

# **Air Navigation Amendment Regulations 2003 (No. 4) 2003 No. 331**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2003 No. 331**

Minute No. 2003/44 - Minister for Transport and Regional Services

Subject *Air Navigation Act 1920*

*Air Navigation Amendment Regulations 2003 (No. 4)*

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. Paragraph 26(2)(a) of the Act specifically allows the Governor-General to make regulations for or in relation to aviation security.

Part 7, Division 7, Subdivision 3 of the *Air Navigation Regulations 1947* ('the current Regulations') provides for the issue, expiry and cancellation of Aviation Security Identification Cards (ASICs). ASICs are a means of controlling access to security sensitive areas at an airport, and are issued to persons in accordance with the Principal Regulations. The requirements for the issue of ASICs have recently been updated to reflect the Government's decision to tighten background, and identity checking for persons working in security areas at Australian airports, in light of the increased threat to aviation security since 11 September 2001.

The purpose of the proposed Regulations is to correct minor problems with the form of ASICs under the current Regulations.

The proposed Regulations will apply retrospectively from 1 November 2003. This is necessary because a re-issue of ASICs commenced on that date, and this will ensure that the Regulations apply consistently to all ASICs issued on or after 1 November 2003.

Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations which are expressed to commence before the date of notification have no effect if, as a result, the rights of a person other than the Commonwealth would be disadvantaged, or liabilities would be imposed on a person other than the Commonwealth in respect of anything done or omitted to be done before the date of notification. Advice from the Australian Government Solicitor confirms that the proposed Regulations would not have these effects, and may therefore be validly made with retrospective effect.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

Details of the proposed Regulations are set out in the Attachment.

The proposed Regulations would commence upon gazettal.

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

## **ATTACHMENT**

Details of the proposed *Air Navigation Amendment Regulations 2003 (No. 4)*

### **Regulation 1**

Regulation 1 provides that the name of the regulations is the *Air Navigation Amendment Regulations 2003 (No. 4)*.

## **Regulation 2**

Regulation 2 provides that the proposed Regulations would be taken to have commenced on 1 November 2003.

## **Regulation 3**

Regulation 3 provides that Schedule 1 amends the *Air Navigation Regulations 1947*, as amended on 1 November 2003.

## **Schedule 1 Amendments**

### **Item 1: Regulation 95A (1) (b)**

This item substitutes a new paragraph 95A (1) (b). Paragraph 95A (1) (b) removes the requirement for a security identification card to bear the holder's full name as it appears on primary identification, but keeps the requirement for the card to display the person's name.

Implementation of the Aviation Security Identification Card (ASIC) reissue since 1 November 2003 has exposed some practical difficulties with the existing wording. For example, if an ASIC applicant has changed their name through marriage, or deed poll, their new name will not necessarily appear on any of the primary identification documents listed under Regulation 28, and therefore the current Regulations will require the person's former name to appear on the security identification card. In addition, there have been several cases where the ASIC applicant has several long names appearing on their primary identification; issuing Authorities have limited space on the card to place the name and in these cases it has not been practicable to fit their full name on the card. This paragraph thus provides flexibility for initials, or shortened names.

### **Item 2: Regulation 95A (2)**

This item substitutes a new subregulation 95A (2). The new regulation 95A (2) specifies that the particular details specified in existing subregulation 95A (1) must be displayed on the front of a security identification card, and that each card be protected against tampering by means of a Kinegram Hot Stamped Patch Optically Variable Device. This will be subject to subregulation 95A (2A) (see below).

### **Regulation 95A (2A)**

This item inserts a new subregulation after subregulation 95A (2). Subregulation 95A (2A) allows an exemption to be given by the Secretary of the Department of Transport and Regional Services for names to be placed on the reverse-side of the card. This provision allows a member of an airport's security force, or a law enforcement officer (including an Australian Protective Services officer), to place their name on the back of the security identification card. This provision was inserted to ensure the name of such a person is not publicly available where this information may potentially pose a threat to the ASIC holder's personal safety.