

EXPLANATORY STATEMENT

Minute No. 40 of 2018 - Minister for Infrastructure, Transport and Regional Development

Subject - *Air Navigation Act 1920*

Air Navigation (Gold Coast Airport Curfew) 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 Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed.

The Air Navigation (Coolangatta Airport Curfew) Regulations 1999 were introduced to establish a regulatory framework for the restriction of aircraft movements at Coolangatta Airport between the periods of 11pm-6am.

OUTLINE

The purpose of the Air Navigation (Gold Coast Airport Curfew) Regulations 2018 (the Regulations), is to remake the Air Navigation (Coolangatta Airport Curfew) Regulations 1999 (the 1999 Regulations) which are due to sunset on 1 April 2019. The Regulations remake the 1999 Regulations in substantially the same form, while also permitting the use of passenger jet quota movements by international air services.

The Regulations:

- amend the name to Gold Coast Airport which was officially changed in 1999 after the 1999 Regulations took effect;
- provide clarity in the application of summer time in New South Wales;
- amend section 11 to require additional considerations for the granting of passenger jet aircraft movements at Gold Coast Airport;
- amend the 1999 Regulations to include delegation provisions to delegate powers to Australian Public Service Executive Level 1 or higher positions. Those exercising delegations must be either sufficiently senior to exercise the power or function, or, have appropriate qualifications or expertise to exercise the function; and
- modernise drafting language.

The Regulations amend the name of the airport to Gold Coast Airport reflecting that the name was officially changed in 1999 from Coolangatta Airport to Gold Coast Airport.

The 1999 Regulations permitted a quota of 24 domestic passenger jet movements per year during the curfew period. The quota system provided operators with some flexibility to manage scheduling and network issues during peak travel times to the Gold Coast, such as school holidays and schoolies week, without having to seek a dispensation.

Quota movements could be used for take-off or landing between 11.00pm and 11.45pm during eastern standard time, or for landing only between 11.00pm and 11.30pm during summer (daylight saving) time. The operator reported to the Department of Infrastructure, Regional Development and Cities details of a quota movement within seven days of it

occurring. Summer time is not applied in Broken Hill or Lord Howe Island the Regulations update the 1999 Regulations to reflect this.

The Regulations continue to provide for 24 quota movements per year, however remove the distinction between international and domestic flights permitted within the curfew. In addition, to reduce the potential impact of aircraft noise on the community, the Regulations ensure that international passenger jet aircraft using a quota movement will be no heavier than 100,000 kilograms. Aircraft must also be certified as compliant with the noise standards set out in Chapter 4 or 14 of Volume I of Annex 16 to the Chicago Convention.

The Regulations include delegation provisions to delegate powers to Australian Public Service Executive Level 1 or higher positions. Those exercising delegations must be either sufficiently senior to exercise the power or function, or, have appropriate qualifications or expertise to exercise the function. This level of delegation has been deemed appropriate given the time critical nature of decisions for dispensations granted under section 18 of the Regulations. Only those employees who are appropriately trained to administer the provisions under section 18 will exercise these powers.

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 Regulations could be expected to have a minor impact on business and the community. A certification letter was provided to OBPR recommending that the 1999 Regulations be remade with minor amendment, and therefore a Regulation Impact Statement was not required for these Regulations (OBPR 24121).

Consultation before making

Consultation was undertaken with effected Australian international and domestic airlines (Qantas Airways, Jetstar Airways, Tigerair Australia and Virgin Australia), the peak industry association for international airlines (the Board of Airline Representatives of Australia). Consultation has been conducted with the Gold Coast Airport, the Gold Coast Airport Community Aviation Consultative Group, Airport Noise Aviation Consultative Committee and various airlines. All those who were consulted are supportive of the changes as it allows increased flexibility while maintaining protections for the community from the effects of aircraft noise.

Details of the Regulations 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 January 2019.

Details of the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*.

Section 2 – Commencement

This instrument commenced on 1 January 2019.

Section 3 – Authority

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

Section 4 – Schedules

This section specifies that 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.

Section 5 – Definitions

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

The definition of *Annex* has been 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 ICAO website [//store.icao.int/annex-16-environmental-protection-volume-1-aircraft-noise-english-printed.html](http://store.icao.int/annex-16-environmental-protection-volume-1-aircraft-noise-english-printed.html). Any person subject to the Regulations can request and obtain a copy of Annex 16, Volume I from the Department of Infrastructure, Regional Development and Cities without charge.

The definition of *Movement* has been included to provide clarity for the references to movement in Part 3.

The definition of *Eligible Freight Jet Aircraft* has been removed from previous regulation 14 and added to section 5.

The definition of *Maximum Take-off Weight* for clarity now references the definition provided in the Civil Aviation Regulations 1988.

The definition of *Eligible Passenger Jet Aircraft* has been included to distinguish between an eligible passenger jet and an eligible freight jet aircraft with reference to the curfew quota.

The definition of *Year* in this instrument has been defined as a period of 12 months starting from 1 January 2019, the commencement date of these Regulations. This ensures that quota movements are applicable for a calendar year and that aircraft operators using current quota are not disadvantaged as a result of the 1999 Regulations being repealed.

Section 6 – Time is legal time in Queensland

This section specifies for the purposes of the Air Navigation (Gold Coast Airport) Regulations 2018 references to time are references to legal time in Queensland, as the State of Queensland does not adopt summer time.

Section 7 – Curfew period

This section provides that a curfew period starts at 11pm on a day and ends at 6am on the next day.

Section 8 – Prohibition on taking off or landing during curfew periods

This section specifies the penalty, under subsection 13.3(3) of the *Criminal Code*, in this section has been increased to 50 penalty units. The offence provision was reviewed and determined to ensure a sufficient deterrence effect that it should be increased to 50 penalty units. An increase to 50 penalty units is consistent with penalty provisions in the Air Navigation (Essendon Fields Airport) Regulations 2018.

The offence provisions have existed since the introduction of the Air Navigation (Coolangatta Airport) Regulations 1999 and have resulted in four minor breaches with the past 19 years. Conduct of a more severe 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 reversal of the burden of proof in the Regulations has been deemed appropriate given that the exemptions rely on evidentiary matter likely to be within the particular knowledge of the defendant.

Section 9 – Eligible passenger jet aircraft movements – yearly quota

This section permits both international and domestic airlines to apply for the overall quota of 24 movements per year. The 1999 Regulations only provide for domestic airlines to apply. To reduce the potential impact of aircraft noise on the community, international passenger jet aircraft using a quota movement will be no more than 100,000 kilograms.

Subsection 3 provides additional compliance checks to ensure that operators hold a permit, which is in force under the Regulations, and that only allocated movements are used for eligible take-offs or landings. Aircraft operators are not to exceed their allocation for a calendar year.

Subsection 4 provides clarity that the provisions apply on a day during a summer time period for *New South Wales under the Standard Time Act 1987 (NSW)* as Broken Hill and Lord Howe Island do not apply summer time.

Section 10 – Permits for eligible passenger jet aircraft movements

This section replaces regulation 11 of the 1999 Regulations which indicated what information the Secretary should have regard to when granting a permit for an operator to use one or more eligible passenger jet aircraft quota movements.

This section provides additional information, which must be included in an application to utilise quota movements at Gold Coast Airport.

Section 11 of the 1999 Regulations was removed, should a permit be varied or revoked this would be in accordance with power under subsection 33(3) of the *Acts Interpretation Act 1901*. Therefore, the powers included in the 1999 Regulations have been deemed no longer necessary. Where a permit is varied or revoked applicants can seek a review under section 20 of the Regulations.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Section 11 – Notifying Secretary about use of permit for eligible passenger jet aircraft movement

This section replaces previous regulation 13 that makes it an offence for an operator failing to notify the Secretary when a quota allocation has been used. A maximum of ten penalty units should apply.

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)*.

Section 12 – Eligible freight jet aircraft movements – weekly quota

This section replaces previous regulation 14 to provide four freight jet aircraft movements per week and also permits freight jet aircraft to use a quota movement only if they have sought a permit prior to that movement. An operator must not exceed the allocation of quota movements.

Section 13 – Permits for eligible freight jet aircraft movements

This section replaces previous regulation 15 to provide that an operator may apply to the Secretary for permission to use one or more weekly quota movements and provides for the Secretary to grant permission for a specified period of time. Should a permit be varied or revoked this would be in accordance with power under subsection 33(3) of the *Acts Interpretation Act 1901*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Section 14 – Taxi clearance received, or taxiing for take-off started, before start of curfew period

This section replaces previous regulation 9 to permit aircraft to take-off during a curfew period if that aircraft receives taxi clearance for take-off from *air traffic control*, or commenced taking for take-off, before 11pm on a day for which a take-off is sought. This

section includes reference to the Civil Aviation Regulations 1988 to provide a consistent understanding of air traffic control as defined in the Civil Aviation Regulations 1988.

Section 15 – Maximum take-off weight of 34,000 kg or less

This section replaces previous regulations 16 and 17 with minor amendments. Both regulations grants certain types of aircraft exemption from the curfew. An aircraft is exempt under this provision if:

- The aircraft is a jet aircraft or a propeller-driven aircraft; and
- The aircraft has a maximum take-off weight of 34,000 kilograms or less; and
- For a jet aircraft
 - o The aircraft complies with the maximum noise levels specified in Chapter 3, 4 or 14 of Annex 16, Volume I that is applicable to the *maximum take-off weight* of the aircraft; and
 - o The aircraft is of a type that complies with the 90-95 noise level rule.
- For a propeller-driven aircraft that it is issued with a noise certificate appropriate for the aircraft, type in accordance with the Air Navigation (Aircraft Noise) Regulations 2018.

Section 16 – Use of Gold Coast Airport as an alternate airport

This section replaces previous regulation 18 and 19 and provides for international aircraft may land and then take-off during the curfew period when using Gold Coast Airport as an alternate airport. Domestic airlines may land, however are not permitted to take-off again during the curfew period. A domestic airline seeking a take-off during a curfew period would need to seek a dispensation under section 18 of the Regulations.

Section 17 – Aircraft involved in emergencies

This section replaces previous regulation 20 that provides an aircraft may take-off from, or land at, the Gold Coast Airport during the curfew period if it is involved in an emergency. The definitions of aircraft involved in an emergency has been amended to include *mercy flights* which is consistent with the intent of emergency operations at other airports subject to a curfew. A mercy flight is a flight to transport a person in urgent need of medical attention, to transport an organ for urgent transplant, or to rescue a person from a dangerous situation.

Section 18 – Dispensations in exceptional circumstances

This section replaces previous regulation 21. This section outlines information relating to the applying for, granting of and information about dispensations from the curfew at Gold Coast Airport. This section permits operators to apply to the Secretary for a dispensation from the curfew in exceptional circumstances.

This section also provides the Secretary with the power to grant one-off dispensations to aircraft in exceptional circumstances and allows the Secretary to grant dispensations subject to conditions including, for example, when the take-off or landing must occur. A dispensation from the Secretary need not be in writing, but a written record of a dispensation and the reasons for granting it must be made and kept.

An application for a dispensation need not be in writing, however, as soon as practicable the operator must provide a written statement explaining the exceptional circumstances with an offence clause and penalty of 10 penalty units for failure to submit the written statement.

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)*.

Section 19 – Giving information to the Secretary

This section replaces regulation 22 that provides the Secretary with the power to request information, by written notice, in relation to the operation of an aircraft.

The Secretary will be able to request information in relation to the noise level of an aircraft and information relevant to determining whether a take-off or landing was involved in an emergency. The information request power in this clause is contained in the Regulations since it is relevant only in the context of the Secretary considering whether or not a particular aircraft operation is permitted under the Regulations.

The privilege against self-incrimination is not expressly outlined in this section, on the basis that it applies automatically for individuals unless it is expressly or impliedly overridden. There is nothing in this provision to expressly override the privilege. Further, the privilege does not attach to bodies corporate hence may be inapplicable for many users of Gold Coast Airport.

It is an offence for an operator to knowingly or recklessly fail to comply with a notice issued by the Secretary. A penalty of 10 penalty units applies to this offence.

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)*.

Section 20 – Review of decisions

This section replaces previous regulation 24 to provide for review by the Administrative Appeals Tribunal of a decision by the Secretary to grant, refuse to grant a passenger jet aircraft movements; revoke a permit granted to passenger jet aircraft; and grant, refuse to grant a freight jet aircraft movement permission.

Section 21 – Delegation

This section replaces previous regulation 25 to give the Secretary the power to delegate in writing and of his or her powers under the Regulations to an officer of the Department. This section amends the 1999 Regulations to include delegation provisions to delegate powers to Australian Public Service Executive Level 1 or higher positions. Those exercising delegations must be either sufficiently senior to exercise the power or function, or, have appropriate qualifications or expertise to exercise the function. This level of delegation has been deemed appropriate given the time critical nature of decisions for dispensations granted under section 18 of the Regulations. Only those employees who are appropriately trained to administer the provisions under section 18 will exercise these powers.

Section 22 – Definitions

This section allows for transition from the *old law* being the Air Navigation (Coolangatta Airport Curfew) Regulations 1999.

Section 23 – Passenger jet aircraft movements

This section allows the transition of quota movements by defining a transition year for quotas granted under the *old law*.

This section permits aircraft operators to continue to use domestic passenger jet aircraft movements allocated until the commencement of the Regulations on 1 January 2019.

Section 24 – Saving of delegations

This section allows the transition of delegations granted under the *old law* to apply for delegations used under the Air Navigation (Gold Coast Airport) Regulations 2018.

Schedule 1 – Repeals

This section repeals the whole of the *Air Navigation (Coolangatta Airport Curfew) Regulations 1999*.

Statement of Compatibility with Human Rights

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

Air Navigation (Gold Coast Airport Curfew) 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

The *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* (the Regulations) are to remake the Air Navigation (Coolangatta Airport Curfew) Regulations 1999 which are due to sunset on 1 April 2019, with modernised drafting language and a minor amendment to the curfew quota.

The Regulations establish a framework for the restriction of aircraft movements at Gold Coast Airport through a curfew in place between the periods of 11pm-6am daily for all aircraft. The curfew period and related protections remain unchanged.

The Regulations change the name to Gold Coast Airport; clarify in the application of summer time in New South Wales; require additional considerations for the granting of passenger jet aircraft movements at Gold Coast Airport; and include delegation provisions to delegate powers to Australian Public Service Executive Level 1 or higher positions.

Finally, the Regulations modernise drafting language.

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

Human rights implications

This amendments made by 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 a reversal on the burden of proof (section 8, 11, 18 and 19). This is considered a permissible limitation for the following reasons:
 - a) Conduct of such nature in breach of the regulated curfew period would contravene fundamental values and be harmful to society, in particular the community surrounding Gold Coast Airport.
 - 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. The community surrounding Gold Coast Airport has an expectation of protection from aircraft noise during sensitive times.

- c) Conduct in contravention of the applicable Regulation is entirely within the control of the defendant and completely within the defendant's knowledge.
- d) The offence is considered appropriate to provide protection to the community through applying a deterrent effect to operators at Gold Coast Airport.

Conclusion

This 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, Transport and Regional Development, the Hon Michael McCormack MP