

EXPLANATORY STATEMENT

Minute No. 11 of 2018 - Minister for Infrastructure and Transport

Subject - *Air Navigation Act 1920*

Air Navigation (Aircraft Noise) Regulations 2018

INTRODUCTION

The *Air Navigation Act 1920* (the Act) gives effect to the International Convention on Civil Aviation (the Chicago Convention) which regulates all aspects of international air transport.

Section 26 of the *Air Navigation Act 1920* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed.

OUTLINE

Article 31 of the Chicago Convention requires that every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered. The certificate of airworthiness includes reference to the noise certification standards of Annex 16, Volume I of the Chicago Convention.

Noise certification was first raised at the 16th Assembly of the International Civil Aviation Organization (ICAO) held in Buenos Aires in 1968. At the 16th Assembly, Resolution A16-3 was adopted which resulted in a Special Meeting on Aircraft Noise in the Vicinity of Aerodromes convened in Montréal in November–December 1969. The following aspects related to the problems of aircraft noise were examined:

- a) procedures for describing and measuring aircraft noise;
- b) human tolerance to aircraft noise;
- c) aircraft noise certification;
- d) criteria for establishment of aircraft noise abatement operating procedures;
- e) land-use control; and
- f) ground run-up noise abatement procedures.

The Special Meeting on Aircraft Noise resulted in the adoption of Annex 16, Volume I of the Chicago Convention, which includes Standards and Recommended Practices relating to aircraft noise certification. At the Ninth Meeting of the Committee on Aviation Environmental Protection in 2015, ICAO endorsed the introduction of more stringent noise standards.

The *Air Navigation (Aircraft Noise) Regulations 2018* (the Regulations) remade the *Air Navigation (Aircraft Noise) Regulations 1984* (the 1984 Regulations) which were due to sunset on 1 April 2018. The Regulations remade the 1984 Regulations in substantially the same form, and also prescribed stricter noise standards to apply to new aircraft types manufactured after 1 January 2018 engaged in international air navigation. This gives effect to Australia's obligations as a Contracting State of ICAO.

The Regulations:

- amend the definitions to include:
 - a) standards which will apply to aircraft with a maximum take-off weight of 55,000kg or greater from 1 April 2018;
 - b) subsonic jet aircraft with a maximum take-off weight less than 55,000kg from 1 January 2021; and

- c) propeller-driven aircraft with a maximum take-off weight between 8,618kg and 55,000kg from 1 January 2021.
- include the definition of Commonwealth place and constitutional corporation to clarify the intent and scope of Commonwealth power;
- restructure to more clearly specify the requirements for aircraft which must have a noise certificate;
- specify the requirements for those aircraft which may operate without a noise certificate to aid with interpretation and communication with industry on applicable requirements; and
- modernise drafting language.

Regulatory impact analysis

The regulatory impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). The OBPR considered that the amendments could be expected to have a minor impact on business and the community. A certification letter has been provided to OBPR certifying that the 1984 Regulations are operating effectively and efficiently, and that therefore a Regulation Impact Statement is not required for this regulation to be remade (OBPR 22597).

The impact on industry and the community of the revised regulations will be minimal as the new standard will apply to new aircraft types certified for entry into service. Existing noise standards will remain including restrictions on older aircraft types. Annex 16, Volume I of the Chicago Convention is not a publically available document, however, aircraft operators requiring access to the document are entitled to be provided with a copy upon request.

Consultation before making

Consultation was undertaken with affected Australian international airlines (Qantas Airways, Jetstar Airways, Tigerair Australia and Virgin Australia), the peak industry association for international airlines (the Board of Airline Representatives of Australia), and Sydney, Melbourne, Brisbane, Perth and Adelaide Airports. Australia's affected international airlines advised that their current fleet purchases will not be affected by the proposed Regulations as they are not purchasing aircraft which are not already in service certified against the current standard (Chapter 4) which applies for aircraft which entered service from 1 January 2006 to 1 January 2018.

Details of the Regulation are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out in Attachment B prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

The Regulations are a legislative instrument for the purpose of the *Legislation Act 2003*.

The Regulations commenced on 1 April 2018.

Details of the Air Navigation (Aircraft Noise) Regulations 2018

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Air Navigation (Aircraft Noise) Regulations 2018*.

Section 2 – Commencement

This instrument commenced on 1 April 2018.

Section 3 – Authority

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

Section 4 – Definitions

This section sets out the definitions for terms used throughout the Regulations.

The definition of *Annex* is amended to reflect the current version of Annex 16, Volume I which is in force at the commencement of the Regulations. The *Air Navigation Act 1920* does not permit the incorporation of instruments as in force from time-to-time; the definition is therefore amended to reflect the current version of Annex 16. Annex 16, Volume I is available to purchase on the International Civil Aviation Organization (ICAO) website [//store.icao.int/annex-16-environmental-protection-volume-1-aircraft-noise-multilingual.html](http://store.icao.int/annex-16-environmental-protection-volume-1-aircraft-noise-multilingual.html). Aircraft operators can request a copy of Annex 16, Volume I from the Department of Infrastructure, Regional Development and Cities without charge. Members of the public can source a copy through the national Library of Australia or another public library. The definition of *Chapter 14* has been included in line with the stricter standard to apply to aircraft noise.

The definition of *Commonwealth place* and *constitutional corporation* have been included to clearly define constitutional limitations regulating aircraft operating in Australia, and to assist in interpretation and reflect amendments to the *Civil Aviation Act 1988*.

The definition of *Local governing body* has been removed from existing Regulation 9AAA (5) and included to aid in interpretation and consistency.

The definition of *relevant law* has been amended to specify that *relevant law* means a law of a Contracting State relating to the control of aircraft noise, being a law the requirements of which are at least as stringent as the Annex. The amendment will assist in interpretation and is to be used in the case where an aircraft has been manufactured but there are no relevant standards in the Annex, for example, pre 1977 large propeller-driven aircraft like the Antonov AN-12. In the instance of such an aircraft a certificate would be issued by the relevant Contracting State, in the example case Russia, which states that the aircraft complies with an equivalent standard. The amendments to *relevant law* also include reference to a notifiable instrument rather than the *Gazette* consistent with Parliamentary Counsel Drafting Direction 3.8.

Section 5 – Application

Application provisions have been amended to reflect the constitutional limitations regulating aircraft and to ensure consistency in the application of the instrument.

Section 6 – Aircraft must have noise certificate or other approval

Previous regulation 9 has been amended to become section 6 to clearly define the application provisions for aircraft engaging in air navigation and the standards which apply to aircraft engaged in air navigation. This section imposes an offence of strict liability.

The offence provision was reviewed as part of the sunset process in accordance with the *Legislation Act 2003* which found that it remains appropriate to provide a deterrent effect. The offence provision has existed since the introduction of the Air Navigation (Aircraft Noise) Regulations 1984 and have resulted in sufficient deterrence that no offences for breaches of the Regulations have been prosecuted within the preceding 10 years. Conduct of such nature in breach of the Regulations would contravene fundamental values and be harmful to society. The operations of aircraft at airports are a social license between the community and industry to balance protections of the community with the ability to facilitate industry productivity and growth.

The offence provisions have been developed consistent with the *Attorney-General's Department Guide to Framing Commonwealth Offence, Infringement Notices and Enforcement Powers (Offences Guide)*. The penalty in this section, under subsection 13.3(3) of the *Criminal Code*, is 20 penalty units.

Section 7 – Applications by owner or operator of an aircraft

Section 7 replaces regulation 5 to define that the operator must apply for either (a) a noise certificate; or (b) an exemption provided under section 14 to operate an aircraft.

Section 8 – Issue of noise certificate for aircraft to which the Annex applies

Section 8 defines the standards which apply for the issue of a noise certificate.

Section 9 – Issue of a noise certificate for aircraft described in Schedule 1

Section 9 states the requirements for noise certificates for aircraft which are specified in column 1 of Schedule 1, meaning a type of aircraft for which there is an applicable noise standard. For aircraft that do not have an applicable noise standard but do have a noise testing process these aircraft are deemed to comply in accordance with section 9(3)(b).

Section 10 – Form and content of noise certificate

Section 10 defines the form and content of the noise certificate. Section 10 references the Annex rather than setting out in the Regulations the form and content of the noise certificate. The provisions of the Annex are subject to regular amendment and specifying the form and content of the noise certificate in the Regulations is likely to result in Australia being non-compliant with obligations under the Chicago Convention. The form and content of noise certificates is set out in procedural guidance issued by Airservices Australia for aircraft operators when applying for a noise certificate.

Section 11 – Noise certificate to be carried on board aircraft

Section 11 specifies that a noise certificate must be carried on board the aircraft at all times.

Section 12 – Noise certificate deemed to be issued in certain circumstances

Section 12 specifies that the manufacturer of an aircraft can be deemed to meet the requirements set out in the Annex and be included in the flight manual. Section 12 references

the Annex rather than setting out in the regulations the test procedures to deem an aircraft to be compliant. The provisions of the Annex are subject to regular amendment and specifying the test procedures to deem an aircraft in the regulations is likely to result in Australia being non-compliant with obligations under the Chicago Convention. The deeming provisions are set out in procedural guidance issued by Airservices Australia for aircraft operators when applying for a noise certificate.

Section 13 – Revocation of a noise certificate

Section 13 specifies the circumstances for the revocation of a noise certificate. This section imposes an offence of strict liability if an operator fails to return a noise certificate that has been revoked, or to have its revocation appropriately noted in relevant flight documents.

The offence provision was reviewed as part of the sunseting process in accordance with the Legislation Act 2003 which found that it remains appropriate to provide a deterrent effect. The offence provision has existed since the introduction of the Air Navigation (Aircraft Noise) Regulations 1984 and have resulted in sufficient deterrence that no offences for breaches of the Regulations have been prosecuted within the preceding 10 years. Conduct of such nature in breach of the Regulations would contravene fundamental values and be harmful to society. The operations of aircraft at airports are a social license between the community and industry to balance protections of the community with the ability to facilitate industry productivity and growth.

The offence provisions have been developed consistent with the Attorney-General's Department Guide to Framing Commonwealth Offence, Infringement Notices and Enforcement Powers (Offences Guide). The penalty in this section, under subsection 13.3(3) of the Criminal Code, is 5 penalty units.

Section 14 – Other approvals

Section 14 specifies the requirements which were defined in regulation 9A of the regulations. Section 14 describes when an operator may apply to the Secretary to engage in air navigation in a circumstance where an aircraft cannot comply with the relevant standards and meets on of the following conditions:

- a) The extent to which the aircraft exceeds the standards is not significant;
- b) The historical significance of the aircraft justifies the application (examples include post World War II aircraft which are kept by private collectors and used in air displays or museum collections to maintain a link to aviation wartime operations)
- c) The aircraft is to be used in the public interest (this can include aircraft being used for humanitarian evacuations which are often ex-military propeller-driven aircraft, provisions of services to remote areas (which are often specialist large aircraft); a medical or emergency flight or scientific research (scientific research aircraft often carry specialised equipment which may not be available in a commercially certified aircraft and have been used in previous military service);
- d) The aircraft is to be used in an air display or an adventure flight (examples include post World War II aircraft which are used in air displays or to conduct period enactments in adventure flights using aircraft which maintain a link to aviation wartime operations).

Section 15 – Public consultation about adventure flights

Section 15 replaces regulation 9AAA in the regulations to specify the consultation requirements for adventure flights. Consultation must occur with the local governing body and the aerodrome operator prior to consideration of an application for an adventure flight.

Section 16 – Approval for a supersonic aircraft

Section 16 specifies that approval may be given for the operations of supersonic aircraft subject to conditions.

Section 17 – Approval for other aircraft

Section 17 replaces regulation 9AB which allows the operation of aircraft which may not meet specified noise standards as these noise standards have not been defined, examples include short take-off and landing aircraft and the use of auxiliary power units for aircraft.

Section 18 – imposition of operating restrictions at airport

Section 18 specifies the Minister may issue a notice restricting the operation of a large marginally compliant aircraft at an airport. An example of a large marginally compliant aircraft is the Antonov An-225 that is capable of transporting an aircraft fuselage that would not be possible using other commercially certified cargo aircraft.

Section 18(5) has been amended to provide for notification in a notifiable instrument consistent with Parliamentary Counsel Drafting Direction 3.8.

Section 19 – Approval to use restricted airport in public interest

Section 19 specifies that the operator of a large marginally compliant aircraft may apply to the Secretary to operate an aircraft at a restricted airport.

This provision allows large marginally compliant aircraft to operate for:

- a) medical or emergency flights; or
- b) humanitarian purposes ; or
- c) provision of essential services to a remote area; or
- d) a scientific or research flight.

The provision of services in these circumstances are often provided by ex-military aircraft which are designed for large cargo transport and can often land in remote areas with limited runway length which would not be possible in commercial cargo aircraft.

Section 20 – Prohibition on operating at restricted airport

Section 20 specifies that a large marginally compliant aircraft must not operate at a restricted airport unless the operation is permitted by the Secretary under section 19. This section imposes an offence of strict liability.

The offence provision was reviewed as part of the sunseting process in accordance with the *Legislation Act 2003* which found that it remains appropriate to provide a deterrent effect. The offence provision has existed since the introduction of the Air Navigation (Aircraft Noise) Regulations 1984 and have resulted in sufficient deterrence that no offences for breaches of the Regulations have been prosecuted within the preceding 10 years. Conduct of such nature in breach of the Regulations would contravene fundamental values and be harmful to society. The operations of aircraft at airports are a social license between the

community and industry to balance protections of the community with the ability to facilitate industry productivity and growth.

The offence provisions have been developed consistent with the *Attorney-General's Department Guide to Framing Commonwealth Offence, Infringement Notices and Enforcement Powers (Offences Guide)*. The penalty in this section, under subsection 13.3(3) of the *Criminal Code*, is 50 penalty units.

Section 21 – Appointment of inspectors

Section 21 replaces Regulation 14 and allows for the appointment of inspectors to ensure compliance with the Regulations. This section imposes an offence of strict liability if a person ceases to be an inspector and does not return their identity card within 14 days.

Strict liability is applied to this offence to provide a deterrent effect in order to protect the community. The offence has been put in place to ensure that only aviation inspectors duly authorised can carry out inspections on aircraft. The offence prescribed also ensures there is no danger to public safety through the unauthorised inspection of aircraft which may provide public assurances which are unfounded.

The reversal of the evidential burden of proof applies to this offence as it is likely to be within the particular knowledge of the defendant. The offence provision was reviewed and retained to ensure a sufficient deterrence effect against non-compliance.

The offence provisions have been developed consistent with the *Attorney-General's Department Guide to Framing Commonwealth Offence, Infringement Notices and Enforcement Powers (Offences Guide)*. The penalty in this section, under subsection 13.3(3) of the *Criminal Code*, is one penalty unit.

Section 22 – Powers of inspectors

Section 22 separates the appointment of inspectors from the powers of inspectors to allow consistency with other instruments such as the Civil Aviation Safety Regulations 1988 and to aid in interpretation.

Section 23 – Review of decisions

Section 23 replaces regulation 15 and specifies that decisions may be reviewed by the Administrative Appeals Tribunal.

Section 24 – Delegation

Section 24 replaces regulation 4 which allows for the delegation of powers under the Regulations. Before delegating a power to an officer or employee other than an SES employee, or acting SES employee, the Secretary must be satisfied that the officer or employee has appropriate qualifications or expertise to exercise the power or perform the function.

Section 25 – Transition and saving provisions

Section 25 defines the Air Navigation (Aircraft Noise) Regulations 1984 as the old law in force immediately before the commencement of this instrument.

Section 26 – Noise certificates

Section 26 provides transitional provisions for noise certificates, deemed certificates, applications and revocations made under the old law.

Section 27 – Other approvals

Section 27 provides that permissions given under regulation 9A of the old law remain valid for subsonic aircraft to which standards apply, for supersonic aircraft and to other aircraft.

Section 28 – Marginally compliant aircraft

Section 28 provides that restrictions under regulation 11 of the old law remain valid.

Section 29 Miscellaneous

Section 29 provides that inspectors appointed under regulation 14 of the old law is taken to be an inspector for section 21 of this instrument.

Schedule 1

Items 1, 2 and 3 – subsonic aircraft

Items 1, 2 and 3 specify the noise standards applicable to subsonic jet aircraft.

Items 4, 5, 6, 7, 8, 9 and 10 – propeller-driven aeroplanes

Items 4, 5, 6, 7, 8, 9, 10 specify the noise standards applicable to propeller-driven aeroplanes.

Item 11 – short take-off and landing aircraft

Item 11 specifies that propeller-driven short take-off and landing aeroplanes shall be noise certified using the Guidelines set out in Attachment B of Annex 16, Volume I.

Item 12 and 13 - Helicopters

Item 12 and 13 specifies the noise standards that apply to helicopters.

Item 14 and 15 – Tilt rotor aircraft

Item 14 specifies the noise standard that applies to tilt rotor aircraft. Item 15 specifies the tilt-rotor aircraft manufactured prior to 1 January 2018 will be noise certified using the Guidelines set out in Attachment F of Annex 16, Volume I in force prior to 31 December 2017.

Item 16 – Other

Item 16 specifies that installed auxiliary power units and associated aircraft ground systems shall be noise certified using the Guidelines set out in Attachment C of Annex 16, Volume I.

Statement of Compatibility with Human Rights

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

Air Navigation (Aircraft Noise) Regulations 2018

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 Regulations

Amendments to the *Air Navigation (Aircraft Noise) Regulations 1984* to specify standards which will apply to aircraft with a maximum take-off weight of 55,000kg or greater from 1 April 2018. The Regulations also specify that subsonic jet aircraft with a maximum take-off weight less than 55,000kg and propeller-driven aircraft with a maximum take-off weight between 8,617kg and 55,000kg must comply with new standards from 1 January 2021.

The definitions of the amended Regulations include the definition of Commonwealth place and Constitutional Corporation to clarify the intent and scope of Commonwealth power; includes local governing body to assist in interpretation; and amends relevant law to specify that notices can be given by notifiable instrument.

The amended Regulations more clearly specify the requirements for aircraft which must have a noise certificate; specify the requirements for those aircraft which may operate without a noise certificate in a separate part of the amended Regulations, to aid with interpretation and communication with industry on applicable requirements.

Finally, the amended Regulations modernise drafting language.

The amendments do not alter any of the substantive provisions which previously applied.

Human rights implications

This Legislative Instrument engages the following rights:

- The criminal process rights in Article 14 of the *International Covenant on Civil and Political Rights*.
- The legislative instrument includes strict liability offences (sections 6, 13, 20 and 21) and a reversal on the burden of proof (section 21). These are considered permissible limitations for the following reasons:
 - a) Conduct of such nature in breach of the Regulations would contravene fundamental values and be harmful to society.
 - b) The operations of aircraft at airports are a social licence between the community and industry to balance protection of the community with the ability to facilitate industry productivity and growth.
 - c) Conduct in contravention of section 21 is entirely within the control of the defendant and the reversal of the evidential burden of proof relates to evidential matters likely to be within the particular knowledge of the defendant.
 - d) The offences are considered appropriate to provide protection to the community through applying a deterrent effect.

- e) The offence provisions have been developed consistent with the *Attorney-General's Department Guide to Framing Commonwealth Offence, Infringement Notices and Enforcement Powers (Offences Guide)*.

Conclusion

The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Deputy Prime Minister and Minister for Infrastructure and Transport, the Hon
Michael McCormack MP**