

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2010 No. 39

Subject - *Air Navigation Act 1920*

*Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 1)*

Section 26 of the *Air Navigation Act* (the Act) provides for the Governor-General to make regulations for the purpose of:

- carrying out and giving effect to the Chicago Convention, and in regard to any Annex to the Convention relating to international standards and recommended practices; and
- in relation to air navigation, being regulations with respect to any other matter with respect to which the Parliament has power to make laws.

The *Air Navigation (Aircraft Noise) Regulations 1984* (the Regulations) implement aircraft noise standards established by the International Civil Aviation Organization (ICAO).

The Regulations require all aircraft operating in Australian airspace to meet the appropriate noise standards set out in Volume I of ICAO Annex 16 (the Annex) and allow for the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) to grant conditional permission to engage in air navigation to aircraft that do not meet the noise standards.

The purpose of the amendments to the Regulations is to remove obsolete regulations, revise definitions and references to ensure clarity and consistency with the Annex and the Civil Aviation Safety Regulations (CASRs), and to introduce new sub-regulations to specifically address adventure flight and air display activities.

In 1991, the Regulations were amended (SR 1991 No. 428) to prohibit all subsonic jet aircraft, added to the Australian Register after 1 January 1991, from operating in Australia unless they met the noise standards contained in Chapter 3 of the Annex. The amendments provided for a ten year phase-out period for the operation of non-compliant aircraft. As this phase-out period ended on 31 March 2002 these sub-regulations are now obsolete and will be removed. There would be no impact or effect of this action on current aviation activities.

The Amendment Regulations contain a number of miscellaneous ‘house-keeping’ changes to ensure the Regulations maintain their clarity and consistency. These changes update definitions in line with the current versions of the Annex and the CASRs, revise the Regulations to specify the form and content of a noise certificate, and include a requirement for the noise certificate to be carried on board the aircraft.

There would be no impact or effect of this action on current aviation activities.

If an aircraft (to which the Annex applies) does not meet the required noise standard, under the current regulations, the owner or operator may apply for special permission to operate the aircraft. The three grounds for granting permission to operate are:

- \* the extent to which the aircraft exceeds the noise standards is not significant<sup>1</sup>; or
- \* the historical significance of the aircraft justifies giving the permission; or
- \* the aircraft is to be used solely for a purpose that is in the public interest.

Since the 1998 introduction of the 'limited' category of aircraft under the CASRs there has been an emergence of historic/warbird type aircraft conducting commercial adventure flight operations and participating in Civil Aviation Safety Authority sanctioned air displays. There are currently no specific provisions in the Regulations for these types of operations.

The Amendment Regulations introduce two additional exemption categories to expressly manage adventure flight and air display activities. These additions provide a clearer regulatory regime for adventure flight and historic aircraft activities and realign the Regulations with the CASRs. The requirement for community consultation by adventure flight operators provides for the affected public to be better informed of the potential noise impacts of these aircraft.

The industry impact of introducing the adventure flight category would be:

- the requirement for all adventure flight operators to renew permissions annually and provide evidence of ongoing community support for their operations as part of this annual application process.

There would be no impact or effect of the introduction of the air show category on current aviation activities.

A Regulation Impact Statement was completed for the Regulations and an approval of this statement was received from the Office of Best Practice Regulation. Details of the Regulations are set out in the [Attachment](#).

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

The Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations would commence on the day after they are registered on the Federal Register of Legislative Instruments.

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<sup>1</sup> 'significant' is typically considered to be an immediate sound increase of more than 5dB.

The Minute recommends that the Regulations be made in the form proposed.

Authority:           Section 26 (1) of the  
*Air Navigation Act 1920*

[Minister's initials]

## **Details of the Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 1)**

### **Regulation 1 – Name of Regulations**

This regulation would provide that the title of the Regulations is the *Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 1)*

### **Regulation 2 – Commencement**

This regulation would provide for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

### **Regulation 3 – Amendment of Air Navigation (Aircraft Noise) Regulations 1984**

This regulation would provide that the *Air Navigation (Aircraft Noise) Regulations 1984* (the Principal Regulations) are amended as set out in Schedule 1.

### **Regulation 4 – Transitional**

This regulation would make provision for a twelve month transition period for operators with existing permissions to reapply under the revised regulatory framework outlined in subregulation 9A(2) of the Principal Regulations. The transition period approach would allow the annual administrative burden on operators and the Department to remain unchanged.

The regulation would also define *commencement time*, *existing noise certificate* and *new Regulation 7* for the purpose of clarifying the transitional arrangement applying to existing noise certificates following the introduction of regulation 7.

### **Schedule 1 – Amendments**

#### **Item [1] – Regulation 2, insert new Regulation**

This item would re-number current regulation 2 of the Principal Regulations as a new subregulation 2(1) for drafting purposes.

#### **Item [2] and Item [5] – Regulation 2, new definitions**

This item would insert new definitions for *adventure flight*, *agricultural operations* *air display* and *Annex* into regulation 2 of the Principal Regulations to ensure continuity with definitions contained in the CASRs.

#### **Item [3] - Regulation 2, definition of aircraft**

This item would make an amendment to the definition of *aircraft* at subparagraph (c)(iii) of the Principal Regulations by substituting the word *operations* in place of *purposes*. This change would be made to ensure continuity with definitions contained in the CASRs.

#### **Item [4] - Regulation 2, definition of aircraft**

This item would insert a new definition at subparagraph (c)(iv) into regulation 2 of the Principal Regulations, relating to the use of aircraft for *environmental operations*.

**Item [6] - Regulation 2, definitions of *certificate of airworthiness*, Chapter 2 standards, Chapter 3 standards and Commonwealth aircraft**

This item would make minor clarification amendments to the definitions of *certificate of airworthiness*, Chapter 2 standards, Chapter 3 standards and Commonwealth aircraft at regulation 2 of the Principal Regulations to ensure continuity with definitions contained in the Annex and reference to the CASRs.

**Item [7] - Regulation 2, after definition of *engage in conduct***

This item would insert a new definition for aircraft used for *environmental operations* after the definition of *engage in conduct* in regulation 2 of the Principal Regulations. This new definition would clarify the meaning of *environmental operations* as introduced in subparagraph 2(c)(iv) of the Principal Regulations.

**Item [8] - Regulation 2, definition of *foreign aircraft***

This item would make an amendment to the definition of *foreign aircraft* at regulation 2 of the Principal Regulations, to make proper reference to the *Air Navigation Regulations 1947*.

**Item [9] - Subregulation 2(1), definition of *maintenance***

This item would repeal the definition of *maintenance* as it relates to now redundant regulations and insert a new definition for *maximum take-off weight* at subregulation 2(1) of the Principal Regulations to ensure continuity with definitions contained in the Annex.

**Item [10] - Regulation 2, definition of *registered***

This item would make an amendment to the definition of *registered* at regulation 2 of the Principal Regulations, to make proper reference to the *Civil Aviation Safety Regulations 1998*.

**Item [11] - Regulation 2, definition of *the Annex***

This item would repeal the definition of *the Annex*. This definition would be replaced with the definition contained in Item 5. The item would also insert a new definition for *type certificate* at regulation 2 of the Principal Regulations to ensure continuity with definitions contained in the Annex.

**Item [12] - Regulation 2**

This item would insert a new subregulation into regulation 2 of the Principal Regulations, to convey that words and expressions used in the Regulations and the Annex have the same meaning.

**Item [13] - Subregulation 6A(5)**

This item would repeal subregulation 6A(5) of the Principal Regulations. This text would now be moved to form subregulation 2(2) of the Principal Regulations.

**Item [14] - Regulation 7**

This item would replace the existing regulation dealing with the required content and format of a noise certificate issued under regulation 7 of the Principal Regulations. It would also insert new subregulation 7A, requiring the noise certificate to be carried

on board the aircraft, in order to ensure consistency with the current requirements of the Annex.

**Item [15] - Paragraph 9(1)(a)**

This item would amend the existing text of paragraph 9(1)(a) of the Principal Regulations to allow for the inclusion of a reference to *Chapter 4 standards* and ensure consistency with the current version of the Annex.

**Item [16] - Paragraph 9(1)(b)**

This item would amend the existing text of paragraph 9(1)(b) of the Principal Regulations to allow for the inclusion of a reference to *Chapter 4 standards* and ensure consistency with the current version of the Annex.

**Item [17] - Paragraph 9(1)(d)**

This item would amend the existing text of paragraph 9(1)(d) of the Principal Regulations to make proper reference to the *Civil Aviation Safety Regulations 1998*.

**Item [18] - Paragraph 9(2)(d)**

This item would amend the existing text of paragraph 9(2)(d) of the Principal Regulations to make proper reference to the *Civil Aviation Safety Regulations 1998*.

**Item [19] - Paragraph 9(4)(a)**

This item would amend the existing text of paragraph 9(4)(a) of the Principal Regulations to allow for the inclusion of a reference to *Chapter 4 standards* and ensure consistency with the current version of the Annex.

**Item [20] - Paragraph 9(4)(b)**

This item would amend the existing text of paragraph 9(4)(b) of the Principal Regulations to remove reference to repealed regulations 10A and 10B and allow for the inclusion of a reference to *Chapter 4 standards*. This inclusion would ensure consistency with the current version of the Annex.

**Item [21] - Subregulation 9A(1A)**

This item would repeal subregulation 9A(1A) of the Principal Regulations in order to ensure consistency with the current version of the Annex.

**Item [22] - Subregulation 9A(2)**

This item would insert new subregulation 9A(2)(d) into the Principal Regulations to provide for the issuing of *air display* and *adventure flight* operation permissions.

**Item [23] - After Regulation 9A**

This item would insert new regulation 9AAA into the Principal Regulations to require adventure flight operators to engage in public consultation regarding potential noise from proposed operations.

**Item [24] - Subregulation 9AB(1)**

This item would remove reference to subregulation 9A(1A) of the Principal Regulations in order to ensure consistency with the current version of the Annex.

**Item [25] - After Subregulation 10(3)**

This item would insert new subregulation (3A) into the Principal Regulations to reflect the inclusion of new subregulation 7A.

**Item [26] - Subregulation 10(5)**

This item would amend the existing text of subregulation 10(5) of the Principal Regulations to reflect the inclusion of new subregulation 10(3A).

**Item [27] - Regulations 10A, 10B, 10BA, 10C and 10D**

This item would repeal regulations 10A, 10B, 10BA, 10C and 10D of the Principal Regulations to ensure consistency with the current version of the Annex.

**Item [28] - Paragraph 13(b)**

This item would amend the existing text of paragraph 13(b) of the Principal Regulations to reflect the repeal of Subregulation 10BA(3).

**Item [29] - Paragraph 13(c)**

This item would amend the existing text of paragraph 13(c) of the Principal Regulations to reflect the repeal of subregulation 10BA(4)(a).

**Item [30] - Paragraph 13(d)**

This item would amend the existing text of paragraph 13(d) of the Principal Regulations to reflect the repeal of subregulation 10BA(4)(b).

**Item [31] - Paragraph 13(e)**

This item would amend the existing text of paragraph 13(e) of the Principal Regulations to reflect the repeal of subregulation 10BA(6).

**Item [32] - Paragraph 13(f)**

This item would amend the existing text of paragraph 13(f) of the Principal Regulations to reflect the insertion of subregulation 10(3A).

**Item [33] – Paragraphs 13(g), (h) and (i)**

This item would remove paragraphs (g), (h) and (i) of regulation 13 to reflect the repeal of regulations 10C and 10D.

**Item [34] - Schedule**

This item would amend the reference to ‘the Schedule’ contained in the Principal Regulations to ‘Schedule 1’ and revise the associated table to ensure consistency with the current version of the Annex.

## Schedule 1 Noise standards and testing procedures for certain aircraft

(Regulation 6A)

| Column 1<br>Item No | Column 2<br>Type of Aircraft   | Column 3<br>Provisions of the Annex for noise levels | Column 4<br>Provision of the Annex for test procedure                          |
|---------------------|--|--|--|
| 1                   | Subsonic jet aeroplanes for which the application for a Type Certificate was submitted on or after 6 October 1977 and before 1 January 2006  | 3.2, 3.4, 3.5  | 3,2, 3.3, 3.6, 3.7<br>Appendix 2<br><br>Or<br>4.2, 4.3, 4.5, 4.6<br>Appendix 2 |
| 2                   | Propeller-driven aeroplanes with a maximum take-off weight exceeding 5700kg and less than 8618kg for which the application for a Type Certificate was submitted on or after 1 January 1985 and before 17 November 1988 | 3.2, 3.4, 3.5<br><br>Or<br>6.2, 6.3                  | 3,2, 3.3, 3.6, 3.7<br>Appendix 2<br><br>Or<br>6.2, 6.4, 6.5<br>Appendix 3      |
| 3                   | Propeller-driven aeroplanes with a maximum take-off weight exceeding 8618kg for which the application for a Type Certificate was submitted on or after 17 November 1988 and before 1 January 2006                      | 3.2, 3.4, 3.5<br><br>Or<br>4.2, 4.3, 4.4             | 3,2, 3.3, 3.6, 3.7<br>Appendix 2<br><br>Or<br>4.2, 4.3, 4.5, 4.6<br>Appendix 2 |
| 4                   | Subsonic jet aeroplanes for which the application for a Type Certificate was submitted on or after 1 January 2006  | 4.2, 4.3, 4.4  | 4.2, 4.3, 4.5, 4.6<br>Appendix 2   |
| 5                   | Propeller-driven aeroplanes with a maximum take-off weight exceeding 8618kg for which the application for a Type Certificate was submitted on or after 1 January 2006  | 4.2, 4.3, 4.4  | 4.2, 4.3, 4.5, 4.6<br>Appendix 2   |
| 6                   | Propeller-driven aeroplanes of a maximum certificated take-off weight exceeding 5700 kg for which the application for a type certificate was submitted before 1 January 1985   | 5.2, 5.4, 5.5  | 5.6, 5.7<br>Appendix 2   |



|    |  |   |                                      |
|----|--|---|--------------------------------------|
| 7  | Propeller-driven aeroplanes of a maximum certificated take-off weight not exceeding 8618kg for which the application for a type certificate was submitted before 17 November 1988                  | 6.2, 6.3  | 6.2, 6.4, 6.5<br>Appendix 3          |
| 8  | Propeller-driven STOL (short take-off and landing) aeroplanes  | <i>Guidelines provided in Attachment B [of the Annex; see heading] may be used for noise certification of propeller-driven STOL aeroplanes for which a certificate of airworthiness for the individual aeroplane was first issued on or after 1 January 1976.</i>   |                                      |
| 9  | Helicopters (refer to 8.1 of the Annex for Applicability)  | 8.2, 8.4, 8.5   | 8.2, 8.3, 8.6, 8.7<br>Appendix 2     |
| 10 | Installed auxiliary power units (APU) and associated aircraft systems during ground operations   | <i>Guidelines provided in Attachment C may be used for noise certification of installed auxiliary power units (APU) and associated aircraft systems in:</i><br><i>a) all aircraft for which the application for a Type Certificate was submitted, or another equivalent prescribed procedure was carried out by the certifying authority, on or after 6 October 1977; and</i><br><i>b) aircraft of existing type design for which the application for a change of type design involving the basic APU installation was submitted, or another equivalent prescribed procedure was carried out by the certifying authority, on or after 6 October 1977.</i> |                                      |
| 11 | Propeller driven aircraft of a maximum certificated take-off weight not exceeding 8618kg for which the application for a type certificate or derived version was submitted before 17 November 1988 | 10.4  | 10.2, 10.3, 10.5, 10.6<br>Appendix 6 |
| 12 | Helicopters with a maximum take-off weight not exceeding 3175kg  | 11.3, 11.4  | 11.4, 11.5, 11.6<br>Appendix 4       |
| 13 | Tilt-rotor aircraft  | <i>Guidelines provided in Attachment F may be used for noise certification of tilt-rotor aircraft for which the application for a Type Certificate was submitted, or another equivalent prescribed procedure was carried out by the certifying authority, on or after 13 May 1998 and to provide data for land-use planning purposes.</i>   |                                      |

**Item [35] - Further amendments - Schedule**

This item would amend corresponding regulations, paragraphs and subregulations of the Principal Regulations to reflect an updated reference to *Schedule 1*.