

## **EXPLANATORY STATEMENT**

Minute No. 19 of 2019 - Minister for Infrastructure, Transport and Regional Development

Subject - *Air Navigation Act 1920*

*Air Navigation (Gold Coast Airport Curfew) Amendment (Technical Measures) Regulations 2019*

### **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.

### **OUTLINE**

The purpose of the *Air Navigation (Gold Coast Airport Curfew) Amendment (Technical measures) Regulations 2019* (the Regulations) is to amend the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* (the Principal Regulations) to provide clarity in the permitted operations during the curfew period.

The Regulations:

- Define helicopter and maximum take-off weight to provide clarity to and align definitions in similar legislation;
- Add the provision, omitted inadvertently from the previous regulations, to permit aircraft to only land and not take-off during the curfew period under section 9 of the 2018 Regulations up until 11:30pm during New South Wales (NSW) daylight savings time as intended;
- Provide clarity on non-emergency helicopter movements during the curfew period.

The Principal Regulations continue to provide for 24 quota movements per year. However the Regulations amend the Principal Regulations to provide approved aircraft to use a quota movement for a landing only during NSW daylight savings time between 11pm and 11:30pm instead of a landing and take-off. This provision was omitted when the Principal Regulations were made due to sunseting. This provision balances the need for the community to be provided with some night time respite from aircraft noise, whilst also providing industry some operational flexibility.

The Regulations provide clarity for stakeholders and the community involving helicopter movements. Only emergency helicopter movements are permitted at the Gold Coast Airport during the curfew period.

### **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. Therefore, a Regulation Impact Statement was not required for these Regulations (OBPR 25387).

### **Consultation before making**

Consultation was undertaken with the Gold Coast Airport, the Australian Airports Association, the Australian Helicopter Industry Association, the chair of the Gold Coast Airport Community Aviation Consultation Group and the Airport Noise Abatement Consultative Committee. Stakeholders did not raise any concerns over the minor amendments.

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 the day after registration.

**Details of the *Air Navigation (Gold Coast Airport Curfew) Amendment (Technical Measures) Regulations 2019***

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Air Navigation (Gold Coast Airport Curfew) Amendment (Technical Measures) Regulations 2019*.

Section 2 – Commencement

This section provides that the instrument commenced the day after registration.

Section 3 – Authority

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

Section 4 – Schedule

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.

Schedule 1 – Amendments

Item 1 – Section 5

Section 5 of the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018* (the Principal Regulations) provides definitions for a number of terms with the amendments being:

The definition of *helicopter* has been added to provide clarity for the references to helicopter in section 15. The definition is the same as found in 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](https://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, Transport, Cities and Regional Development without charge. Members of the public can source a copy through the National Library of Australia or another public library.

Item 2 – Section 5

The definition of *Maximum Take-off Weight* has been amended to ensure consistency between the Principal Regulations and the *Air Navigation (Essendon Fields Airport) Regulations 2018*.

Item 3 – Section 9

Subsection 9(4) has been amended to include a provision that was omitted in the Principal Regulations. Passenger jets allocated with quota movements under section 9 are able to take off or land between 11pm and 11:45pm when NSW and Queensland time is aligned (i.e. April to September). The amendment includes the omitted provision that during NSW

daylight savings time (October to the end of March) aircraft with a quota movement approval, are restricted **to landings only** (not take-offs) between 11pm and 11:30pm.

Item 4 – Section 15

A subsection has been added to include the words ‘to avoid doubt, this section does not apply to helicopters’ to provide clarity that helicopters (other than those permitted for emergency operations) are not permitted to operate during the curfew period.

## 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) Amendment (Technical Measures) Regulations 2019**

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) Amendment (Technical Measures) Regulations 2019* (the Regulations) amend the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*.

The Regulations provide clarity to the aviation industry and enable the community to continue to receive night time respite during the periods of 11pm – 6am daily.

The amendments in the Regulations do not alter any of the substantive provisions in the *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*.

#### **Human rights implications**

These amendments made by this Legislative Instrument engage the following rights:

- The right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.
- The legislative instrument includes a restriction of helicopter movements during the curfew period (except emergency movements). This is considered a permissible limitation for the following reasons:
  - a) 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.
  - b) Helicopter movements, except emergencies, are not permitted to operate during the curfew period and the Regulations clarify this position.

#### **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**