

EXPLANATORY STATEMENT

Issued by authority of the Minister for Infrastructure and Transport

Air Navigation Act 1920

Air Navigation Regulation 2016

The *Air Navigation Act 1920* (the Act) implements the Convention on International Civil Aviation (the Chicago Convention) and the International Air Services Transit Agreement under Australian law.

Section 26 of the Act provides that the Governor-General may make regulations prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed to give effect to the Act. Section 13 of the Act also states the regulations may provide for or in relation to the licensing of scheduled international air services operated over, into or out of Australian territory.

The primary purpose of the Air Navigation Regulation 2016 (Regulation) is to create a framework for ensuring compliance with the bilateral air services arrangements that are made consistent with the Chicago Convention. This is achieved through a system of International Air Licences (IALs) (required under section 12 of the Act) and approvals for timetables for international air services. A range of other issues relating to the Chicago Convention will also be implemented by the Regulation.

The provisions are largely consistent with arrangements administered under the Air Navigation Regulations 1947 (1947 Regulations), which are due to sunset on 1 April 2016 in accordance with the *Legislative Instruments Act 2003*.

The Regulation makes minor improvements to the existing provisions to streamline the issuing of IALs and timetable approvals. Key changes include:

- the removal of the 35 day mandatory ‘notice of proposed action’ period for changes to IALs in circumstances where the proposed action is made at the request of the IAL holder, removing an unnecessary administrative process;
- the streamlining of timetable variation requirements to no longer require filings in many circumstances, including most ad-hoc variations to a scheduled service operated by the IAL holder;
- in many circumstances, removing the requirement to file timetable variations for changes to marketed services resulting from the actions of an operating carrier; and
- removing the requirement to advertise a service as ‘subject to Government approval’ in circumstances where the airline has a valid IAL for the operation of the service.

The Regulation repeals a number of redundant provisions which are now dealt with under other legislative frameworks, in particular the *Aviation Transport Security Act 2004*. The changes are consistent with the fit-for purpose test for best practice regulation. The Regulation also modernises and simplifies existing provisions to comply with modern drafting conventions.

Following internal Government consultation, IAL holders were contacted in September 2015 to seek views on the operation of the 1947 Regulations. An exposure Draft of the Regulation was released for industry comment in January 2016. Industry is broadly supportive of the Regulation, which has a net deregulatory effect.

Details of the Regulation are set out in the Attachment.

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Authority: Subsection 26 of the
Air Navigation Act 1920

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Air Navigation Regulation 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The primary purpose of the Air Navigation Regulation 2016 (Regulation) is to create a framework for ensuring compliance with the bilateral air services arrangements that are made consistent with the Chicago Convention. The Regulation also repeals a number of redundant provisions which are now dealt with under other legislative frameworks, in particular the *Aviation Transport Security Act 2004*. These changes will ensure consistency with the fit-for purpose test for best practice regulation. The Regulation also modernises and simplifies existing provisions to comply with modern drafting conventions.

The Regulation makes minor improvements to the existing provisions to streamline the issuing of International Air Licences (IALs) and timetable approvals. Key changes include:

- the removal of the 35 day mandatory ‘notice of proposed action’ period for changes to IALs in circumstances where the proposed action is made at the request of the IAL holder, removing an unnecessary administrative process;
- the streamlining of timetable variation requirements to no longer require filings in many circumstances, including most ad-hoc variations to a scheduled service operated by the IAL holder;
- in many circumstances, removing the requirement to file timetable variations for changes to marketed services resulting from the actions of an operating carrier; and
- removing the requirement to advertise a service as ‘subject to Government approval’ in circumstances where the airline has a valid IAL for the operation of the service.

Further details of the instrument are set out in the Attachment to the Explanatory Statement.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Darren Chester Minister for Infrastructure and Transport

Details of the *Air Navigation Regulation 2016*

Part 1 – Preliminary

Section 1 – Name

This section provides that the title of the Regulation is the *Air Navigation Regulation 2016*.

Section 2 – Commencement

This section provides that the Regulation commences on 1 April 2016.

Section 3 – Authority

This section provides that the Regulation is made under the *Air Navigation Act 1920* (Act).

Section 4 – Schedules

This section provides for the operation of Schedule 1 to the Regulation. Schedule 1 of the Regulation provides for the repeal of the *Air Navigation Regulations 1947* (1947 Regulations).

Section 5 – Definitions

This section sets out a number of definitions for the purposes of the Regulation. A number of expressions used in the Regulation are defined in the Act, including *Australian territory* and *State Aircraft*.

Section 6 – Application of this instrument

This section provides for the territorial application of the Regulation. This section substantially remakes regulation 6 of the 1947 Regulations.

Subsection (1) outlines the forms of air navigation within Australian Territory to which the Regulation applies.

Subsection (2) provides that where applicable the Regulation extends to the extra-territorial operation of an Australian aircraft. This subsection ensures section 27 of the Act applies to the Regulation in its entirety. Australian aircraft is defined in section 3 of the Act.

Subsection (3) provides that the Regulation does not apply to state aircraft or a part of an aerodrome under the control of the Defence Force, and is made for the avoidance of any doubt as to the scope of this Regulation. State aircraft are defined in section 3 of the Act.

Part 2 – Statistical returns and other information

This part facilitates the collection of statistical returns from aircraft owners and operators by the Bureau of Infrastructure, Transport and Regional Economics (BITRE). The Part enables BITRE to respond to requests for data by the International Civil Aviation Organization in accordance with the Chicago Convention.

This part largely remakes regulation 12 of the 1947 Regulations with a number of modernisations to the drafting.

Section 7 – Statistical returns and other information

This section provides for the collection of certain statistical returns concerning the operation of aircraft in Australian Territory by BITRE. Section 7 largely remakes regulation 12(1) of the 1947 Regulations.

Subsection (1) states the persons to which subsection (2) applies.

Subsection (2) provides for the statistical information the Secretary may request from persons specified under subsection (1). Paragraph 7(2)(b) provides for the collection of information regarding passengers. The intended meaning is for aggregate statistical information on the number of passengers and other non-identified information, and does not involve the collection of data which activates the Australian Privacy Principles.

The information to be collected under Section (7) cannot be effectively collected by another means, is essential to the ongoing performance of the functions of BITRE and is an important part of meeting Australia's obligations under the Chicago Convention. The information published by BITRE, based on statistical information to be collected under this provision, is essential to the efficient management and operations of the Australian aviation industry.

Subsection (3) introduces a minimum notice period to ensure aircraft operators are given a reasonable period of time to comply with a request for information.

Section 8 – Traffic Reports, cost statistics and financial statements

This section provides for the collection of statistical information in relation to traffic, fuel consumption, revenue and cost statistics and financial statements. Section 8 largely remakes regulation 12(2) of the 1947 Regulations.

Subsection (2) slightly broadens the scope of regulation 12(2) of the 1947 Regulations to reflect the broader information requested in recent years by the Council of the International Civil Aviation Organization (the Council).

Section 9 – Information to be provided to the Council

This section allows for the provision of statistical information collected under section 8(2) to the Council.

Subsection (1) substantially remakes subregulation 12(4) of the 1947 Regulations and requires the Secretary to provide to the Council all information required by Article 67 of the Convention.

Subsection (2) gives the Secretary a discretionary power to provide information collected to assist the Council's research efforts under Article 55 of the Convention. BITRE currently requests this information from industry, but the introduction of this subsection clarifies the Secretary's ability to share the information to assist the Council with these research efforts.

Section 10 – Confidential information

This section provides for the conditions of the disclosure of information collected under subsections 7(2) and 8(2) by remaking subregulation 12(4) of the 1947 Regulations.

Section 11 – Failure to give information to the Secretary

This section makes it an offence to fail to supply information requested by the Secretary under subsections 7(2) and 8(2).

Section 26(2)(k) of the Act allows for the inclusion of penalties in Regulations made by the Governor General not exceeding a fine of 50 penalty units. The penalty is set as 10 penalty units, which is considered consistent with the nature and severity of the offence. This penalty is consistent with Subsection 12(7) of the 1947 Regulations.

Subsection 11(2) substantially remakes regulation 125 of the 1947 Regulations by providing for a specific remedy for a court to make an order requiring a defendant to comply with a notice referred in subsection (1). No additional court workload is anticipated due to the strong history of compliance with Regulation 12 of the 1947 Regulations.

Section 12 – Self-incrimination

This section provides for a partial abrogation of the privilege against self-incrimination. This partial abrogation ensures any information provided under Section 7 or 8 cannot be used in other criminal proceedings against the person providing the information, except in proceedings under section 137.1 or 137.2 of the Criminal Code for the provision of false or misleading information.

Part 3 – Licensing of scheduled international services

Division 1 – Purpose

Section 13 – Purpose of this Part

This section explains the purpose of Part 3 of the Regulation, which is to establish a framework for the licensing of scheduled international air services in accordance with section 13 of the Act.

This section substantially remakes regulation 15 of the 1947 Regulations.

Division 2 – Applying for a licence

Section 14 – Applying for a licence

This section provides for the application requirements for the granting of an international airline licence in relation to a scheduled international air service. Under Article 6 of the Chicago Convention no scheduled international air service may be operated over or into the territory of a contracting State, except with the permission of that State. In practice, this has led States to negotiate bilateral agreements to facilitate air traffic. An IAL is required by section 12 of the Act and primarily intended to ensure flights are operated consistent with relevant bilateral agreements.

Section 14 provides that an airline applying for an IAL must provide contact details, details about its corporate identity, evidence of several forms of insurance required in international aviation operations and evidence of compliance with other aviation regulatory frameworks as part of its IAL application.

This provision substantially remakes regulation 16 of the 1947 Regulations.

Division 3 – Grant of a licence

Section 15 – Matters to be taken into account

This section provides that in making a decision on an application under section 14, the Secretary may consider all of the content of the application and any other content they consider relevant to the determination.

This section substantially remakes regulation 17 of the 1947 Regulations.

Section 16 – Granting a licence

This section provides that the Secretary must make a decision on any application for an IAL.

Subsection (2) clarifies that an IAL is issued for a type of service whether Australian International Carriage or an air transport service by an airline of a relevant foreign government. Under regulation 17A(2) of the 1947 Regulations, the IAL had to specify the individual services to which the IAL applied. As this information is contained in timetable approvals under part 5, the inclusion of this information in IALs is redundant duplication.

Subsection (3) provides the Secretary must grant a licence in the approved form.

Subsection (4) provides that if an IAL is granted, it may be granted subject to conditions imposed by the Secretary. Section 19 provides for imposing licence conditions.

This section substantially remakes regulation 17A of the 1947 Regulations. Section 45 provides that any IAL issued under the 1947 Regulation will continue in force as if it were an IAL granted under this section.

Decisions under this section may be subject to review by the Administrative Appeals Tribunal.

Section 17 – Refusal to grant a licence

This section provides that the Secretary must notify the applicant of a decision to refuse an application under section 14 and must do so in writing within 14 days.

This section substantially remakes regulation 18 of the 1947 Regulations.

Section 18 – Duration of a licence

This section provides that an IAL commences on the day specified in the IAL and continues in force until the day it is suspended or cancelled in accordance with subsection 22(1) or at the licence holders request.

This section substantially remakes regulation 18A of the 1947 Regulations.

Section 19 – Licence conditions

This section provides for the conditions applied to an IAL.

Subsection (1) provides various IAL conditions, including ongoing compliance with various aviation related regulatory frameworks. The IALs are also conditional on the ongoing provision of compliance declaration forms in accordance with section 24.

Subsection (2) provides that the Secretary may impose further conditions on an IAL regardless of whether they have breached their licence.

Decisions under this subsection may be subject to review by the Administrative Appeals Tribunal.

Subsection (3) provides that the Secretary must give the IAL holder notice of any proposed variation to their conditions.

This section substantially remakes regulation 18B of the 1947 Regulations.

Division 4 – Variation, suspension or cancellation of a licence

Section 20 – Secretary may vary, suspend or cancel a licence

This section provides that the Secretary may vary, suspend, or cancel an IAL for various reasons. These circumstances include where the change has been requested by the IAL holder, where there has been a breach of this Regulation by the IAL holder or where it is considered necessary to do so in the public interest.

This section substantially remakes regulation 18C of the 1947 Regulations.

Section 21 – Notice of proposed action to vary, suspend or cancel a licence

This section provides for a requirement to notify IAL holders of a proposed action to vary, suspend or cancel an IAL unless subject to an exemption under subsection (4).

Subsection (2) requires this notice period to be 35 days and subsection (3) provides IAL holders with the opportunity to respond to a notice issued under this section and require the Secretary to consider any response to the notice before making a decision under section 22.

Subsection (4) provides that notice is not required if the Secretary is satisfied urgent action is required due to risks to public safety and security, or if variation, suspension or cancellation was requested in writing by the licence holder.

Section 22 – Decision on variation, suspension or cancellation of a licence

This section details the Secretary's power to vary, suspend or cancel a licence.

Subsection (1) enables the Secretary to vary, suspend or cancel an IAL (subject to the reasons outlined in Section 20 and notice period outlined in section 21), and clarify that the Secretary may vary a license by removing a condition.

Subsection (2) provides that the Secretary may cancel a licence following a failure by an IAL holder to comply with the conditions of an earlier variation or suspension, or if another reason for taking action exists (in accordance with Section 20), even if the period for fulfilling the condition of the earlier suspension or variation has not ended.

Subsections (3) to (6) provide that the Secretary must issue a notice in writing informing the IAL holder of the decision to vary, suspend or cancel a licence. Any of these notices must be accompanied with an explanation of the reason for the variation and advice of the day from which the change takes effect.

This section substantially remakes regulation 18E of the 1947 Regulations.

Decisions under this section may be subject to review by the Administrative Appeals Tribunal.

Division 5 – Compliance declarations

Compliance declaration forms are intended to provide a mechanism to ensure IAL holders continue to meet their licence conditions.

Section 23 – Secretary to publish compliance declaration form

Subsection (1) provides that the Secretary must make available a compliance declaration form.

Subsection (2) provides that this form must be made available electronically. Currently this form is made available on the Department's website at:

https://infrastructure.gov.au/aviation/international/ial/licence_status.aspx

The compliance declaration form is required to specify the period to which it relates in accordance with subsection (3). Currently timetable filings are made in two scheduling periods each year corresponding with the Northern Summer and Northern Winter.

This section substantially remakes regulation 18F of the 1947 Regulations.

Section 24 – Licence holder must lodge compliance declaration

This section provides that an IAL holder must complete a compliance declaration for each scheduling period.

Subsection (2) requires an IAL holder to provide the Secretary with a compliance declaration for each scheduling period.

Subsection (3) enables the Secretary to audit compliance with IAL conditions by providing that the Secretary may request verification of any information stated in the compliance declaration. This information may be used to inform decisions relating to IALs.

This section substantially remakes regulation 18G of the 1947 Regulations.

Part 4 – Tariffs

This part provides a mechanism for the Secretary to approve the tariffs (price) of an international air transport service.

The Part reflects provisions included in various bilateral air services arrangements negotiated by the Australian Government with foreign governments, which enable the aeronautical authorities party to the agreement to require airlines to submit their tariffs for approval. The inclusion of these provisions in bilateral air services arrangements reflects common international practice.

The Part substantially remakes Part 6 Division 3 of the 1947 Regulations.

It is not envisaged the Australian Government would utilise the Part in the current market environment, however, noting the ability of foreign governments to impose these requirements on airlines serving the Australian international aviation market, it remains appropriate for the Australian Government to similarly retain this mechanism.

Section 25 – Submitting tariffs for approval

This section provides for the circumstances in which an IAL holder submits a tariff for approval.

Subsection (1) provides that a licence holder may choose to voluntarily submit a tariff for consideration.

Subsection (2) provides that the Secretary may direct an IAL holder to submit a tariff for their consideration.

The Secretary's direction is required by subsection (3) to state a period of at least 14 days within which the IAL holder is required to reply to the Secretary's request and the form in which they may submit their tariff.

Subsection (4) requires an IAL holder to comply with a direction under subsection (2).

This section substantially remakes regulation 19 of the 1947 Regulations.

Decisions under this section may be subject to review by the Administrative Appeals Tribunal.

Section 26 – Approval of tariffs

This section provides a mechanism for the approval of tariffs.

Subsection 26(1) provides that the Secretary may approve, approve subject to conditions, or refuse to approve a tariff.

Subsection 26(2) outlines the matters the Secretary must take into account when making a decision under subsection 26(1).

Subsection 26(3) requires the Secretary to provide written of the decision and reasons for the decision.

Subsection 26(4) provides the tariff is to be approved if the Secretary had not made a decision on the tariff within 7 days.

This section substantially remakes regulation 19A of the 1947 Regulations.

Decisions under this section may be subject to review by the Administrative Appeals Tribunal.

Section 27 – Additional information

This section enables the Secretary to request additional information before making a decision on a tariff, and substantially remakes regulation 19B of the 1947 Regulations.

Section 28 – Application of tariffs

This section prevents airlines from applying a tariff that the Secretary had refused to approve, or from applying a tariff without the conditions applied by the Secretary, and substantially remakes regulation 19C of the 1947 Regulations.

Part 5 – Timetables etc.

This Part provides a system for approving timetables for services operated by IAL holders. The system of timetable approvals ensures services operated by IAL holders are consistent with the commercial entitlements granted under the relevant bilateral arrangements.

Division 1 – Approval of timetables

Section 29 – Application for approval of a proposed timetable

This section substantially remakes regulation 20 of the 1947 Regulations.

Subsection (1) establishes a requirement for an IAL holder to apply for timetable approval for each scheduled service to or from Australian territory.

Subsection (2) prescribes the matters to be included in an application and the requirements an application must meet. This includes providing for the Secretary to prescribe the form an application must be in.

Subsection (3) requires an application to be lodged at least 35 days prior to the proposed commencement of a service, unless otherwise allowed by the Secretary.

Subsection (4) provides for the Secretary to require an applicant to provide further information to enable a decision to be made on an application. This includes removing any obligation on the Secretary to consider the application until the requested information is provided.

Section 30 – Approval of a proposed timetable

This Section provides for the Secretary to make decisions on an application for a timetable and substantially remakes regulation 21 of the 1947 Regulations.

Subsection (1) provides for the Secretary to approve, reject, approve with specified variations, or approve with conditions, a timetable.

Subsection (2) prescribes the matters the Secretary may have regard to in making a decision under Subsection (1), including consideration of relevant air transit agreements, traffic, other approved timetables, the public interest and any other relevant matters. Matters the Secretary may have regard to also include consideration of whether the applicant, or the government authority of the relevant foreign country, has impeded, engaged in discriminatory or restrictive practice, or denied a fair and equal opportunity, against an Australian airline. The Secretary may also consider whether the applicant, or the government authority of the relevant foreign country, has contravened the relevant bilateral agreement governing the service.

Decisions under this section may be subject to review by the Administrative Appeals Tribunal.

Division 2 – Variation, suspension or cancellation of timetables

Section 31 – Variation, suspension or cancellation of approved timetables

This section substantially remakes regulation 22 of the 1947 Regulations, providing for the Secretary to vary, suspend or cancel approved timetables.

Subsection (1) provides for the Secretary to vary, suspend or cancel an approved timetable if the licence holder operates, or fails to operate a service otherwise than in accordance with an approved timetable. The subsection also provides for the Secretary to vary, suspend or cancel an approved timetable if the licence holder, or the government authority of the relevant foreign country, has impeded, engaged in discriminatory or restrictive practice, or denied a fair and equal opportunity, against an Australian airline, or has contravened a relevant bilateral agreement.

Subsection (1) also provides for the Secretary to vary, suspend or cancel an approved timetable if matters required in the application change substantially, or if variation, suspension or cancellation is in the public interest.

Subsection (2) provides for licence holders to apply for a timetable variation, or to have a condition varied or removed.

Subsection (3) provides for the Secretary, on application from the licence holder, to vary a timetable, vary the timetable with alterations, vary or remove conditions imposed by the Secretary, or refuse to vary the timetable or conditions.

Subsection (4) requires the Secretary to notify a licence holder in writing of their decision relating to a timetable or condition variation, suspension or cancellation. This includes a requirement to provide reasons for the decision, as well as details of any variations, suspension periods or cancellation dates.

Decisions under this section may be subject to review by the Administrative Appeals Tribunal.

Section 32 – Circumstances for which variation not required

This section provides for the circumstances in which an IAL holder is not required to seek a variation under Section 31.

Subsection (1) provides that a licence holder is not required to apply for a timetable variation where the variation relates solely to a timing change that does not alter the number of services per week, a cancellation which does not permanently change the approved timetable, or where the service will be completed within 48 hours of the scheduled time. The Subsection also provides that the substitution of aircraft does not require a variation where that aircraft type was listed for that particular service in the original timetable application.

It should be noted the regulation does not affect any law that applies in relation to a curfew at an Australian aerodrome.

Subsection (2) clarifies that a licence holder is not required to apply to the Secretary for a variation of an approved timetable if they are engaged in a code sharing service where they are the marketing carrier for a service operated by another airline, and the marketing carrier is not subject to a capacity allocation by the International Air Services Commission.

Section 33 – Conditions that may be imposed on a timetable

This section substantially remakes regulation 23 of the 1947 Regulations but modernises the form and language of the provision in line with modern drafting practices.

The Section outlines conditions that may be imposed upon a timetable in addition to those provided for under Sections 30 and 31. Under the Section, timetable conditions could be imposed relating to the traffic, or type of traffic, permitted to be carried on the route, including part of the route. The Section also provides for imposing conditions on advertising, including whether advertising is permitted and the manner and content of advertising, for the service or certain other services operated by the licence holder.

Division 3 – Offences relating to timetables and advertising

Section 34 – Offence—operation of air service not in accordance with approved timetable

This section substantially remakes subregulation 24(1) of the 1947 Regulations but modernises the form and language of the provision in line with modern drafting practices.

The section establishes an offence for operating a scheduled international air service to or from Australian territory if the service is not operated in accordance with an approved timetable and relevant conditions.

The penalty is set as 50 penalty units, which is considered consistent with the nature and severity of the offence. The penalty is also consistent with the 1947 Regulations.

Subsection (2) clarifies that subsection (1) (the offence) does not apply if the service is not operated in accordance with an approved timetable or relevant conditions, and a circumstance applies where a variation is not required, as is provided for under Section 32.

Section 35 – Offence—advertising unlicensed services

This section substantially remakes regulation 24AA of the 1947 Regulations.

The Section establishes an offence for advertising a scheduled international air service where the person does not hold an international airline licence for the service if they do not state the operation of the service is subject to Government approval.

The penalty is set as 50 penalty units, which is considered consistent with the nature and severity of the offence. The penalty is also consistent with the 1947 Regulations.

Section 36 – Offence—advertising non-scheduled flights

This section substantially remakes regulation 24A of the 1947 Regulations but modernises the form and language of the provision in line with modern drafting practices.

Subsection (1) establishes an offence for a person advertising or publicly announcing they are willing to sell seats or make capacity available on a non-scheduled flight.

The penalty is set as 25 penalty units, which is considered consistent with the nature and severity of the offence.

Subsection (2) outlines the circumstances where the offence under Subsection (1) does not apply. These circumstances includes where the Secretary has permitted the flight, or has determined permission is not required, or where the advertising or public announcement states the operation is subject to Government approval.

Part 6 – International and other matters

This part provides for the regulation of international aviation matters not dealt with elsewhere in Australia's regulatory frameworks.

Section 37 – Smoking on an aircraft

This section ensures the ongoing implementation of Australia's commitment to prohibit smoking on passenger-carrying aircraft.

Subsection (1) establishes an offence for smoking on an aircraft engaged in international carriage, other than an aircraft engaged in the carriage of freight-only. The penalty is set as 25 penalty units, which is considered consistent with the nature and severity of the offence. The penalty provision has also been modernised to prescribe the penalty in terms of penalty units, in line with modern drafting practice.

Subsections (2) and (3) establish a requirement for the operators of aircraft engaged in international carriage, other than an aircraft engaged in the carriage of freight-only, as part of an air transport service, to provide notices indicating smoking is prohibited at all times. These subsections require the notice to be legible and displayed in a conspicuous place.

Subsection (4) clarifies that an aircraft operator's failure to meet notice requirements is not a defence from prosecution for a person who smokes aboard an aircraft in contravention of subsection (1).

This section substantially remakes regulation 25 of the 1947 Regulations.

Section 38 – Exemption of aircraft and spare parts from seizure on patent claims

This section implements Article 27 of the Chicago Convention into Australian law, and protects certain aircraft, parts and equipment from claims relating to an infringement of Letters Patent.

This section substantially remakes regulation 148 of the 1947 Regulations.

Section 39 – Secretary may give directions in relation to the Convention

This section provides that the Secretary may provide a direction in relation certain aerodromes to ensure compliance with international standards, recommended practices and procedures developed in accordance with the Chicago Convention or the Air Transit Agreement.

This section substantially remakes regulation 10 of the 1947 Regulations.

Part 7 – Miscellaneous

Section 40 – Change of address

This section makes it an offence for a licence holder to fail to inform the Secretary of a change of address.

Subsection (2) provides that an IAL holder has a period of 28 days in which to inform the Secretary of any change to their place of business or address for communication.

The penalty is set as 10 penalty units, which is considered consistent with the nature and severity of the offence.

This section substantially remakes regulation 144 of the 1947 Regulations but modernises the form and language of the provision in line with modern drafting practices.

Section 41 – Production of licences and other documents

This section establishes the requirement to provide certain documents to the Secretary if requested.

Subsection (1) provides that an IAL holder must produce their IAL if requested by the Secretary.

A pilot or owner of an aircraft must produce any list of names of passengers or bills of lading for cargo on the aircraft if requested by the Secretary under subsection (2). This subsection is made for the purposes of Article 29 of the Chicago Convention and to assist the Council in acquiring this information should it be required by the Council as part of its functions not otherwise covered by other legislative frameworks.

This section substantially remakes regulation 146 of the 1947 Regulations.

Section 42 – Protection of certain rights

This section clarifies the Regulation does not confer any rights for aircraft to alight on land, or prejudice the rights or remedies available to persons or property injured by aircraft.

This section substantially remakes Regulation 11 of the 1947 Regulations.

Section 43 – Evidence

Subsection 43(1) enables the Secretary to certify certain documents are true copies, and subsection 43(2) enables the Secretary to certify whether certain regulatory approvals under the Regulation were in place at a particular time.

Subsection 43(3) provides that such certifications are prima facie evidence of the facts stated therein in courts, reviews, investigations and inquiries.

This section substantially remakes subregulations 142(2), 142(3) and 142(5) of the 1947 Regulations.

Normal probity arrangements for decision making ensure evidentiary certificates are issued by a responsible officer who is independent of the parties/prosecution involved in any case for which evidentiary certificates are issued. This is further supported by the APS values and code of conduct which requires impartial and professional behaviour.

Section 44 – Delegation by Secretary

This section provides for the capacity of the Secretary to delegate his or her powers.

Subsection (1) provides for the Secretary to delegate any of their functions or powers under the Regulation to an APS officer of the Department.

The ability to delegate the Secretary's powers to any APS officer in the Department is considered necessary and appropriate in light of the large number of regulatory approvals processed under the Regulation, and the specialised knowledge that is frequently required to process them appropriately.

Subsection (2) provides that a delegate of the Secretary must comply with any written directions of the Secretary in exercising their functions.

This section substantially remakes Regulation 8 of the 1947 Regulations.

Part 8 – Transitional Provisions

This Part provides for transitional arrangements to repeal the 1947 Regulations and establish the Regulation. These transitional provisions minimise the impact upon industry by allowing existing decisions and authorities to continue to have effect for the purposes of the Regulation.

Section 45 – Transitional–licences

This section provides for an IAL to continue to have effect for the purposes of the Regulation, including any relevant conditions. Nothing in this section is intended to require an IAL holder under the 1947 Regulations to reapply for an IAL.

Subsection (2) clarifies a transitioned licence and/or licence condition may be varied, suspended or cancelled after coming into effect for the purposes of the Regulations.

Section 46 – Transitional–tariffs

This section provides for a tariff to continue to have effect for the purposes of the Regulation, including any relevant conditions. Nothing in this section is intended to require a licence holder to resubmit a tariff for approval.

Section 47 – Transitional–timetables

This section provides for timetable approvals to continue to have effect for the purposes of the Regulation, including any relevant conditions. Nothing in this section is intended to require a licence holder under the 1947 Regulations to reapply for timetable approval.

Subsection (2) clarifies a transitioned timetable and/or timetable condition may be varied, suspended or cancelled after coming into effect for the purposes of the Regulation.

Section 48 – References to provisions of the Air Navigation Regulations 1947

This Section clarifies that a reference to the 1947 Regulations may be taken to be a reference to the Regulation after 1 April 2016. This arrangement minimises the impact of the introduction of the Regulation by avoiding the need to undertake a broad review and redrafting of documentation which may refer to the 1947 Regulations.

Schedule 1– Repeals

This schedule provides that the 1947 Regulations are repealed.