



Air Navigation Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following instrument.

Dated 24 March 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Darren Chester
Minister for Infrastructure and Transport

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Part 1—Preliminary

1 Name

This is the *Air Navigation Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2016.	1 April 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Air Navigation Act 1920*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

- (1) In this instrument:

ACN has the same meaning as in the *Corporations Act 2001*.

Act means the *Air Navigation Act 1920*.

agreement means the Air Transit Agreement or another agreement or arrangement referred to in paragraph 13(3)(b) of the Act.

airline means the operator of an air transport service.

air transport service means a service for the carriage of persons or cargo by air for hire or reward.

Section 5

approved form means a form approved by the Secretary under section 45 for the provision in which the expression is used.

approved timetable means:

- (a) a timetable approved under paragraph 30(1)(a) or (b); or
- (b) if a timetable referred to in paragraph (a) of this definition is varied in accordance with subsection 31(1) or (3)—the timetable as varied.

Australian international carriage has the meaning given by subsection 27(2) of the Act.

cargo means property carried on board an aircraft other than stores, baggage or carry-on luggage.

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

Commonwealth aircraft means an aircraft that is in the possession, or under the control, of the Commonwealth or an authority of the Commonwealth or is being used wholly or principally for a purpose of the Commonwealth (other than aircraft of any part of the Defence Force).

Convention means the Chicago Convention, as amended by the Protocols referred to in subsection 3A(2) of the Act, and includes any Annex to the Convention relating to international standards and recommended practices (being an Annex adopted in accordance with the Convention).

Council means the Council of the International Civil Aviation Organization.

grant, in relation to an international airline licence, means the grant of the licence, either by way of initial issue or by renewal from time to time.

international airline licence means a licence granted under section 16.

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

licence holder means a person who holds an international airline licence that is in force.

owner, of an aircraft, has a meaning affected by subsection (2).

relevant agreement, for a scheduled international air service, means an agreement that governs the service.

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 relevant foreign country that:

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

relevant foreign country, for an airline, means a country (other than Australia):

- (a) in which the airline is incorporated; or
- (b) in which the airline has its place of business; or

- (c) in which any aircraft belonging to the airline is registered; or
- (d) the government of which directly or indirectly controls the airline; or
- (e) of which the airline is a designated airline for the purposes of the relevant agreement for a scheduled international air service that the airline operates.

scheduling period, for a licence holder, means a period in relation to which the licence holder applies to the Secretary for approval of a proposed timetable under section 29.

stores, in relation to an aircraft, means items properly for use, sale or consumption on board the aircraft in flight.

tariff means both of the following:

- (a) the price for the carriage of passengers, baggage or cargo, other than mail;
- (b) the conditions governing the availability of the price.

timetable, in relation to a scheduled international air service, includes each of the following:

- (a) the route of the service;
- (b) the times of departure from, and arrival at, each terminal and any intermediate stopping place on the route;
- (c) the frequency of the service;
- (d) the capacity on all or part of the route of the service concerned;
- (e) the type of aircraft operating, or that may operate, on all or part of the route of the service concerned.

traffic includes a passenger or an item of mail or cargo.

type of traffic includes traffic identified by reference to its earliest origin or intended ultimate destination, whether or not that origin or destination is on the route of the service concerned.

Owner of an aircraft

- (2) A reference in this instrument to the owner of an aircraft includes a reference to the hirer of an aircraft if, under a contract for the hire or charter of the aircraft, the control, maintenance and operation of the aircraft is vested in the hirer.

6 Application of this instrument

- (1) This instrument applies to and in relation to each of the following:
 - (a) international air navigation within Australia;
 - (b) air navigation in relation to trade and commerce with other countries and among the States;
 - (c) air navigation within the Territories;
 - (d) air navigation to or from the Territories;
 - (e) air navigation in which a Commonwealth aircraft is engaged;
 - (f) all other air navigation within Australian territory of a kind not specified in paragraph (a), (b), (c), (d) or (e).

Section 6

- (2) Unless otherwise provided, this instrument extends to acts, omissions, matters and things in relation to Australian aircraft engaged in air navigation outside Australia.
- (3) This instrument does not apply to:
 - (a) state aircraft; or
 - (b) an aerodrome, or any part of an aerodrome, that is under the control of any part of the Defence Force.

Part 2—Statistical returns and other information

7 Statistical returns and other information

- (1) Subsection (2) applies in relation to a person who:
 - (a) holds a certificate of registration for an aircraft under the *Civil Aviation Safety Regulations 1998*; or
 - (b) operates an aircraft.
- (2) The Secretary may, by written notice given to the person, require the person to give the Secretary any specified statistical information that the person possesses, or is reasonably able to obtain, in relation to any of the following:
 - (a) the aircraft;
 - (b) passengers or cargo carried on the aircraft;
 - (c) work performed using the aircraft;
 - (d) flights made by the aircraft.
- (3) The notice must specify a reasonable period within which the person must provide the information to the Secretary. The period must end at least 7 days after the day the notice is given.

8 Traffic reports, cost statistics and financial statements

- (1) Subsection (2) applies in relation to a person who is:
 - (a) an airline; or
 - (b) the owner of an aircraft engaged in an air transport service.
- (2) The Secretary may, by written notice given to the person, require the person to give the Secretary information relating to any of the following:
 - (a) traffic;
 - (b) fuel consumption;
 - (c) revenue and cost statistics;
 - (d) financial statements (including details of all receipts and the sources of those receipts).
- (3) The notice must specify a reasonable period within which the person must provide the information to the Secretary. The period must end at least 7 days after the day the notice is given.

9 Information to be provided to the Council

- (1) In accordance with Article 67 of the Convention, the Secretary must give the Council any information supplied to the Secretary under subsection 8(2) if the information relates to the international operations of Australian airlines.
- (2) In accordance with the Convention, the Secretary may give the Council any other relevant information supplied to the Secretary under subsection 8(2).

Section 10

10 Confidential information

If a person has obtained information in accordance with subsection 7(2) or 8(2), the person must not disclose the information in a way that allows individual responses to be identified, except:

- (a) in accordance with section 9; or
- (b) in the course of performing a function under the Act or this instrument; or
- (c) where the person who provided the information has given their consent to the disclosure of the information.

11 Failure to give information to the Secretary

- (1) A person commits an offence if:
 - (a) the person is given a notice under subsection 7(2) or 8(2); and
 - (b) the person fails to comply with the notice.

Penalty: 10 penalty units.

- (2) If a person is convicted of an offence against subsection (1) for failing to comply with a notice, a court of competent jurisdiction may, in addition to imposing any pecuniary or other penalty, order the defendant to comply with the notice.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

12 Self-incrimination

- (1) A person is not excused from giving information under section 7 or 8 on the ground that the information might tend to incriminate the person or expose the person to a penalty.
- (2) However, if the person is a natural person:
 - (a) the information; and
 - (b) the giving of the information; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code* that relates to the giving of the information.

Part 3—Licensing of scheduled international air services

Division 1—Purpose

13 Purpose of this Part

For section 13 of the Act, this Part makes provision in relation to the licensing of scheduled international air services operated over, into or out of Australian territory.

Division 2—Applying for a licence

14 Applying for a licence

- (1) A person may apply, in writing, to the Secretary for the grant of an international airline licence in relation to a scheduled international air service.
- (2) Subject to subsection (4), 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 the corporation is incorporated in Australia—its ACN and the address of its registered office; and
 - (ii) if the corporation is not incorporated in Australia—its business registration details and the address of its corporate headquarters; and
 - (iii) evidence of its place of incorporation and corporate existence; and
 - (iv) if paragraph (d) does not apply to the applicant—evidence of the corporation's ownership and control arrangements;
 - (d) if the applicant is an airline of a relevant foreign country and subject to principal place of business arrangements under an 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 relevant foreign country;
 - (ii) payment of tax by the corporation in that country;
 - (iii) registration of the corporation's aircraft in that country;
 - (iv) that a substantial proportion of the corporation's employees are citizens of that country;
 - (e) evidence of insurance coverage for the scheduled international air service in relation to:
 - (i) passenger liability; and
 - (ii) third party liability; and
 - (iii) cargo and baggage liability; and
 - (iv) liability for 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 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 within the meaning 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 to be covered by the licence, including the type of aircraft to be used for each service;
 - (j) any other information that the Secretary requests in writing.

Code sharing services

- (3) Each person proposing to engage in a code sharing service must make an application under this section for the grant of an international airline licence in relation to that service.
- (4) If the applicant is applying for an international airline licence in relation to a code sharing service, the application:
 - (a) does not need to include the information mentioned in paragraphs (2)(f) and (g); and
 - (b) must include details of the international airline the applicant intends to operate the code sharing service with.

Section 15

Division 3—Grant of a licence

15 Matters to be taken into account

In making a decision on an application made under section 14, 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.

16 Granting a licence

- (1) The Secretary must make a decision on an application made under section 14.
- (2) The Secretary may grant an international airline licence to an applicant in relation to a scheduled international air service for:
 - (a) Australian international carriage; or
 - (b) air transport services by an airline of a relevant foreign country.
- (3) If the Secretary grants the licence, the Secretary must do so in the approved form.
- (4) If the Secretary grants the licence, the Secretary may do so subject to conditions.

Note: For review of a decision by the Secretary under this subsection, see section 23A of the Act.

17 Refusal to grant a licence

If the Secretary decides not to grant an international airline licence on an application made under section 14, the Secretary must give the applicant notice of the decision, in writing, within 14 days after the decision is made.

Note: For review of a decision by the Secretary under this section, see section 23A of the Act.

18 Duration of a licence

- (1) An international airline licence granted under section 16 commences on the day specified in the licence.
- (2) The licence continues in force until it is suspended or cancelled:
 - (a) under subsection 22(1); or
 - (b) at the request of the licence holder.

19 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 the Secretary with compliance declarations in accordance with section 24;

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- (c) if the Secretary gives the licence holder a written notice under subsection 24(3), or otherwise requests the licence holder 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 14(2)(e);
 - (iii) a copy of the Air Operator’s Certificate mentioned in paragraph 14(2)(f);
 - (iv) current evidence of the transport security program mentioned in paragraph 14(2)(g);
- (d) the licence holder must comply with the following:
- (i) the Act and this instrument;
 - (ii) the *Air Navigation (Aircraft Noise) Regulations 1984*;
 - (iii) the *Civil Aviation Act 1988* and any instrument made under that Act;
 - (iv) the *Aviation Transport Security Act 2004* and any instrument made under that Act;
 - (v) the *Civil Aviation (Carriers’ Liability) Act 1959* and any instrument made under that Act;
 - (vi) if the licence holder is Qantas—the *Qantas Sale Act 1992*.
- (2) The Secretary may, at any time after granting an international airline licence, impose further conditions on the licence, whether or not the licence holder has breached any existing condition of the licence.

Note: For review of a decision by the Secretary under this subsection, see section 23A of the Act.

- (3) If the Secretary proposes to impose a further condition on an international airline licence under subsection (2), the Secretary must give the licence holder notice of the proposed variation of the licence in accordance with section 21.

Section 20

Division 4—Variation, suspension or cancellation of a licence

20 Secretary may vary, suspend or cancel a licence

The Secretary may vary, suspend or cancel an international airline licence in relation to a scheduled international air service for any of the following reasons:

- (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 the licence;
- (c) if, in the Secretary's opinion:
 - (i) the licence holder is likely to breach a condition of the licence; and
 - (ii) the likely breach is reasonably expected to affect the safety or security of air navigation in Australia;
- (d) if, in the Secretary's opinion:
 - (i) adequate provision has not been made by the relevant authority in relation to the licence holder to ensure that the licence holder substantially conforms to and complies with the standards, practices and procedures set out in the Convention and the Air Transit Agreement; 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 the scheduled international air service in accordance with the approved timetable or in accordance with a condition subject to which the timetable is approved (other than in a circumstance mentioned in section 32);
- (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 the relevant authority in relation to the licence holder, has contravened the relevant agreement for the scheduled international air service;
- (h) if there has been a substantial change in any of the matters to which the Secretary had regard under subsection 30(2);
- (i) if it is in the public interest to vary, suspend or cancel the licence.

Note: For review of a decision by the Secretary under this section, see section 23A of the Act.

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

- (1) Subject to subsection (4), before taking action to vary, suspend or cancel an international airline 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 variation, suspension or cancellation of the licence.
- (2) The licence holder must be given 35 days after the notice is given to respond to the notice.

- (3) If the licence holder responds to the notice within 35 days after the notice is given, the Secretary must consider any response from the licence holder before making a decision to vary, suspend or cancel the licence.
- (4) The Secretary is not required to give the licence holder notice of the proposed variation, suspension or cancellation if:
 - (a) the Secretary is satisfied that there is a need to take urgent action because the reason for the variation, suspension or cancellation represents a risk to public safety or security; or
 - (b) the variation, suspension or cancellation was requested, in writing, by the licence holder.

22 Decision on variation, suspension or cancellation of a licence

- (1) Subject to sections 20 and 21, the Secretary may decide to do one or more of the following in relation to an international airline licence:
 - (a) vary the licence by imposing a further condition on the licence under subsection 19(2);
 - (b) vary the licence by removing a condition of the licence;
 - (c) suspend the licence;
 - (d) cancel the licence.

Note: For review of a decision by the Secretary under this subsection, see section 23A of the Act.

- (2) If:
 - (a) the Secretary takes an action mentioned in paragraph (1)(a) or (c) (the **first breach**); and
 - (b) the Secretary later becomes satisfied that:
 - (i) the licence holder is not complying with the further condition imposed on the licence; or
 - (ii) the licence holder is not complying with the terms of the suspension of the licence; or
 - (iii) some other reason for taking action under section 20 exists in relation to the licence holder;

the Secretary may cancel the licence under paragraph (1)(d) even if the period for fulfilling the condition, or the period of the suspension, for the first breach has not ended.

Note: For review of a decision by the Secretary under this subsection, see section 23A of the Act.

Notice of decision to vary

- (3) If the Secretary varies an international airline licence under paragraph (1)(a) or (b), the Secretary must give the licence holder notice, in writing, of:
 - (a) the variation (including the reason for the variation); and
 - (b) the day the variation takes effect (which must not be earlier than the day the notice is given).

Section 22

Notice of decision to suspend

- (4) If the Secretary suspends an international airline licence under paragraph (1)(c), the Secretary must give the licence holder notice, in writing, of:
- (a) the decision to suspend the licence (including the reason for the suspension); and
 - (b) the day the suspension takes effect (which must not be earlier than the day the notice is given); and
 - (c) the period of the suspension.
- (5) The period of a suspension for any particular breach, or for a particular reason, must not be more than 6 months in total.

Notice of decision to cancel

- (6) If the Secretary cancels an international airline licence under paragraph (1)(d), the Secretary must give the licence holder notice, in writing, of:
- (a) the cancellation (including the reason for the cancellation); and
 - (b) the day the cancellation takes effect (which must not be earlier than the day the notice is given).

Division 5—Compliance declarations

23 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.

24 Licence holder must lodge compliance declaration

- (1) A licence holder must complete a compliance declaration (in the form made available under section 23) for each of the licence holder's scheduling periods.
- (2) The licence holder must give the Secretary the compliance declaration for a scheduling period:
 - (a) at least 35 days before the commencement of the scheduling period; or
 - (b) within any lesser period allowed by the Secretary.
- (3) The Secretary may, by written notice, require the licence holder to verify any information stated in the compliance declaration.

Part 4—Tariffs

25 Submitting tariffs for approval

- (1) A licence holder may submit a tariff to the Secretary for approval.
- (2) The Secretary may, by notice in writing, direct a licence holder to submit the licence holder's tariff, or part of the licence holder's tariff, to the Secretary for approval.
- (3) A notice under subsection (2):
 - (a) must state a period, not shorter than 14 days, within which the licence holder must submit the tariff to the Secretary for approval; and
 - (b) may state the form in which the tariff must be submitted.
- (4) If the Secretary gives a licence holder a direction under subsection (2), the licence holder must comply with the direction.

26 Approval of tariffs

- (1) If a licence holder submits a tariff to the Secretary under subsection 25(1) or (2), the Secretary may:
 - (a) approve the tariff; or
 - (b) approve the tariff subject to conditions; or
 - (c) refuse to approve the tariff.

Note: For review of a decision by the Secretary under this subsection, see section 42.

- (2) In making a decision under subsection (1), the Secretary must take the following into account:
 - (a) the public interest;
 - (b) the relevant agreement for the scheduled international air service concerned;
 - (c) the need for air transport services to operate on a satisfactory economic basis in an environment where there is due regard for the interests of consumers of those services.
- (3) If the Secretary makes a decision under subsection (1), the Secretary must give the licence holder notice, in writing, of:
 - (a) the decision; and
 - (b) the reasons for the decision.
- (4) If the Secretary does not make a decision under subsection (1) about a tariff within 7 days after the tariff is submitted to the Secretary under subsection 25(1) or (2), the tariff is taken to have been approved under paragraph (1)(a) of this section at the end of that period.

27 Additional information

- (1) The Secretary may, in writing, ask a licence holder who has submitted a tariff under subsection 25(1) or (2) to give the Secretary additional information to assist the Secretary to make a decision under subsection 26(1).
- (2) If the Secretary makes a request under subsection (1) in relation to a tariff, the period mentioned in subsection 26(4) in relation to the tariff is suspended from the day the request is made until the end of the day the Secretary receives the information.

28 Application of tariffs

- (1) If, under paragraph 26(1)(c), the Secretary refuses to approve a tariff, the licence holder who submitted the tariff must not apply the tariff or allow the tariff to be applied.
- (2) If, under paragraph 26(1)(b), the Secretary approves a tariff subject to conditions, the licence holder who submitted the tariff must not apply the tariff or allow the tariff to be applied unless the conditions are met.

Part 5—Timetables etc.

Division 1—Approval of timetables

29 Application for approval of a proposed timetable

- (1) A licence holder must apply to the Secretary for approval of a proposed timetable for each of its scheduled international air services to or from Australian territory.
- (2) An application under subsection (1) must:
 - (a) if the Secretary directs, be in the approved form; and
 - (b) specify:
 - (i) the day on which the licence holder proposes to start operating the service; and
 - (ii) if known, the day on which the licence holder proposes to stop operating the service; and
 - (c) include, in relation to the service, details of each of the matters mentioned in paragraphs (a) to (e) of the definition of *timetable* in subsection 5(1).
- (3) An application under subsection (1) must be lodged with the Secretary:
 - (a) at least 35 days before the day the licence holder proposes to start operating the service; or
 - (b) within any lesser period allowed by the Secretary.
- (4) If further information is necessary to enable the Secretary to determine an application made under subsection (1):
 - (a) the Secretary may, by notice in writing, require the licence holder to provide the information; and
 - (b) the Secretary is not bound to consider the application further, or to determine the application, until such information is provided to the Secretary.

30 Approval of a proposed timetable

- (1) If the Secretary receives an application under subsection 29(1) from a licence holder for approval of a proposed timetable, the Secretary may:
 - (a) approve the timetable; or
 - (b) approve the timetable:
 - (i) with specified variations; or
 - (ii) subject to specified conditions; or
 - (c) reject the timetable.

Note: For review of a decision by the Secretary under this subsection, see section 42.

- (2) In making a decision under subsection (1), the Secretary may have regard to the following:
 - (a) the relevant agreement for the service concerned;
 - (b) the matters referred to in paragraphs (a) to (e) of the definition of *timetable* in subsection 5(1);

- (c) the likely type, proportion or amount of traffic, or the origin or destination of traffic, that may be carried on all or part of the route of the service concerned;
 - (d) any approved timetable of:
 - (i) the licence holder; or
 - (ii) another airline from the same country as the licence holder; or
 - (iii) an airline of a country in which a terminal or intermediate stopping place on the route of the service to which the application relates is situated;
 - (e) whether, in the opinion of the Secretary, the airline concerned, or the government or an authority of a relevant foreign country for the airline concerned:
 - (i) has impeded or limited an Australian airline in, or prevented an Australian airline from, providing an international air service; or
 - (ii) has engaged in unfair, discriminatory or restrictive practices in relation to an international air service provided by an Australian airline; or
 - (iii) has denied an Australian airline fair and equal opportunity in the provision of an international air service;
 - (f) whether, in the opinion of the Secretary, the airline concerned, or the government or an authority of a relevant foreign country for the airline concerned, has contravened the relevant agreement for the service concerned;
 - (g) the public interest;
 - (h) any other relevant matter.
- (3) An approval under paragraph (1)(a) or (b) has effect for the period, not exceeding 12 months, specified by the Secretary in the approval.
- (4) The Secretary must, if practicable, notify the licence holder of the decision the Secretary has made under subsection (1) before the day the licence holder proposes to start operating the service.
- (5) Notification under subsection (4) must be in writing and include the following:
- (a) if the timetable is approved—the period for which the timetable is approved;
 - (b) if the timetable is approved subject to variations—the details of, and the reasons for, the variations;
 - (c) if the timetable is approved subject to conditions—the details of, and the reasons for imposing, the conditions;
 - (d) if the timetable is rejected—the reasons for the rejection.

Division 2—Variation, suspension or cancellation of timetables

31 Variation, suspension and cancellation of approved timetables

- (1) The Secretary may vary, suspend or cancel an approved timetable, or vary, suspend or remove a condition in relation to an approved timetable, or impose a further condition in relation to an approved timetable, if:
- (a) the licence holder operates a service otherwise than in accordance with the approved timetable, or otherwise than in accordance with a condition subject to which the timetable is approved (other than in a circumstance mentioned in section 32); or
 - (b) the licence holder fails to operate a service in accordance with the approved timetable or in accordance with a condition subject to which the timetable is approved (other than in a circumstance mentioned in section 32); or
 - (c) in the opinion of the Secretary, the licence holder, or the government or an authority of a relevant foreign country for the airline concerned:
 - (i) has impeded or limited an Australian licence holder in, or prevented an Australian airline from, providing a scheduled international air service; or
 - (ii) has engaged in unfair, discriminatory or restrictive practices in relation to a scheduled international air service provided by an Australian airline; or
 - (iii) has denied an Australian airline fair and equal opportunity in the provision of a scheduled international air service; or
 - (d) in the opinion of the Secretary, the licence holder, or the government or an authority of a relevant foreign country for the airline concerned, has contravened the relevant agreement for the service concerned; or
 - (e) there has been a substantial change in any of the matters to which the Secretary had regard under subsection 30(2) in approving the timetable; or
 - (f) it is in the public interest to vary, suspend or cancel the timetable or to vary, suspend or remove the condition, or impose a further condition in relation to the approved timetable, as the case may be.

Note: For review of a decision by the Secretary under this subsection, see section 42.

- (2) A licence holder may apply to the Secretary, in writing, for:
- (a) a variation of an approved timetable in relation to a schedule international air service that the licence holder operates; or
 - (b) the variation or removal of a condition imposed by the Secretary in relation to an approved timetable in relation to a schedule international air service that the licence holder operates.
- (3) If the Secretary receives an application under subsection (2), the Secretary may, having regard to the matters mentioned in subsection (1):
- (a) vary the approved timetable to which the application relates in accordance with the application; or
 - (b) vary the approved timetable with alterations, or subject to conditions, determined by the Secretary; or

- (c) vary or remove a condition imposed by the Secretary in relation to the approved timetable; or
- (d) refuse to vary the timetable, or vary or remove the condition, as the case may be.

Note: For review of a decision by the Secretary under this subsection, see section 42.

- (4) If the Secretary makes a decision under subsection (1) or (3), the Secretary must, as soon as practicable, notify the licence holder concerned in writing of:
 - (a) the reasons for the decision; and
 - (b) if the decision is to vary an approved timetable, to vary a condition in relation to an approved timetable, or to impose a further condition in relation to an approved timetable:
 - (i) the details of the variation; and
 - (ii) the day of its effect; and
 - (c) if the decision is to suspend an approved timetable or to suspend a condition in relation to an approved timetable—the duration of the suspension; and
 - (d) if the decision is to cancel an approved timetable or to remove a condition in relation to an approved timetable—the day of its effect.

32 Circumstances for which variation not required

- (1) A licence holder is not required to apply to the Secretary for a variation of an approved timetable if the variation relates solely to one or more of the following:
 - (a) a timing change that does not change the number of international air services provided per week;
 - (b) the cancellation of an international air service that does not permanently change the approved timetable;
 - (c) the substitution of another type of aircraft for a particular international air service, being a type of aircraft that was listed for that particular service in the application for the approved timetable;
 - (d) a change to the timing of a scheduled international air service where the service will be completed within 48 hours of the scheduled time in the approved timetable.

Note: Subsection (1) does not affect any law that applies in relation to a curfew at an Australian aerodrome.

- (2) A licence holder who engages in a code sharing service is not required to apply to the Secretary for a variation of an approved timetable if:
 - (a) the licence holder (the *marketing carrier*) is a marketing carrier for an air transport service operated by another international airline; and
 - (b) the marketing carrier is not subject to a capacity allocation by the International Air Services Commission.

33 Conditions that may be imposed on a timetable

Without limiting the conditions that may be imposed under section 30 or 31 in relation to a timetable, a condition may relate to:

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- (a) the proportion or amount of traffic, or a type of traffic, that may be carried on all or part of the route of the service concerned; or
- (b) whether advertising is permitted, the manner of advertising, or the content of advertisements, in Australia, by or on behalf of the licence holder, in relation to:
 - (i) the service concerned; or
 - (ii) any service operated by the licence holder to, from or through any point situated on the route of the service concerned.

Division 3—Offences relating to timetables and advertising

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

- (1) A person commits an offence if:
- (a) the person operates a scheduled international air service to or from Australian territory; and
 - (b) the service is not operated in accordance with:
 - (i) an approved timetable; or
 - (ii) any conditions imposed by the Secretary in relation to an approved timetable.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the scheduled international air service is not operated in accordance with an approved table, or a condition imposed by the Secretary in relation to an approved timetable, in a circumstance mentioned in section 32.

35 Offence—advertising unlicensed services

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, the person does not hold an international airline licence for the service; and
- (c) the advertisement does not state that the operation of the service is subject to Government approval.

Penalty: 50 penalty units.

36 Offence—advertising non-scheduled flights

- (1) A person commits an offence if the person advertises, or makes a public announcement, to the effect that the person is willing to:
- (a) sell seats on a non-scheduled flight; or
 - (b) make capacity available on a non-scheduled flight.

Penalty: 25 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the Secretary has granted permission for the flight under section 15D of the Act; or
 - (b) the Secretary has determined, under subsection 15A(3) or 17(1B) of the Act, that permission for the flight is not required; or
 - (c) the advertisement or public announcement states that the operation of the non-scheduled flight is subject to Government approval.

Note: *Non-scheduled flight* is defined in section 3 of the Act.

Part 6—International and other matters

37 Smoking on an aircraft

- (1) A person commits an offence if:
- (a) the person smokes on board an aircraft; and
 - (b) the aircraft is engaged in:
 - (i) the carriage of passengers between airports in Australian territory as part of an air transport service; or
 - (ii) Australian international carriage (other than the carriage of freight only) as part of an air transport service.

Penalty: 25 penalty units.

- (2) A person commits an offence if:
- (a) the person is the operator of an aircraft; and
 - (b) the aircraft is engaged in:
 - (i) the carriage of passengers between airports in Australian territory as part of an air transport service; or
 - (ii) Australian international carriage (other than the carriage of freight only) as part of an air transport service; and
 - (c) a notice that meets the requirements in subsection (3) is not displayed in a conspicuous place in the aircraft.

Penalty: 50 penalty units.

- (3) A notice meets the requirements in this subsection if the notice:
- (a) indicates that smoking is prohibited at all times; and
 - (b) is legible.
- (4) It is not a defence to a prosecution for an offence against subsection (1) that a notice that meets the requirements in subsection (3) was not displayed in a conspicuous place in the aircraft.

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

- (1) The lawful entry into Australian territory, or the lawful transit across Australian territory, with or without landings, of an aircraft in relation to which this section applies is not to entail:
- (a) the seizure or detention of the aircraft; or
 - (b) the bringing of proceedings against the owner or operator of the aircraft; or
 - (c) any other interference with the aircraft;

by or on behalf of the Commonwealth, or any person in Australian territory, on the ground that the construction, mechanism or operation of the aircraft is, or the parts or accessories of the aircraft are, an infringement of Letters Patent granted in Australian territory.

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- (2) The importation into, and storage in, Australian territory of spare parts and spare equipment for an aircraft in relation to which this section applies, and the use and installation of those spare parts and spare equipment, is not to entail:
- (a) the seizure or detention of the aircraft or of the spare parts or spare equipment; or
 - (b) the bringing of proceedings against the owner or operator of the aircraft or against the owner of the spare parts or spare equipment; or
 - (c) any other interference with the aircraft or with the spare parts or spare equipment;
- by or on behalf of the Commonwealth, or any person in Australian territory, on the ground that the spare parts or the spare equipment are, or their installation is, an infringement of Letters Patent granted in Australian territory.
- (3) Subsection (2) does not apply in relation to spare parts or spare equipment which are sold or distributed in Australian territory or are exported from Australian territory for sale or distribution.
- (4) This section applies in relation to aircraft registered in a country or territory:
- (a) which is a party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 as amended; or
 - (b) in which there are in force laws protecting inventions made by Australian citizens.

Note: The Convention is in Australian Treaty Series 1972 No. 12 ([1972] ATS 12) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

39 Secretary may give directions in relation to the Convention

The Secretary may, in relation to any aerodrome:

- (a) regulated under the *Civil Aviation Safety Regulations 1998*; or
- (b) to which an arrangement under section 20 of the *Civil Aviation Act 1988* applies;

issue such directions as the Secretary considers necessary to ensure compliance with the standards, recommended practices and procedures adopted from time to time in accordance with the Convention or the Air Transit Agreement.

Part 7—Miscellaneous

40 Change of address

- (1) A licence holder must notify the Secretary, in writing, of a change to the licence holder's place of business or the address to which any communication under the Act or this instrument may be sent.
- (2) The licence holder must notify the Secretary of the change no later than 28 days after the change occurs.
- (3) A person commits an offence if:
 - (a) the person is required to notify the Secretary under subsection (1); and
 - (b) the person does not notify the Secretary in accordance with subsections (1) and (2).

Penalty: 10 penalty units.

41 Production of licences and other documents

- (1) A person who is a licence holder must produce the international airline licence if the Secretary requires the person to do so.
- (2) A person who is an owner of an aircraft, or the pilot in command of an aircraft, must produce:
 - (a) the list of names of passengers on the aircraft (if any); and
 - (b) the bills of lading for cargo on the aircraft (if any);if the Secretary requires the person to do so.

42 Review of certain decisions

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

- (a) a decision under paragraph 26(1)(b) to approve a tariff subject to conditions;
- (b) a decision under paragraph 26(1)(c) to refuse to approve a tariff;
- (c) a decision under paragraph 30(1)(b) to approve a timetable with specified variations or subject to specified conditions;
- (d) a decision under paragraph 30(1)(c) to reject a timetable;
- (e) a decision under subsection 31(1) to:
 - (i) vary, suspend or cancel an approved timetable; or
 - (ii) vary, suspend or remove a condition in relation to an approved timetable; or
 - (iii) impose a further condition in relation to an approved timetable;
- (f) a decision under subsection 31(3) to:
 - (i) vary, or refuse to vary, an approved timetable; or
 - (ii) to vary or remove, or refuse to vary or remove, a condition in relation to an approved timetable.

Section 43

Note: Under section 23A of the Act, applications may be made to the Administrative Appeals Tribunal for review of decisions by the Secretary to do any of the following under this instrument:

- (a) refuse to grant an international airline licence;
- (b) impose a condition on an international airline licence;
- (c) vary, refuse to vary, suspend or cancel an international airline licence.

43 Protection of certain rights

Nothing in this instrument is to be construed as conferring on any aircraft, as against the owner of any land or any person who has an interest in the land, the right to alight on that land, or as prejudicing the rights or remedies of any person in respect of any injury to persons or property caused by the aircraft.

44 Evidence

- (1) The Secretary may certify, in writing, that:
 - (a) a copy of the text of the Convention that is annexed to the certificate is a true copy; or
 - (b) a copy of a licence, notice, approval or other document that:
 - (i) has been published, given or issued, as the case may be, under the Act or this instrument; and
 - (ii) is annexed to the certificate;is a true copy.
- (2) The Secretary may certify, in writing, that during a specified period or on a specified day:
 - (a) a person was or was not a licence holder; or
 - (b) a notice or approval required under the Act or this instrument had or had not been issued; or
 - (c) an international airline licence was or was not suspended, cancelled or endorsed with a specified endorsement.
- (3) In all courts and in any review, investigation or inquiry conducted or made under this instrument, a certificate under this section is prima facie evidence of the facts stated in the certificate.

45 Approved forms

The Secretary may, in writing, approve a form for the purposes of a provision of this instrument.

46 Delegation by Secretary

- (1) The Secretary may, in writing, delegate any or all of the Secretary's functions or powers under this instrument (other than this power of delegation) to an APS employee in the Department.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any written directions of the Secretary.

Part 8—Transitional provisions

47 Transitional—licences

- (1) Despite the repeal of the *Air Navigation Regulations 1947* (the **old regulations**) by Schedule 1 to this instrument, a licence that was in force under Division 1 of Part 6 of the old regulations immediately before 1 April 2016 has effect, on and after that day:
 - (a) as if it were an international airline licence granted under section 16 of this instrument; and
 - (b) if the licence was subject to any conditions imposed by the Secretary under subregulation 17A(5) or 18B(2) of the old regulations—subject to those conditions.

Note: The conditions mentioned in subsection 19(1) of this instrument also apply to the licence on and after 1 April 2016.

- (2) Subsection (1) does not prevent the variation, suspension or cancellation of the licence, or a condition of the licence, on or after 1 April 2016.

48 Transitional—tariffs

Despite the repeal of the *Air Navigation Regulations 1947* (the **old regulations**) by Schedule 1 to this instrument, a tariff that was approved under regulation 19A of the old regulations has effect, on and after 1 April 2016:

- (a) as if it were approved under section 26 of this instrument; and
- (b) if the tariff was approved subject to conditions under paragraph 19A(1)(b) of the old regulations—subject to those conditions.

49 Transitional—timetables

- (1) Despite the repeal of the *Air Navigation Regulations 1947* by Schedule 1 to this instrument, a timetable that was an approved timetable under those regulations immediately before 1 April 2016 has effect, on and after that day:
 - (a) as if it were an approved timetable under this instrument; and
 - (b) if the timetable was subject to any conditions—subject to those conditions.
- (2) Subsection (1) does not prevent the variation, suspension or cancellation of the timetable, or a condition in relation to the timetable, on or after 1 April 2016.

50 References to provisions of the *Air Navigation Regulations 1947*

A reference to a provision of the *Air Navigation Regulations 1947* in any document given to a person by the Secretary or the Department before 1 April 2016 is, on and after that day, taken to be a reference to the corresponding provision of this instrument.

Schedule 1—Repeals

Air Navigation Regulations 1947

1 The whole of the Regulations

Repeal the Regulations.