

Transport and Regional Services Legislation Amendment (Australian Protective Service) Regulations 2004 (No. 1) 2004 No. 222

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 222

Issued by the authority of the Minister for Justice and Customs

Air Navigation Act 1920

Airports Act 1996

Civil Aviation Act 1988

Transport and Regional Services Legislation Amendment (Australian Protective Service) Regulations 2004 (No. 1)

The purpose of the Regulations is to amend a range of regulations in the Transport and Regional Services portfolio as a consequence of the integration of the Australian Protective Service with the Australian Federal Police, and the repeal of the *Australian Protective Service Act 1987*.

Following the Cornall Review in 2001, the Australian Government determined that the Australian Protective Service should transfer from the Attorney-General's Department and become an operating division of the Australian Federal Police. Integration ensures the closest possible coordination between two of Australia's key counter terrorist organisations. It further consolidates and enhances national security initiatives that have been implemented following the terrorist attacks in the United States and Bali.

The *Australian Federal Police and Other Legislation Amendment Act 2004* (AFP Amendment Act) implemented amendments to the *Australian Federal Police Act 1979* to complete the integration of the Australian Protective Service with the Australian Federal Police and repealed the *Australian Protective Service Act 1987*. The AFP Amendment Act commenced on 1 July 2004.

The regulations amended, and the regulation-making powers for each, are as follows:

- The *Air Navigation Regulations 1947*:

Subsection 26(1) of the *Air Navigation Act 1920* provides, in part, that the Governor-General may make regulations not inconsistent with that Act prescribing all matters which by that Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to that Act, and regulations in relation to air navigation, being regulations with respect to any other matter which the Parliament has power to make laws. Paragraph 26(2)(a) of the *Air Navigation Act 1920* provides that without limiting the generality of subsection 26(1), regulations may be made for or in relation to aviation security.

- The *Airports (Control of On-Airport Activities) Regulations 1997*:

Section 252 of the *Airports Act 1996* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed; or necessary or convenient to be prescribed for giving effect to that Act.

- The *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998*:

Subsection 98(1) of the *Civil Aviation Act 1988* provides, in part, that the Governor-General may make regulations, not inconsistent with that Act, prescribing matters required or permitted by that to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to that Act, and regulations in relation to safety of air navigation, being regulations with respect to any other matter with respect to which the Parliament has power to make laws.

There are currently two sets of aviation safety regulations made under section 98: the *Civil Aviation Regulations 1988* (the 1988 Regulations) and the *Civil Aviation Safety Regulations 1998* (the Principal Regulations). As part of an extensive review of the aviation safety regulatory requirements in Australia, the 1988 Regulations are gradually being replaced by the Principal Regulations. However, both sets will continue to operate concurrently until the 1988 Regulations have been completely replaced by the Principal Regulations. The proposed Regulations therefore amend both the 1988 Regulations and the Principal Regulations.

The Regulations, among other things:

- delete references to "officer of the Australian Protective Service" and replace them with references to "protective service officer or special protective service officer of the Australian Federal Police";
- delete references to the "Australian Protective Service" and replace them with references to the "Australian Federal Police"; and
- delete references to the "*Australian Protective Service Act 1987*" and replace them with references to the "*Australian Federal Police Act 1979*".

The Minister for Transport and Regional Services has agreed to the Regulations.

The details of the Transport and Regional Services Legislation Amendment (Australian Protective Service) Regulations are set out in the [Attachment](#).

ATTACHMENT

Details of the *Transport and Regional Services Legislation Amendment (Australian Protective Service) Regulations 2004 (No. 1)*

Regulation 1

Regulation 1 prescribes how the regulations are to be cited.

Regulation 2

Regulation 2 provides that the regulations are taken to have commenced on 1 July 2004.

Regulation 3

Regulation 3 provides that Schedule 1 amends the *Air Navigation Regulations 1947*.

Regulation 4

Regulation 4 provides that Schedule 2 amends the *Airports (Control of On-Airport Activities) Regulations 1997*.

Regulation 5

Regulation 5 provides that Schedule 3 amends the *Civil Aviation Regulations 1988*.

Regulation 6

Regulation 6 provides that Schedule 4 amends the *Civil Aviation Safety Regulations 1998*.

Schedule 1 - Amendments of *Air Navigation Regulations 1947*

Item 1

Item 1 substitutes the heading to Regulation 52 with "Protective service officers may enter categorised airports". This corrects a typographical error in the current heading which refers only to "officer".

Item 2

Item 2 omits "*Australian Protective Service Act 1987*" in Regulation 52 and inserts "*Australian Federal Police Act 1979*". Regulation 52 provides that protective service officers, while exercising powers or performing functions, may enter and remain in categorised airports. Protective service officers powers and functions are now included in the Australian Federal Police Act.

Item 3

Item 3 omits "Part III of the *Australian Protective Service Act 1987*" in paragraph 71(2)(a) and inserts "Divisions 3 and 4 of Part II of the *Australian Federal Police Act 1979*". Regulation 71 provides for the qualifications of security force personnel. The powers of arrest and associated powers of protective service officers are now contained in Divisions 3 and 4 of the Australian Federal Police Act.

Item 4

Item 4 substitutes "a member, special member or protective service officer of the Australian Federal Police; or" in paragraph 72(1)(c) for "a member or special member of the Australian Federal Police; or". Paragraph 72(1) specifies those persons who are eligible to be a member of a

uniformed security force at a category 1 or 2 airport. Members and special members are currently included in paragraph 72(1)(c), while protective service officers are included in paragraph 72(1)(e). Protective service officers are now a class of Australian Federal Police employee. This amendment includes all classes of Australian Federal Police employee eligible to be a member of a uniformed security force in paragraph 72(1)(c).

Item 5

Item 5 omits paragraph 72(1)(e), which is redundant as a result of protective service officers being moved to paragraph 72(1)(c) - see item 4, above.

Schedule 2 - Amendments of *Airports (Control of On-Airport Activities) Regulations 1997*

Items 1 and 2

Items 1 and 2 amend Regulation 105 to omit reference to "an Australian Protective Service vehicle". With the integration of the Australian Protective Service with the Australian Federal Police, the reference to "a police vehicle" in paragraph (a) also covers vehicles used by protective service officers.

Items 3, 4, 5 and 6

Items 3, 4, 5 and 6 substitute "a protective service officer or special protective service officer of the Australian Federal Police" in each of paragraphs 114(b), 121(b), 132(b) and 143(b). Regulations 114, 121, 132 and 143 provide that the Secretary may appoint authorised persons. These paragraphs currently provide for "an officer of the Australian Protective Service" to be an authorised person. "Officers" of the Australian Protective Service are now "protective service officers and special protective service officers of the Australian Federal Police".

Schedule 3 - Amendment of *Civil Aviation Regulations 1988*

Item 1

Item 1 omits the definition of "air security officer" in subregulation 2(1). This definition is no longer required in the *Civil Aviation Regulations 1988* and will now be included in the Dictionary in Part 1 of the *Civil Aviation Safety Regulations 1998* (the CAS Regulations) (item 4 of Schedule 4).

Schedule 4 - Amendment of *Civil Aviation Safety Regulations 1998*

Item 1

Item 1 omits subregulation 92.195(1). This subregulation contains a definition of "air security officer", which will now be included in the Dictionary in Part 1 of the CAS Regulations (see item 4).

Item 2

Item 2 omits "(2) Regulations 92.020," in subregulation 92.195(2) and insert "Regulations 92.020," as subregulation 92.195(1) is to be omitted by Item 1.

Item 3

Item 3 omits "Australian Protective Service" from paragraph 92.195(2)(b) and insert "Australian Federal Police". Paragraph 92.195(2)(b) provides that ammunition issued to air security officers by the Australian Protective Service is not subject to the prohibitions in Regulations 92.020,

92.025 and 92.030. Ammunition for air security officers is now to be issued by the Australian Federal Police.

Item 4

Item 4 inserts a new definition of "air security officer" in the Dictionary of Part 1. An air security officer will mean a protective service officer or a special protective service officer of the Australian Federal Police who is directed by the Commissioner to carry out the duties of a position of air security officer. This updated definition replaces references to the "*Australian Protective Service Act 1987*" and "the Director of Protective Service" and replaces them with "the Australian Federal Police" and "the Commissioner" to reflect the integration of the Australian Protective Service with the Australian Federal Police.