



Air Navigation (Exemption for Commercial Non-Scheduled Flights) Determination 2019

I, Stephen Borthwick, delegate of the Secretary of the Department of Infrastructure, Regional Development and Cities, make the following determination.

Dated 22 March 2019

Stephen Borthwick
General Manager, Aviation Industry Policy Branch
Department of Infrastructure, Regional Development and Cities

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Part 1—Preliminary

1 Name

This instrument is the *Air Navigation (Exemption for Commercial Non-Scheduled Flights) Determination 2019*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsection 15A(3) of the *Air Navigation Act 1920*.

4 Definitions

Note 1: A number of expressions used in this instrument are defined in subsection 3(1) of the Act, including the following:

- (a) aircraft;
- (b) non-scheduled flight.

Note 2: In addition, the following expressions are defined in section 15 of the Act in relation to sections 15A to 15F:

- (a) charterer;
- (b) charter operator.

In this instrument:

Act means the *Air Navigation Act 1920*.

associate means a person who, in relation to another person, is:

- (a) a member of the same unincorporated association; or
- (b) a partner under a partnership agreement.

charter flight means a non-scheduled flight by an aircraft which takes on or discharges passengers, cargo or mail for carriage for reward in Australian territory.

program means a program of charter flights of one or more aircraft conducted pursuant to an arrangement between a charterer and charter operator.

Note: A program may consist of flights with different origins and destinations.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Permission not required for certain flights

6 Categories of flights in respect of which permission not required

For the purposes of subsection 15A(3) of the Act, a permission is not required in relation to a flight if any of sections 7 to 10 apply to it.

7 Single charter flight

This section applies to a charter flight which does not form part of a program.

8 Programs of passenger charter flights

This section applies to a charter flight forming part of a program conducted for the purpose of transporting passengers if all of the following apply:

- (a) all of the flights constituting the program are conducted by aircraft with a seating capacity not exceeding an item in column 2 of Table A;
- (b) the number of flights constituting the program does not exceed the corresponding item in column 3 of Table A;
- (c) within 14 days after the end of the first flight constituting the program, the charter operator gives a written notice to the Secretary setting out the information referred to in paragraphs (a) to (g) of subsection 15C(1) of the Act.

Table A

Column 1	Column 2	Column 3
Item	Maximum seating capacity	Maximum number of flights in program
1.	10	No limit.
2.	40	5
3.	80	2

9 Own-use charter flight

- (1) This section applies to a charter flight, whether or not forming part of a program, if all of the following apply:
 - (a) there is a single charterer;
 - (b) subsection (2) applies to each passenger carried on the flight (if any);
 - (c) the charterer is the owner or lessor of all the cargo carried on the flight (if any) and the purpose of that carriage is for the use or benefit of the charterer.

Note: For the avoidance of doubt, cargo does not include passenger baggage.

- (2) For the purposes of paragraph (1)(b), this subsection applies to the following:
 - (a) an employee of the charterer;
 - (b) a member (including a shareholder) of the charterer;

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- (c) a director of the charterer;
 - (d) an associate of the charterer;
 - (e) an individual contracted to provide services to the charterer;
 - (f) an agent of the charterer;
 - (g) an individual entitled to passage on a transport service operated by the charterer.

10 Charter flight for carriage of homogenous cargo

This section applies to a charter flight, whether or not forming part of a program, if all of the following apply:

- (a) there is a single charterer;
- (b) the dominant purpose of the flight is the transport of cargo;
- (c) the cargo is homogenous;
- (d) the cargo does not consist of or include a consignment consolidated by a person who carries on business as a freight forwarder.

Note: Each of the following is an example of homogenous cargo for the purposes of paragraph (1)(c):

- (a) cargo consisting of electronics and computer equipment;
- (b) cargo consisting of meat of any number of kinds;
- (c) cargo consisting of animals (including livestock) of any number of species.

Schedule 1—Repeals

Determination under subsection 15A(3) of the *Air Navigation Act 1920* made on 21 April 1997 (F2008B00763)

1 The whole of the instrument

Repeal the instrument