

Air Navigation Amendment Regulation 2003 (No. 2) 2003 No. 260

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 260

Minute No. 19 of 2003 - Minister for Transport and Regional Services

Subject *Air Navigation Act 1920*

Air Navigation Amendment Regulation 2003 (No. 2)

Paragraph 26(1)(a) of the *Air Navigation Act 1920* (the Act) provides 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. Paragraphs 26(1)(d) and (e) of the Act specifically permit the making of regulations in relation to air navigation, being regulations with respect to trade and commerce with other countries and among the States, or with respect to any other matter with respect to which the Parliament has power to make laws.

The purpose of the Regulations is to:

1. impose restrictions on the advertising of non-scheduled flights;
2. lift certain international air embargoes; and
3. correct a previous drafting error.

Advertising of non-scheduled flights

Under section 15A of the Act, non-scheduled international flights (basically, charter operations) must not take on or discharge passengers, cargo or mail without permission granted under section 15D, unless the Secretary of the Department of Transport and Regional Services has determined under subsection 15A(3) that permission for the flight is not required.

Section 17 generally prohibits international flights to or from Australia unless the flights are: (i) permitted by the Secretary, or (ii) in accordance with an international airline licence or a permission under section 15D, or (iii) authorised by a determination by the Secretary under subsection 17(1 B).

Subsection 15C(2) of the Act requires charter operators who are applying for permission to carry passengers, cargo or mail on non-scheduled flights, to demonstrate, if the Secretary requests, that consumer protection measures have been established for ticket holders in the event of financial loss caused by failure of charter operators to fulfil their charter obligations.

One area of concern during the charter approval process is the practice of some charterers or charter operators of advertising a service before receiving the approvals referred to above. This potentially places the consumer at considerable risk if the service does not proceed or if necessary approvals are not given.

The Regulations prevent advertising of non-scheduled flights prior to obtaining appropriate permission, unless the advertisement contains the line "subject to Government approval". Similar provisions relating to scheduled international flights (ie. flights made under an international airline licence) are already in place in the *Air Navigation Regulations 1947* (the Principal Regulations).

Air embargoes

Article 41 of the United Nations Charter allows the Security Council to impose sanctions against aggressor nations. The Security Council uses sanctions as a way of enforcing its decisions by applying pressure on a state or entity, such as the Taliban, without resorting to the use of force. Such decisions of the Security Council are legally binding on all member nations. That is, all member nations are obliged to implement the sanctions.

Sanctions include restrictions on civil aviation. Australia has promulgated regulations made under the Act to implement Security Council decisions relating to restrictions on aircraft of designated countries flying over or landing in Australia and restrictions on Australian aircraft travelling to designated countries. These restrictions are commonly known as air embargoes and currently exist in one form or another against, Angola, Libya and Afghanistan.

Regulations 118 and 120 of the *Air Navigation Regulations 1947* operate to prevent Australian registered aircraft being flown to or from the Republic of Angola (Angola) and the Socialist Peoples's Libyan Arab Jamahiriya (Libya), without the express approval of the Secretary to the Department of Transport and Regional Services. These regulations also prevent any aircraft being flown between Australia and either Angola or Libya, without the express approval of the Secretary.

The Minister for Foreign Affairs has advised that the sanctions against Angola have been terminated and those against Libya have been suspended. The Regulations repeals the embargoes against Angola and Libya.

Correction of previous drafting error

The Regulation repeals subregulation 122(1) of the Principal Regulations. Due to an oversight, this provision was not repealed in 1988 when an associated provision to which it refers was repealed

Details of the Regulations are set out in the Attachment. The Office of Regulation Review has advised that the amendments do not require a Regulation Impact Statement.

The Regulations commenced on gazettal.

Authority: Section 26 of the *Air Navigation Act 1920*

ATTACHMENT

Clause 1 Name of Regulations

This clause provides that the Regulations are the *Air Navigation Amendment Regulations (No. 2)*.

Clause 2 Commencement

This clause provides that these Regulations commence on gazettal.

Clause 3 Amendment of *Air Navigation Regulations 1947*

This clause provides that Schedule 1 amends the *Air Navigation Regulations 1947*.

Schedule 1 Amendments

Item 1 - Part 6, after Division 3

This item inserts a new regulation 24A that prohibits advertising or making sale announcements about non-scheduled flights unless the Secretary to the Department of Transport and Regional Services has granted permission under section 15D of the Act for the carriage of passengers, cargo or mail on such flights, or determined under either subsection 15A(3) or subsection 17(1B) of the Act that permission for the flight is not required. However, advertisement or announcement prior to approval is not prohibited as long as it states that the operation of the flight is subject to Government approval.

Item 2 - Regulations 118 and 120

This item repeals the existing regulations 118 and 120, so that the prohibitions on aircraft flying to or from Angola and Libya are lifted.

Item 3 - Regulation 122(1)

This item repeals subregulation 122(1) as its operation relates to a repealed provision, and