

Air Navigation (Aircraft Noise) Amendment Regulations 2000 No. (1) 2000 No. 361

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 361

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

Air Navigation Act 1920

Air Navigation (Aircraft Noise) Amendment Regulations 2000 No. (1)

Subsection 26(1) of the *Air Navigation Act 1920* provides that the Governor-General may make regulations, *inter alia*:

"(c) in relation to air navigation within a Territory or to or from a Territory;

(d) in relation to air navigation, being regulations with respect to trade and commerce with other countries among the States;

(e) in relation to air navigation, being regulations with respect to any other matter with respect to which the Parliament has power to make laws."

The purpose of the proposed Regulations is to:

* put in place arrangements to enable jet aircraft that comply with International Civil Aviation Organisation (ICAO) Chapter 2 noise standards, but not Chapter 3 noise standards, and that would not otherwise be permitted to operate in Australia, to fly into and out of Australia solely for the purpose of maintenance, until 31 December 2005; and

* provide that Chapter 2 subsonic jet aircraft, not otherwise permitted to operate in Australia, may be used for certain public interest purposes.

Australia's *Air Navigation (Aircraft Noise) Regulations* currently provide that a foreign subsonic jet aircraft that meets ICAO Chapter 2 noise standards, and that is fitted with engines of a bypass ratio of less than 2, is permitted to engage in international air navigation in Australia until either (i) the end of the 25th year after the day on which a Certificate of Airworthiness for the aircraft was first issued, or (ii) 31 March 2002, whichever occurs first. In the case of a Chapter 2 jet aircraft fitted with engines of a bypass ratio of 2 or more, such aircraft may engage in international air navigation in Australia until 31 March 2002.

Those provisions reflect Australia's implementation of an ICAO resolution to phase out older, noisier jet aircraft that meet ICAO Chapter 2, but not ICAO Chapter 3, noise standards. As a consequence, Chapter 2 jet aircraft are currently not permitted to operate in Australia beyond their respective phaseout dates.

The proposed Regulations would enable operators of Chapter 2 jet aircraft, otherwise not permitted to operate in Australia, of which there are a number in this region, to have those aircraft maintained in Australia up to 31 December 2005. The 31 December 2005 deadline will provide a reasonable timeframe within which operators of such aircraft will be able to replace them with aircraft that meet ICAO Chapter 3 noise standards. The proposed Regulations would

also permit Chapter 2 jet aircraft, otherwise not permitted to operate in Australia, to be used for certain public interest purposes.

Key features of the proposed Regulations are:

- * An operator of a foreign Chapter 2 subsonic jet aircraft, not otherwise permitted to operate in Australia, may apply to the Secretary for permission to engage in air navigation in Australia, solely for the purpose of maintenance.
- * The Secretary may grant permission to the operator, and any permission must state (i) the period, ending no later than 31 December 2005, during which the aircraft may engage in air navigation, and (ii) any conditions with which the operator must comply (for example specific noise abatement procedures, hours of operation, etc).
- * The Secretary may revoke a permission if the aircraft is operated in a contravention of a condition of the permission, or if the operation of the aircraft has had, and is likely to continue to have, a significant noise impact on the public.
- * Maintenance is defined as "work that is necessary to ensure the continuing airworthiness of an aircraft at the standard required by the country on whose register of aircraft the aircraft is entered".
- * An operator of a Chapter 2 subsonic jet aircraft, not otherwise permitted to operate in Australia, may apply to the Secretary for permission to operate the aircraft for public interest purposes, including, but not limited to, the following:
 - (i) humanitarian purposes;
 - (ii) essential services to remote areas;
 - (iii) medical and emergency flights; and
 - (iv) scientific and research flights.
- * Decisions of the Secretary to the Department of Transport and Regional Services under the Regulations would be reviewable by the Administrative Appeals Tribunal (AAT).

The proposed Regulations would commence upon gazettal.

Further details of the proposed Regulations appear in the Attachment, together with a Regulation Impact Statement.

ATTACHMENT

Clause 1: Name of Regulations

The name of the regulations is the *Air Navigation (Aircraft Noise) Amendment Regulations 2000 (No. 1)*.

Clause 2: Commencement

The Regulations commence on gazettal.

Clause 3: Amendment of Air Navigation (Aircraft Noise) Regulations

Schedule 1 amends the *Air Navigation (Aircraft Noise) Regulations*.

SCHEDULE 1 - AMENDMENTS

Clause 1: Regulation 1 - Name of Regulations

The name of the Regulations is amended to the *Air Navigation (Aircraft Noise) Regulations 1984*. The change in name reflects current legislative drafting practice.

Clause 2: Regulation 2 - definition of *Authority*

The definition of authority is omitted (authority is specified in the body of the Regulations).

Clause 3: Regulation 2 - after definition of *inspector*

A definition of maintenance is inserted, defined as "work that is necessary to ensure the continuing airworthiness of an aircraft at the standard required by the country on whose register of aircraft the aircraft is entered".

Clause 4: Regulation 4 provides for delegation

The existing regulation 4 is substituted by a regulation that provides for the Secretary to delegate his or her powers under the Regulations to (i) an employee of the Department, or (ii) an officer of the Civil Aviation Safety Authority, or (iii) an employee of Airservices Australia.

Clause 5: Subparagraph 9(1)(b)(ii) - Circumstances in which an aircraft may engage in air navigation in Australia

This clause provides a consequential reference to the new regulation 10BA - permission to engage in air navigation for the purpose of maintenance.

Clause 6: Paragraphs 9(1)(4) and 9(2)(d)

This clause omits two references to "Civil Aviation Authority" and replaces them with "Civil Aviation Safety Authority".

Clause 7: Subregulation 9A(2A)

This clause inserts paragraph 9A(2A) which provides that, for paragraph 9A(2)(c), purposes that are in the public interest include, but are not limited to, (i) humanitarian purposes; (ii) the provision of essential services to a remote area; (iii) a medical or emergency flight; and (iv) a scientific or research flight.

Clause 8: Regulation 10BA - Permission to engage in air navigation for the purpose of maintenance

Regulation 10BA is inserted after the existing regulation 10B. It applies to foreign subsonic jet aircraft that comply with Chapter 2, but not Chapter 3 standards, and that apart from this regulation would be prohibited from engaging in air navigation in Australia.

The regulation provides that an operator of a foreign aircraft may apply to the Secretary for permission to engage in air navigation solely for the purpose of maintenance of the aircraft, and that the Secretary may by notice grant permission to the applicant. Any permission granted must state (a) the period, ending no later than 31 December 2005, during which the aircraft may engage in air navigation, and (b) any conditions with which the operator must comply. The regulation also provides that the operator of an aircraft must comply with any conditions, and for a penalty of 20 penalty units in cases of non-compliance.

The Secretary may revoke a permission if an aircraft is operated in contravention of a condition, or if the operation of the aircraft has had, and is likely to continue to have, a significant noise impact on the public.

The regulation also provides that if the Secretary refuses to grant a permission, or revokes a permission, the Secretary must give notice of the decision to the applicant.

Clause 9: Paragraph 11(1)(a)

This clause provides for the Secretary to appoint an officer of the Civil Aviation Safety Authority, or an employee of Airservices Australia, as an inspector.

Clause 10: Regulation 13 - Review of Decisions

This clause provides that application may be made to the Administrative Appeals Tribunal (AAT) for a review of a decision of the Secretary under Regulation 10BA. It also consolidates previous amendments to the Regulations that involve review of decisions that are appealable to the AAT.

Clause 11: Additional amendments relating to the Civil Aviation Regulations 1988

This clause omits "Civil Aviation Regulations" and inserts "*Civil Aviation Regulations 1988*" in regulation 2 (definitions of 'certificate of airworthiness' and 'registered') and paragraphs 9(1)(d), 9(1)(e), 9(2)(d) and 9(2)(e) of the *Air Navigation (Aircraft Noise) Regulations*.

REGULATION IMPACT STATEMENT

AIR NAVIGATION (AIRCRAFT NOISE) REGULATIONS AMENDMENT 2000 (No. 1)

1. ISSUE IDENTIFICATION

Australia's *Air Navigation (Aircraft Noise) Regulations* currently provide that a foreign-registered subsonic jet aircraft that meets International Civil Aviation Organization (ICAO) Chapter 2 noise standards, and that is fitted with engines of a bypass ratio of less than 2, is permitted to engage in international air navigation in Australia until either (i) the end of the 25th year after the day on which a certificate of airworthiness for the aircraft was first issued, or (ii) 31 March 2002, whichever occurs first. In the case of a Chapter 2 jet aircraft that is fitted with engines of a bypass ratio of 2 or more, the Regulations provide that such aircraft may engage in air navigation until 31 March 2002. The phaseout provisions reflect Australia's implementation of an ICAO resolution to phase out older, noisier jet aircraft that meet Chapter 2, but not Chapter 3, noise standards. As a consequence, non-compliant Chapter 2 subsonic jet aircraft are not permitted to operate in Australia beyond their phaseout dates.

In early 2000, an approach was made to several Australian aircraft maintenance companies by a foreign airline wishing to have maintenance work on its non-compliant Chapter 2 jet aircraft carried out in Australia. Subsequently, the Minister agreed that the Department of Transport and Regional Services should prepare an amendment to the *Air Navigation (Aircraft Noise) Regulations* that would permit flights to Australia by foreign non-compliant Chapter 2 subsonic jet aircraft, solely for maintenance purposes up to, but not beyond 31 December 2005.

The Department subsequently developed the *Air Navigation (Aircraft Noise) Amendment Regulations 2000 (No. 1) (the Regulations)*, to permit foreign non-compliant Chapter 2 subsonic jet aircraft to operate to Australia, solely for the purposes of maintenance, up to, but not beyond, 31 December 2005. This 'sunset' provision is intended to create a timeframe within which foreign operators of such aircraft would be able to replace those aircraft with quieter, compliant Chapter 3 jet aircraft. The Regulations also permit conditions to be placed on any approvals to require, for example, the operator to follow appropriate noise abatement procedures.

The amendment to the Regulations also provides that non-compliant Chapter 2 subsonic jet aircraft may be used for certain purposes that are in the public interest. Those public interest purposes include, but are not limited to, (i) humanitarian purposes, (ii) essential services to remote areas, (iii) medical and emergency flights and (iv) scientific and research flights.

2. DESIRED OBJECTIVES

The object of the Regulations is to enable foreign non-compliant Chapter 2 subsonic jet aircraft to operate to Australia solely for the purposes of maintenance, and to allow non-compliant Chapter 2 jet aircraft to operate on defined public interest grounds.

3. IDENTIFICATION OF OPTIONS

Option 1: Develop New Regulatory Arrangements

This is effectively the only option that would enable non-compliant jet Chapter 2 aircraft to operate to Australia for maintenance purposes, as there are no discretionary provisions in the existing *Air Navigation (Aircraft Noise) Regulations* that would permit such operations.

The Regulations also introduce certain public interest grounds to allow applications by operators of non-compliant Chapter 2 jet aircraft to be considered in relation to, but not limited to, those grounds.

Option 2: Administrative Arrangements

Administrative arrangements would not be a feasible alternative to the proposed Regulations, as the current *Air Navigation (Aircraft Noise) Regulations* do not permit any administrative or discretionary arrangements that would enable foreign non-compliant Chapter 2 subsonic jet aircraft to operate to Australia for maintenance purposes.

4. IMPACT ANALYSIS

Impact Group Identification

The groups that could be affected by the Regulations were identified as aircraft operators, airports and communities around airports with jet maintenance facilities.

Assessment of Benefit

The Regulations will enable any suitable aircraft maintenance facility in Australia to undertake maintenance work on foreign non-compliant Chapter 2 subsonic jet aircraft until, but not beyond, 31 December 2005. This could be of potential benefit to several maintenance companies that are located in regional areas of Australia. The Regulations also provide that public interest purposes include, but are not limited to, humanitarian purposes, essential services to remote areas, medical and emergency flights and scientific and research flights. This will provide greater certainty for operators of non-compliant Chapter 2 subsonic jet aircraft when applying to use such aircraft on public interest grounds.

Assessment of Costs - Government

The Regulations should not impose additional administrative costs for Government. The Regulations have a 'sunset' provision that limits any maintenance flight to no later than 31 December 2005. The public interest grounds should not impose any additional costs for Government, as the Department already handles applications for flights by non-compliant Chapter 2 jet aircraft.

Assessment of Costs - Consumers

There should be no direct costs imposed on consumers by the Regulations. The Regulations will permit a potential expansion in maintenance activity, by comparison with current maintenance activity, associated with foreign non-compliant Chapter 2 subsonic jet aircraft.

The Regulations will also enable any permission granted to be subject to conditions (for example - noise abatement procedures; hours of operation), and for any permission to be revoked if the aircraft is operated in contravention of a condition, or has had, and is likely to continue to have a significant noise impact on the public.

Effects on Small Business

The Regulations should impose no direct costs on small business. The Regulations could increase the potential for small business to participate in work associated with maintenance of foreign non-compliant Chapter 2 subsonic jet aircraft in Australia.

5. CONSULTATION

A consultation process involving major stakeholders was undertaken during the development of the draft Regulations, and comments received were taken into account prior to finalisation of the Regulations.

6. CONCLUSION AND RECOMMENDED OPTION

The Regulations will provide the mechanism through which foreign non-compliant Chapter 2 subsonic jet aircraft will be able to have maintenance work carried out in Australia until 31 December 2005. The Regulations will also permit operators of non-compliant Chapter 2 jet aircraft to apply to use those aircraft for purposes that include, but are not limited to, stated public interest purposes. Accordingly, Option 1 is the recommended option.

7. IMPLEMENTATION AND REVIEW

Implementation

The Regulations commence on gazettal.

On-going Consultation and Review

The Department has regular, formal contacts with major stakeholders, including airports, local communities, aviation industry and aviation agencies on aircraft environment matters. Those contacts will also facilitate on-going consultation on the operation of the new Regulations. Should a need be identified to review the Regulations, a formal consultation process will be undertaken to obtain the views of stakeholders, prior to any amendment.