



Air Navigation Amendment Regulations 2009 (No. 1)¹

Select Legislative Instrument 2009 No. 23

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Air Navigation Act 1920*.

Dated 25 February 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ANTHONY ALBANESE
Minister for Infrastructure, Transport, Regional Development
and Local Government

1 Name of Regulations

These Regulations are the *Air Navigation Amendment Regulations 2009 (No. 1)*.

2 Commencement

These Regulations commence on the commencement of Schedule 1 to the *Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Act 2008*.

3 Amendment of *Air Navigation Regulations 1947*

Schedule 1 amends the *Air Navigation Regulations 1947*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 3 (1), definition of *agreement*

omit

subsection 12 (2)

insert

paragraph 13 (3) (b)

[2] Subregulation 3 (1), after definition of *carry-on luggage*

insert

code sharing has the same meaning as in section 4 of the *International Air Services Commission Act 1992*.

[3] **Subregulation 3 (1), after definition of *infringement notice offence***

insert

International Air Services Commission means the body established under section 6 of the *International Air Services Commission Act 1992*.

[4] **Subregulation 3 (1), after definition of *relevant agreement***

insert

relevant authority, in relation to a licence holder and a scheduled international air service operated by the licence holder, means the government or an authority of a foreign country that:

- (a) has regulatory oversight of the licence holder; and
- (b) is a signatory to the relevant agreement.

[5] **Subregulation 3 (1), definition of *scheduled international air service***

omit

[6] **Part 6, Division 1**

substitute

**Division 1 Licensing of scheduled
international air services**

15 Purpose

This Division is made for the purposes of section 13 of the Act.

16 Applying for a licence

- (1) A person (the *applicant*) may apply in writing to the Secretary for the granting of a licence in relation to a scheduled international air service (an *international airline licence*).
- (2) Except as provided in subregulation (4) and regulation 16A, the application must include the following:
 - (a) the applicant's name and address;
 - (b) the applicant's contact telephone number in Australia;
 - (c) if the applicant is a corporation:
 - (i) if it is incorporated in Australia — its ACN number; and
 - (ii) if it is not incorporated in Australia — its business registration details; and
 - (iii) evidence of the place at which it was incorporated, or has its corporate headquarters; and
 - (iv) evidence of its corporate existence; and
 - (v) if paragraph (d) does not apply to the applicant — evidence of its ownership and control arrangements;
 - (d) if the applicant is an airline of a foreign country and is subject to principal place of business arrangements under a relevant agreement operating between the country and Australia — evidence of one or more of the following:
 - (i) substantial operations and capital investment in facilities of the corporation in the foreign country;
 - (ii) payment of tax by the corporation in the foreign country;
 - (iii) registration of the corporation's aircraft in the foreign country;
 - (iv) a substantial proportion of the corporation's employees being citizens of the foreign country;
 - (e) evidence of insurance coverage for the scheduled international air service in relation to the following:
 - (i) passenger liability;
 - (ii) third party liability;
 - (iii) cargo and baggage liability;

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- (iv) injury and loss as a result of active hostilities or civil unrest;
 - (f) a copy of the relevant Air Operator's Certificate for the scheduled international air service that has been issued under Division 2 of Part III of the *Civil Aviation Act 1988*;
 - (g) evidence of the relevant transport security program for the scheduled international air service approved under Part 2 of the *Aviation Transport Security Act 2004*;
 - (h) if the applicant is an Australian carrier under section 4 of the *International Air Services Commission Act 1992* — details of the applicant's capacity, as allocated by the International Air Services Commission;
 - (i) details of the scheduled international air services that are to be covered by the licence, including the type of aircraft to be used for each service;
 - (j) any other information relating to the application that the Secretary, in writing, requests.
- (3) Each person proposing to engage in a code sharing service must make an application under this regulation in relation to that service.
- (4) However, if the applicant is applying for an international airline licence only in relation to a code sharing service, the following apply to the applicant:
- (a) the application does not need to include the information in paragraphs (2) (f) and (g);
 - (b) the application must include details of the international airline the applicant intends to operate a code sharing service with.
- (5) If the Secretary makes a request to the applicant for information under paragraph (2) (j), the Secretary may refuse to make a decision on the application until the applicant provides the requested information.

16A Existing licences

An applicant is not required to include in the application the information in paragraphs 16 (2) (c) to (i) if:

- (a) at the time of the commencement of this regulation the applicant:
 - (i) holds an international airline licence; and
 - (ii) has held the licence continuously for two years or less; and
- (b) the applicant gives the Secretary a compliance declaration in the form published under regulation 18F.

17 Matters to be taken into account

In making a decision on the application, the Secretary may take into account:

- (a) anything in the application or in any other document submitted by the applicant to the Secretary; and
- (b) any other matter the Secretary considers relevant.

17A Granting a licence

- (1) The Secretary must make a decision on the application.
- (2) The Secretary may grant an international airline licence to an applicant for the operation of a scheduled international air service specified on the licence.
- (3) If the Secretary grants a licence, the Secretary must do so in the approved form.
- (4) The Secretary may approve a form for the purpose of subregulation (3).
- (5) If the Secretary decides to grant the licence, the Secretary may do so subject to conditions.

18 Refusal to grant a licence

If the Secretary decides not to grant an applicant an international airline licence, the Secretary must give the applicant notice in writing about the decision within 14 days after making the decision.

18A Duration of licence

- (1) A licence granted under regulation 17A commences on the day specified in the licence.
- (2) The licence continues in force until suspended or cancelled under regulation 18E or at the request of the licence holder.

18B Licence conditions

- (1) The following conditions apply to an international airline licence:
 - (a) the licence holder must continue to maintain a contact telephone number in Australia;
 - (b) the licence holder must provide to the Secretary a compliance declaration form in accordance with regulation 18G;
 - (c) if the Secretary gives the licence holder a written notice under subregulation 18G (3) or otherwise requests in writing, the licence holder must provide the following documents to the Secretary:
 - (i) if the licence holder is a corporation — current evidence of its corporate existence;
 - (ii) current evidence of the insurance coverage mentioned in paragraph 16 (2) (e);
 - (iii) a copy of the Air Operator's Certificate mentioned in paragraph 16 (2) (f);
 - (iv) current evidence of the transport security program mentioned in paragraph 16 (2) (g);
 - (d) the licence holder must comply with the following:
 - (i) the Act;
 - (ii) these Regulations;

- (iii) the *Air Navigation (Aircraft Noise) Regulations 1984*;
 - (iv) the *Civil Aviation Act 1988*;
 - (v) the Regulations made under the *Civil Aviation Act 1988*;
 - (vi) the *Aviation Transport Security Act 2004*;
 - (vii) the Regulations made under the *Aviation Transport Security Act 2004*;
 - (viii) the *Civil Aviation (Carriers' Liability) Act 1959*;
 - (ix) the Regulations made under the *Civil Aviation (Carriers' Liability) Act 1959*;
 - (x) if the licence holder is Qantas — the *Qantas Sale Act 1992*.
- (2) In addition to the conditions mentioned in subregulation (1) and any condition the Secretary imposes on the licence at the time of granting the licence, the Secretary may, after granting the licence, impose on the licence holder a further condition, whether or not the licence holder has breached any existing condition of the licence.
- (3) If the Secretary imposes a further condition under subregulation (2), the Secretary must give the licence holder notice of the proposed variation of the licence in accordance with regulation 18D.

18C Variation, suspension and cancellation of a licence

The Secretary may vary, suspend or cancel an international airline licence on any of the following grounds:

- (a) if the licence holder requests, in writing, that the licence be varied, suspended or cancelled;
- (b) if the licence holder breaches a condition of its licence;
- (c) if, in the Secretary's opinion:
 - (i) the licence holder is likely to breach a condition of its licence; and
 - (ii) the likely breach is reasonably expected to affect the safety or security of air navigation in Australia;

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- (d) if, in the Secretary's opinion:
- (i) adequate provision has not been made by the relevant authority to ensure that the licence holder substantially conforms to and complies with the standards, practices and procedures set out in the Chicago Convention and the Annexes to that Convention; and
 - (ii) the lack of provision is reasonably expected to affect the safety or security of air navigation in Australia;
- (e) if the licence holder does not operate a scheduled international air service in accordance with the approved timetable or in accordance with a condition subject to which the timetable is approved;
- (f) if, in the Secretary's opinion, it is necessary or desirable to do so for the purpose of preserving or promoting fair competition in international air transport services;
- (g) if the licence holder, or relevant authority in relation to the licence holder, has contravened the relevant agreement;
- (h) if there has been a substantial change in any of the matters to which the Secretary has had regard under subregulation 21 (2);
- (i) if it is in the public interest to vary, suspend or cancel the licence.

18D Notice of proposed action

- (1) Subject to subregulation (4), before taking action to vary, suspend or cancel the licence, the Secretary must give the licence holder notice in writing of the proposed variation, suspension or cancellation and a statement setting out the reason for the proposed action.
- (2) The licence holder must be given 35 days after the day the notice is given to respond to the notice.
- (3) The Secretary must consider any response from the licence holder before making a decision to vary, suspend or cancel the licence.

- (4) Subregulations (1), (2) and (3) do not apply if the Secretary is satisfied that there is a need to take urgent action because the ground for variation, suspension or cancellation of the licence holder's licence represents a risk to public safety or security.

18E Decision on variation, suspension or cancellation

- (1) Having taken any action required under regulation 18D, the Secretary may do 1 or more of the following:
- (a) vary the licence by imposing a further condition on the licence under subregulation 18B (2);
 - (b) suspend the licence;
 - (c) cancel the licence.
- (2) If:
- (a) the Secretary takes an action mentioned in paragraph (1) (a) or (b) (the *first breach*); and
 - (b) the Secretary later becomes satisfied that:
 - (i) the licence holder is not complying with the condition varying the licence; or
 - (ii) the licence holder is not complying with the terms of the suspension; or
 - (iii) some other ground for taking action under regulation 18C exists in relation to the licence holder;
- the Secretary may cancel the licence even if the period for fulfilling the condition, or the period of the suspension, for the first breach has not ended.
- (3) If the Secretary suspends the licence under paragraph (1) (b), the Secretary must give the licence holder notice in writing of the suspension, the date that the suspension takes effect, and the period of the suspension.
- (4) The period of a suspension for any particular breach, or on a particular ground, must not be more than 6 months in total.
- (5) If the Secretary cancels the licence under paragraph (1) (c), the Secretary must give the licence holder notice in writing of the cancellation and the date from which the cancellation takes effect.

- (6) A date under this regulation must not be a date before the date the notice is given.
- (7) A notice under this regulation must also include a statement setting out the reason that the licence was varied, suspended or cancelled, as the case may be.

18F Secretary to publish compliance declaration form

- (1) In respect of a particular period, the Secretary must make available a compliance declaration form containing questions about compliance with licence conditions during that period.
- (2) The form must be made available electronically.
- (3) The form must specify the period to which the form relates.

18G Licence holder must lodge compliance declaration

- (1) A licence holder must complete a compliance declaration form made available under subregulation 18F(1) for each scheduling period.
- (2) The licence holder must give the Secretary the form:
 - (a) not less than 35 days before the commencement of the scheduling period; or
 - (b) within a lesser period (if any) allowed by the Secretary.
- (3) The Secretary may, by written notice, require the licence holder to verify any information stated in the declaration.
- (4) For this regulation, *scheduling period* means a period in relation to which a licence holder applies to the Secretary for approval of a proposed timetable under regulation 20.

[7] After regulation 23

insert

Division 3A Offences relating to timetables and advertising

[8] After regulation 24

insert

24AA Restriction on advertising a service

A person commits an offence if the person:

- (a) advertises that the person operates, or will operate, a scheduled international air service to or from Australian territory; and
- (b) at the time of advertising, does not hold an international airline licence for the operation of the service; and
- (c) does not state in the advertisement that the operation of the service is subject to government approval.

Penalty: 50 penalty units.

[9] Division 3A, heading

omit

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.