

EXPLANATORY STATEMENT

Air Navigation (International Airline Licence Exemption) Determination 2019

The Determination exempts airlines from the requirement to have an international airline licence (IAL) when an airline flies over Australian territory without landing and for airlines that land for non-traffic purposes.

The Determination remakes, without any significant changes, the *Determination under subsection 12(3) of the Air Navigation Act 1920* made on 16 December 2008, which was due to sunset on 1 April 2019. Minor changes were made to reflect modern drafting conventions and to remove a redundant provision referring to approvals under subsection 12(1B) of the *Air Navigation Act 1920* (the Act). This power has since been repealed.

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.

Paragraphs 1 to 4 refer to machinery provisions associated with the making of this instrument, including the name of the instrument, the commencement date, the authority under which the instrument is made, and definitions.

Paragraph 5 refers to Schedule 1 of the instrument which repeals the previous Determination made in 2008.

Paragraph 6 sets out the circumstances under which scheduled international air services may be operated other than in accordance with an IAL.

The system of IALs ensures that scheduled international air services are operated in accordance with bilateral air services agreements and arrangements between Australia and our international aviation partners. They also act as a final checking mechanism to ensure that various safety and security approvals are in place prior to the commencement of air operations. Subsection 12(1) of the Act provides that international airlines shall not operate scheduled international air services over, into or out of Australian territory except in accordance with an IAL.

Paragraph 6(a) provides an exemption to this requirement for services that operate over Australian territory without landing. Over-flight rights are not regulated by Australia's air services agreements, as Australia is a signatory to the International Air Transit Agreement of 1944 which grants this right to airlines of all contracting states, including all of Australia's major aviation partners. There is therefore no need to check over-flights are operated in accordance with a bilateral agreement.

In addition, Australia's safety and security agencies do not require airlines to obtain prior safety or security approvals to overfly Australian territory without landing. The IAL system's role in providing an additional checking mechanism for safety and security approvals therefore does not serve any purpose in these circumstances.

The Department has not in the past enforced the requirement to have an international airline licence for over-flights. The requirement would have been difficult to enforce in practice and would not have resulted in a significant safety, security or economic regulatory outcome.

Paragraph 6(b) exempts airlines from the requirement to have an IAL for services that land in Australia only for non-traffic stops (landing in Australian territory without setting down or taking on passengers or cargo for reward or hire). The International Air Transit Agreement of 1944 also grants this right to airlines of all contracting states, including all of Australia's major aviation partners. Such services remain subject to relevant safety and security approvals.

A recent stakeholder consultation process confirmed support for the continuation of the provisions of the Determination.

The power to make the Determination is contained in subsection 12(3) of the *Air Navigation Act 1920*. Subsection 12(3) allows the Secretary to make a determination that certain categories of international air services are exempt from the requirement to have a licence. The determination-making power in subsection 12(3) has been delegated to the levels of Deputy Secretary and of SES2 (Executive Director) and SES1 (General Manager) in Aviation and Airports Division under the Secretary's Air Navigation Delegation Instrument 2016 (No. 1) dated 5 April 2016.

In accordance with section 18 of the Act, the Determination will be included in the Aeronautical Information Publications published under regulations made under the *Air Services Act 1995*.

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

Statement of Compatibility with Human Rights

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

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

Overview of the Legislative Instrument

The primary purpose of this Legislative Instrument is to provide a legal framework for exempting international airlines from the need to operate in accordance with an international airline licence when operating over Australian territory without landing and when landing in Australia for non-traffic purposes (landing in Australian territory without setting down or taking on passengers or cargo for reward or hire). The instrument is a remake, without any

significant changes, of a previous instrument that has been in place since 2008. Minor changes were made to reflect modern drafting conventions and remove redundant provisions.

The instrument is well understood and accepted by operators and key aviation stakeholders. A recent consultation process reaffirmed stakeholder support for the instrument.

Human rights implications

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

Conclusion

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