting practical instruction in the air in subjects in which a candidate is required to qualify for the grant of a crew

member's licence or the endorsement of a rating on such a licence, to be the holder of an Aerial Work and Flying School Licence.

These regulations now require the training school or organisation to be the holder of an air operator's certificate for this purpose.

Regulation 75 requires a person giving practical flight instruction to a student in the piloting of an aircraft to be the holder of the appropriate flight instructor rating or authorisation. That person also is required to instruct in association with a person who holds an air operator's certificate or to hold a certificate in his or her own right. The student is required to be receiving or to have received ground instruction in accordance with any directions which the Authority may have issued.

Regulation 76 provides for the issue of a ground instructor licence to a person qualified to give instruction in any of the theoretical subjects necessary for any class of pilot, navigator, radio operator or flight engineer licence.

PART VII - PERSONAL LOG BOOKS AND NAVIGATION LOGS

Regulations 77 to 81 inclusive require each member of the operating crew of an aircraft to keep a personal log book and the pilot in command to keep a navigation log in accordance with the requirements set out in the regulations. These regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART VIII - RADIO SYSTEMS FOR USE IN, OR IN CONNECTION WITH, AIRCRAFT

Regulations 82 to 85 inclusive cover the requirements in relation to radio equipment for use in Australian aircraft, and are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART IX - AERODROMES AND FACILITIES AND SERVICES

Regulations 86 and 87 empower the Authority to establish, abolish or vary air route and airway facilities, and to designate air routes and airways.

Regulations 88 to 96 inclusive impose various standards in relation to the licensing, use and operation of aerodromes.

Regulations 97 to 118 inclusive provide for the Authority to establish, maintain and operate an Air Traffic Control service and a Flight Service service; to designate airspace for the purpose of the operation of these services; and to authorise and license Air Traffic Control and Flight Service officers. The regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

Regulations 119 and 120 deal with the arrangements between the Authority and the Director of Meteorology for the provision of meteorological information for the safe navigation of aircraft.

Regulations 121 to 131 inclusive provide for the Authority to establish, maintain and operate a Search and Rescue service and a Rescue and Fire Fighting service, and are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

Regulation 132 requires the owner of an aircraft to furnish statistical returns to the Authority in regard to the operations of that aircraft, and for the transmission of relevant information to the International Civil Aviation Organization.

PART X - CONDITIONS OF FLIGHT

Regulations 133 to 159 inclusive impose certain restrictions on the flight of Australian aircraft and of foreign registered civil aircraft and foreign state aircraft operating into and within Australia, and outline the conditions which have to be met for various types of operations.

Several amendments have been made to regulations which appeared previously at Part X of the Air Navigation Regulations, and these are as follows.

The amendment to Regulation 133 permits foreign aircraft of Contracting States to operate in Australia for private purposes, without the need for prior approval. This corrects a deficiency in the corresponding provision in the previous body of regulations.

Regulation 143 gives the Authority power to approve the carriage of firearms in aircraft other than aircraft engaged in regular public transport or charter operations. Approvals in these latter categories remain with the Department, reflecting the Department's aviation security responsibilities. Administrative arrangements will be put in place to ensure that where aviation security implications arise under this regulation,

delegates will consult appropriate Departmental officers before exercising their delegation.

Provisions relating to the carriage of dangerous goods in aircraft, which were dealt with previously in the Air Navigation Regulations, are now covered in the Act.

The remaining regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART XI - RULES OF THE AIR

Regulations 160 to 181 inclusive outline the rules to be followed by aircraft in flight so as to prevent collisions and ensure the safety of air navigation generally. The regulations also include rules for the operation of aircraft on an aerodrome and on or near the surface of the water, visual flight rules and instrument flight rules.

These regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART X11 - SIGNALS FOR THE CONTROL OF AIR TRAFFIC

Regulations 182 to 205 inclusive are directed towards ensuring the safety of air navigation, and standardise the communication between an aircraft and an air traffic control unit and the signals to be used at aerodromes and by aircraft in flight.

These regulations are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

PART X111 - AIR SERVICE OPERATIONS

Regulations in Division 1 of this Part have been re-cast to reflect the introduction of air operators' certificates in lieu of air service licences.

Regulation 206 outlines the commercial purposes for which an air operator's certificate is required.

Regulations 207 to 209 inclusive impose safety requirements on Australian aircraft being used in particular classes of operations.

Regulation 210 imposes a requirement that a person who is not the holder of an air operator's certificate shall not advertise that he or she is willing to undertake commercial operations for which a certificate is required.

Regulation 211 requires an applicant for an air operator's certificate to furnish such information as the Authority reasonably requires.

With the exception of regulation 255, regulations 212 to 262 inclusive are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations.

Regulations 212 to 262 inclusive place various requirements on the operator to ensure the safety of commercial operations, and specify procedures to be followed during the conduct of those operations. They also specify general provisions relating to the operation of the aircraft, including requirements for the carriage of emergency equipment and in relation to flights over water.

Regulation 255 is an amended version of the regulation which appeared previously in the Air Navigation Regulations dealing with smoking in aircraft and now relates solely to safety.

**PART XIV - REFUSAL TO GRANT, AND SUSPENSION AND CANCELLATION OF,
LICENCES AND CERTIFICATES**

Regulations 263 to 272 inclusive are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations, with the exception of references to Board of Review and the jurisdiction of Courts to hear and determine appeals. Deletion of such references reflects the fact that this Part is now subject to the Administrative Appeals Tribunal Act 1975.

These regulations cover such matters as the grounds on which the Authority may refuse to grant a licence or certificate, the suspension of a licence for the purposes of examination of a person's fitness to continue to hold a licence and the circumstances in which a licence or certificate may be cancelled.

PART XV - APPLICATION OF STATUTORY LIENS

Regulations in this Part have been introduced to support the Statutory Liens provisions of the Act. They are drawn from the Air Navigation (Charges) Regulations.

Regulation 273 places an obligation on the Authority to maintain a register of statutory liens in its Central Office, including any liens which the Authority may have imposed on behalf of the Department.

Regulation 274 places an obligation on the Authority to publish widely a notice of its intention to sell an aircraft at least 14 days before the date on which it is intended to sell.

Regulation 275 deals with the method of ascertaining creditors which may have an interest in an aircraft which is sold in accordance with the provisions of subsection 73(1) of the Act.

Regulation 276 specifies the method of distributing the proceeds of sale of an aircraft which is sold, including the order in which the proceeds are to be expended.

Regulation 277 details the categories of persons who, for the purposes of subsection 76(1) of the Act, are authorised to issue certificates showing full particulars of outstanding amounts in relation to aircraft under lien.

Regulation 278 outlines the details to be included in the Gazette notification required by subsection 77(1) of the Act in

respect of an entry in the register, cancellation of the certificate of registration, cessation of a statutory lien, and persons who have an interest in aircraft (eg. operator, holder of certificate of registration, person holding a security interest, etc).

Regulation 279 details the persons who are covered by the insurance on an aircraft which the Authority is required to take out under the provisions of subsection 81(1) of the Act.

Regulation 280 places an obligation on a person holding any records relating to an aircraft under lien to furnish those records to the Authority upon request.

PART XVI - PENAL PROVISIONS AND PROSECUTIONS

In general, Regulations 281 to 296 inclusive are consistent with those previously appearing in the corresponding Part of the Air Navigation Regulations, except for changes in the following areas -

- (i) the variation of the penalty for an offence under these regulations (where no other penalty is prescribed);

- (ii) the amendment of various regulations to reflect the responsibilities of the Department (for aviation security), the Authority (for safety) and the Federal Airports Corporation (for Federal airports), and
- (iii) the removal of those provisions which required the Secretary to give his or her consent before a prosecution could proceed, to reflect the powers of the Director of Public Prosecutions in this area.

Details of the affected regulations follow.

Regulation 281 defines the offence provisions and sets the level of penalty. Subregulation 281(6) brings the provisions into line with those contained in the Act.

Regulation 289 prohibits smoking or the doing of any act to procure a naked flame within 15 metres of an aircraft or in any part of an aerodrome where a notice indicates that smoking is prohibited. The regulation also prohibits any act that is likely to create a fire hazard endangering an aircraft or an aerodrome.

This regulation does not cover Federal airports. The Federal Airports Corporation will be making by-laws in relation to these requirements at Federal airports.

Regulation 290 authorises an officer of the Authority to discharge a firearm at Federal airports on grounds relating to the safety of air navigation.

An officer of the Authority may also discharge a firearm at other airports for purposes relating to the safety of air navigation by virtue of amendments to the corresponding provisions of the Air Navigation Regulations.

Regulation 291 requires that a stationary aircraft shall not, without the permission of Air Traffic Control, be left standing within the precincts of an aerodrome (including a Federal airport), except in a designated aircraft parking area.

Regulation 293 empowers the Authority to remove an aircraft from any part of an aerodrome (including a Federal airport) or to move the aircraft to another part of the aerodrome in the interests of safety or to expedite and maintain an orderly flow of air traffic.

Regulation 294 prohibits a person from entering or remaining within a prohibited area on an aerodrome, bringing or leaving any property on that area, operating any vehicle on that area or bringing any animal or bird or permitting any animal or bird in his or her possession or control to trespass on that area.

The application of this regulation by the Authority at any aerodrome (including Federal airports) will be in the context of safety. The Department will require a similar regulation for aviation security purposes, and the Federal Airports Corporation may make a by-law to serve its requirements for Federal airports.

PART XV11 - EVIDENCE

Regulation 297 is consistent with that previously appearing in the corresponding Part of the Air Navigation Regulations. The regulation specifies the type of documents which the Authority may produce as evidence in a prosecution for an offence against the regulations, and adds a subregulation (5) which identifies the documentation which may be used for the purposes of establishing liability for charges as defined by section 66 of the Act.

PART XV111 - MISCELLANEOUS

Regulations 298 to 310 inclusive are consistent with those safety regulations previously appearing in the corresponding Part of the Air Navigation Regulations.

These regulations address a variety of matters, including requirements in relation to the issue of licences and restrictions on such issue, the need for licences and log books to be produced on demand by an authorised person, the conditions subject to which licences or certificates are granted and the powers of the pilot in command to take action against persons on board an aircraft to ensure compliance with the Act and Regulations.

PART XIX - TRANSITIONAL

Regulation 311 ensures that any instrument, Air Navigation Order, act done, step taken or decision made under a provision of the Air Navigation Regulations continues to have effect after the commencement of these regulations, providing that provision is one to which a provision of these regulations corresponds.