

Air Navigation Amendment Regulations 2004 (No. 1) 2004 No. 215

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 215

Subject - *Air Navigation Act 1920*

Air Navigation Amendment Regulations 2004 (No. 1)

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.

Subdivision 3 of Division 7, Part 7 of the *Air Navigation Regulations 1947* ('the Principal 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 Subdivision 3 of Part 7 of the Principal Regulations.

The purpose of the Regulations is to extend the timeframe for the re-issue of all ASICs, to update the list of weapons that may not be carried on an aircraft and to address a number of drafting issues that have been identified in reviewing the Principal Regulations.

The Regulations reflect the decision of the Minister for Transport and Regional Services to extend the timeframe for completion of the re-issue of all ASICs in a new tamper-evident format, with background checks conducted, from 30 June 2004 until 31 August 2004.

The Regulations also update the Schedule of Weapons (ie Schedule 1) to specifically include: ammunition for a firearm; an irritant, incapacitating or toxic liquid, powder, gas or chemical, or a dye, in a form capable of being discharged; and an imitation or replica of a firearm.

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

Details of the Regulations are set out in Attachment A.

The Office of Regulatory Review has agreed that the Regulations are mechanistic in nature and do not substantially alter existing arrangements or disadvantage affected businesses. Therefore a Regulatory Impact Statement was not required (see Attachment B).

The Regulations commenced on the date of their notification in the *Gazette*.

The Minute recommended that Regulations be made in the form in Attachment A.

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

ATTACHMENT A

Details of the *Air Navigation Amendment Regulations 2004 (No. 1)*

Regulation 1 Name of Regulation

Regulation 1 provides that the name of the regulations is the *Air Navigation Amendment Regulations 2004 (No. 1)*.

Regulation 2 Commencement

Regulation 2 provides that the Regulations commence on the date of their notification in the *Gazette*.

Regulation 3 Amendment of *Air Navigation Regulations 1947*

Regulation 3 provides that Schedule 1 amends the *Air Navigation Regulations 1947* ('the Principal Regulations').

Schedule 1 Amendments

Amendments to the Principal Regulations are described below by reference to the regulation amended, omitted or inserted.

Regulation 90 Security identification cards - issue by issuing body (Items 1 to 4)

The amendment to subparagraph 90(2)(c) inserts a new subparagraph (d) to specify that the issue of a security identification card (ie ASIC) is also subject to criteria specified in subregulations 90(3) and 90(6).

The amendment to subregulations 90(3) and (6) omits the penalty provisions contained in the subregulations as the same penalty for a contravention of subregulations 90(3) and (6) is prescribed in subregulation 90(2).

The amendment to subregulation 90(7) omits references to subregulations 90(3) and (6) as the same strict liability provision applies to an offence against subregulation 90(2).

Regulation 95 ASICs - period of issue and expiry (Items 5 to 8)

The amendment to subregulation 95(1) clarifies that an issuing body may issue an ASIC for a period of less than 2 years.

The amendment to subparagraph 95(2)(a)(ii) is required for consistency with the amendment to subregulation 95(1) so that an ASIC expires after two years or earlier if an issuing body issues an ASIC for a period of less than two years.

The amendment to paragraph 95(2)(b) omits 'after this regulation commences but' from the paragraph to correct a drafting error.

The amendment to sub-paragraph 95(2)(b)(ii) substitutes 30 June 2004 with 31 August 2004 to permit an extension in the timeframe for issuing bodies to complete the re-issue of ASICs.

Regulation 97 Cancellation of ASICs by issuing body (Item 9)

The amendment to subparagraph 97(1)(c)(vi) corrects a drafting error by replacing 'aviation security card' with 'security identification card'.

Regulation 99 Cancellation of ASICs by Secretary (Item 10)

The amendment to subparagraph 99(1)(c)(vi) corrects a drafting error by replacing 'aviation security card' with 'security identification card'.

Regulation 117 Review of decisions under this Division (Items 11 to 13)

The amendment inserts a new subparagraph 117(2)(a)(viii) to provide applicants with the right of appeal against the Secretary's decision under subregulation 90(5) to direct an issuing body not to issue an ASIC.

The amendment inserts a new subparagraph 117(2)(a)(xii) to provide applicants with the right of appeal against the Secretary's decision under subregulation 95A(2A) to refuse to issue, or refuse to approve the issue of an ASIC showing the holders name on the back.

The amendment to subparagraph 117(2)(b)(ii) corrects a drafting error relating to the issue of an ASIC subject to a condition by replacing the reference to 'subregulation 90(5)' with 'subregulation 90(8)'.

Schedule 1, items 16 and 17 (Item 14)

Schedule 1 to the Principal Regulations lists the items that are defined as weapons for the purpose of paragraph (b) of the definition of 'weapon' in subsection 3(1) of the Act.

The amendment substitutes item 16 to prescribe ammunition or a projectile, designed for use with or discharge from, or capable of being used with or discharged from, a firearm or a device or thing mentioned in items 1 to 6, 11 or 12.

The amendment inserts a new item 16A to prescribe an irritant, incapacitating or toxic liquid, powder, gas or chemical, or a dye, in a form capable of being discharged from a device mentioned in item 7.

The amendment substitutes item 17 to prescribe an imitation or replica of a firearm, or of a device or thing mentioned in items 1 to 16.