

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Home Affairs

*Aviation Transport Security Act 2004*

### ***Aviation Transport Security Amendment (Domestic Air Cargo – Regional Airports) Regulations 2021***

The *Aviation Transport Security Act 2004* (the Aviation Act) and the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) operate to give effect to Australia's obligations under Annex 17 to the Convention on International Civil Aviation (the Chicago Convention). In pursuit of this aim, the Aviation Act and the Aviation Regulations establish a regulatory framework to safeguard against unlawful interference with civil aviation in Australia.

Subsection 133(1) of the Aviation Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Relevantly, in relation to paragraph 133(1)(a), the Aviation Act provides that regulations may prescribe requirements in relation to examining air cargo, receiving clearance, and the circumstances in which air cargo is required to be cleared. Further, subparagraphs 44C(1)(a)(i), (iii), and (iv) of the Aviation Act provide that for the purposes of safeguarding against unlawful interference with aviation, the regulations may prescribe requirements in relation to one or more of the following - examining air cargo, receiving clearance, and the circumstances in which air cargo is required to be cleared.

The purpose of the *Aviation Transport Security Amendment (Domestic Air Cargo – Regional Airports) Regulations 2021* (the Amendment Regulations) is to respond to feedback on the economic impact on regional aviation of the amendments made by Schedule 2 to the *Aviation Transport Security Amendment (Domestic Cargo) Regulations 2020* (the 2020 Amendment Regulations), taking into account the broader impacts on industry that have arisen as a result of the global pandemic, while also maintaining or improving domestic air cargo security. The 2020 Amendment Regulations extended air cargo examination and clearance requirements to domestic air cargo uploaded onto particular aircraft at Adelaide, Brisbane, Melbourne, Perth and Sydney airports from 1 July 2020, and further expanded the requirements to all security regulated airports from 1 July 2021. In particular, the Amendment Regulations amend the Aviation Regulations to:

- reduce the regulatory burden associated with conducting clearance procedures on air cargo originating from regional Australia, by extending the requirements in two stages, 12 months apart commensurate with threat assessments and risk advices in relation to those areas;
- ensure that air cargo examination requirements that are imposed at airports are commensurate with risks associated with unlawful interference;

- reinstate aircraft operators of a prescribed air service as an additional class of persons within the penalty regime set out for a ‘loading person’ who loads air cargo onto an aircraft without a security declaration;
- recognise certain security declarations issued overseas, so that new Australian security declarations do not have to be issued; and
- make other minor consequential and technical amendments.

Consultation was undertaken with industry organisations, including through a virtual meeting of the Air Cargo Security Industry Advisory Forum (ACSIAF) in December 2020, attended by representatives from Australian aircraft operators, aviation industry associations, freight industry associations, customs brokers, freight forwarders and government agencies prior to the development of the 2020 Amendment Regulations.

The Department of Home Affairs also conducted targeted consultation with key air cargo security industry stakeholders from mid-December 2020 to late May 2021. This consultation helped inform the drafting of the Amendment Regulations in addressing industry’s concerns, whilst also achieving the Government’s overarching objective of improving domestic air cargo security. Industry is supportive of these changes.

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Amendment Regulations, and advised that no Regulation Impact Statement was required (OBPR: 42746).

The financial impact of the Amendment Regulations is low. The amendments contain deregulatory measures by reducing the regulatory burden of domestic air cargo examination on regional airports and permitting acceptance of foreign security declarations for domestic transhipped air cargo. The other minor administrative amendments would have little financial impact on industry.

A Statement of Compatibility with Human Rights has been completed in relation to the amendments to the regulations and assesses that the amendments are compatible with Australia’s human rights obligations. A copy of the Statement of Compatibility with Human Rights is at [Attachment A](#).

Details of the Amendment Regulations are set out in [Attachment B](#).

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

Sections 1 to 4 and Schedule 1 to the Amendment Regulations commence on the day after registration of the instrument.

Part 1 of Schedule 2 to the Amendment Regulations commences immediately after the commencement of Schedule 2 to the *Aviation Transport Security Amendment (Domestic Cargo) Regulations 2020* on 1 July 2021.

Part 2 of Schedule 2 to the Amendment Regulations commences on 1 July 2022.

**Statement of Compatibility with Human Rights**

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

***Aviation Transport Security Amendment (Domestic Air Cargo – Regional Airports) Regulations 2021***

This Disallowable 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 Disallowable Legislative Instrument**

The *Aviation Transport Security Act 2004* (the Act) and the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) establish a regulatory framework for the purpose of safeguarding against unlawful interference with civil aviation in Australia.

Schedule 1 of the *Aviation Transport Security Amendment (Domestic Air Cargo – Regional Airports) Regulations 2021* (the Domestic Cargo – Regional Airports Regulations) amends the Aviation Regulations to make minor administrative changes to the domestic air cargo framework.

It does this by clarifying the acceptance of foreign consignment security declarations for domestic transshipment purposes; providing known consignors with flexibility in completing security declarations where the destination of their goods are not yet known; and, ensuring that the penalty for loading cargo without a security declaration can be applied to all aircraft operators.

Schedule 2 of the Amendment Regulations has two parts. Part 1 – Stage 1 amendments commences immediately after the commencement of Schedule 2 of the *Aviation Transport Security Amendment (Domestic Cargo) Regulations 2020* (the Domestic Cargo Regulations) on 1 July 2021. Part 2 – Stage 2 amendments commences on 1 July 2022.

Schedule 2 (Parts 1 and 2) of the Amendment Regulations amends the Aviation Regulations to specify the airports where subdivision 4.1A.1 of the Aviation Regulations applies.

Under amendments to the Aviation Regulations made by the Domestic Cargo Regulations, from 1 July 2021 all airports would be included in the domestic air cargo examination framework in subdivision 4.1A.1 of the Aviation Regulations. This would mean that domestic air cargo would need to receive clearance from a Regulated Air Cargo Agent, Cargo Examining Aircraft Operator or a Known Consignor prior to loading onto an aircraft that is not a closed charter, has 40 or more seats and/or a maximum take-off weight of 20,000kg or more (regulated aircraft).

The outcome of the amendments made by Schedule 2, Part 1 – Stage 1 amendments, of the Amendment Regulations is that from 1 July 2021, domestic air cargo that is

loaded onto regulated aircraft at a designated airport and a tier 1 airport, must receive clearance, rather than at all airports, prior to loading. The effect of this amendment is that the domestic air cargo security framework will expand to apply at additional airports from 1 July 2021.

The outcome of the amendments made by Schedule 2, Part 2 – Stage 2 amendments, of the Amendment Regulations is that from 1 July 2022, domestic air cargo must receive clearance at tier 2, Bankstown and Essendon Fields airports prior to loading, in addition to designated and tier 1 airports.

The effect of this amendment is that the domestic air cargo security framework will commence 12 months later at these airports than scheduled under the Domestic Cargo Regulations. These two stages provide a risk-based and practical approach that considers the operational challenges of industry participants operating in remote and regional airports. The delay in commencement at tier 2, Bankstown and Essendon Fields is required to provide industry, which has been impacted by the global pandemic significantly, with additional time to implement the enhanced security measures at these locations. The volume of domestic air cargo travelling through these airports is low.

Another outcome of Schedule 2 of the Amendment Regulations is that it removes the requirement for examination of air cargo for airports not specified, where there are very few flights using regulated aircraft, and consequently, there is very little uplift of domestic air cargo at these airports.

The total outcome of the Schedule 2 amendments is that the locations where subdivision 4.1A.1 of the Aviation Regulations applies will be clearly specified, which will provide certainty to the air cargo industry about where to implement the new enhanced security measures, and when these measures come into effect.

### **Human rights implications**

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

### **Conclusion**

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

**Details of the Aviation Transport Security Amendment (Domestic Air Cargo – Regional Airports) Regulations 2021**

Section 1 – Name

This section provides that the title of the Regulations is the *Aviation Transport Security Amendment (Domestic Air Cargo – Regional Airports) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

This section provides for the commencement of the Amendment Regulations, as set out in the table in subsection 2(1).

Table Item 1 of subsection 2(1) provides for Sections 1 to 4 and anything in this instrument not elsewhere covered by the Table to commence on the day after this instrument is registered.

Table Item 2 of subsection 2(1) provides for Schedule 1 to the Amendment Regulations to commence on the day after this instrument is registered.

Table Item 3 of subsection 2(1) provides for Part 1 of Schedule 2 to the Amendment Regulations to commence immediately after the commencement of Schedule 2 to the commencement of Schedule 2 to the *Aviation Transport Security Amendment (Domestic Cargo) Regulations 2020*.

Table Item 4 of subsection 2(1) provides for Part 2 of Schedule 2 to the Amendment Regulations to commence on 1 July 2022.

Subsection 2(2) clarifies that information in column 3 of the table in subsection (1) is not part of the instrument, and that information may be inserted there, or edited, in any published version of the instrument.

Section 3 – Authority

This section provides that the instrument is made under the *Aviation Transport Security Act 2004*.

Section 4 – Schedules

This section provides 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 commencing first

### *Aviation Transport Security Regulations 2005*

The amendments to the *Aviation Transport Security Regulations 2005* (the Aviation Regulations) made by this instrument make minor alterations to Australia's domestic air cargo security framework. Australia is a global leader in enhancing domestic air cargo examination requirements, along with other like-minded countries such as the United States of America, introducing measures consistent with our outbound international air cargo examination requirements.

#### **The 2020 Amendment Regulations**

The *Aviation Transport Security Amendment (Domestic Cargo) Regulations 2020* (the 2020 Amendment Regulations) introduced a two-phased approach to setting enhanced requirements for air cargo to be cleared before being uplifted onto domestic flights in Australia.

Phase 1 of the 2020 Amendment Regulations, which commenced on 1 July 2020, imposed new domestic air cargo examination requirements, which specify that air cargo must be examined and cleared to the standard dictated in a notice issued by the Secretary of the Department, or in accordance with procedures set out in an approved Transport Security Plan, to be loaded onto aircraft, at the five major airports (Adelaide, Brisbane, Melbourne, Perth and Sydney) in relation to air services that have 40 or more seats and/or a maximum take-off weight of 20,000kg or more and that are not closed charter operations ('regulated aircraft').

As it currently stands, Phase 2 expands the requirements to all other security regulated airports from 1 July 2021. The Phase 2 amendments would have had the effect of imposing the new cargo examination requirements on domestic air cargo loaded onto regulated aircraft at all airports in Australia, including regional and remote airports.

The phased approach was intended to strengthen Australia's aviation transport security framework to better protect aircraft from unlawful interference from the lodgement of unauthorised explosives in cargo. The 12-month gap between the commencement of each of the two phases, on 1 July 2020 and 1 July 2021, was to take into account industry readiness to upscale equipment and infrastructure at a high number of locations around Australia.

#### **The Amendment Regulations**

Following consultations with industry and other stakeholders, it was decided to split the implementation of the Phase 2 changes across two timeframes. The amendments made by Item 1 of Schedule 2 to the Proposed Regulations apply the new examination requirements to two categories of airports from 1 July 2021. The amendments made by Item 3 of Schedule 2, apply the changes to an additional category of airport and two named airports, from 1 July 2022.

Schedule 1 to the Amendment Regulations amends the Aviation Regulations to make minor technical changes to the domestic air cargo framework.

#### **Item [1] – Regulation 1.03**

This item inserts a new definition of *foreign consignment security declaration* in regulation 1.03 of Part 1 of the Aviation Regulations. For the purposes of the Aviation

Regulations, the term would be defined to have the meaning given by subregulation 4.41D(3), as proposed by Item 4 of this instrument.

***Definition of foreign consignment security declaration***

The purpose and effect of this amendment is to include, in the general definitions section, a sign-post to the reader that the term foreign consignment security declaration is a defined term, but that the term is defined elsewhere within the Aviation Regulations in the place that is specific to air cargo security declarations.

The inclusion of this defined term is relevant to items 2, 3, 4, and 5 of Schedule 1 to this instrument, set out below.

**Item [2] – Regulation 4.41D**

This item inserts “(1)” before the words “A security declaration” in the chapeau to regulation 4.41D. This minor technical amendment is consequential to the amendments made by item 4 of Schedule 1 to this instrument, which expands regulation 4.41D to include two new subregulations. Previously, regulation 4.41D did not contain any subregulations.

**Item [3] – Regulation 4.41D**

This Item inserts the words “is covered by subregulation (3) or that” after the words “a document that” in the chapeau to subregulation 4.41D(1).

This technical amendment is consequential to the amendments made by item 4 of Schedule 1 to this instrument, which would expand regulation 4.41D to include two new subregulations, and would have the effect of expanding the meaning of *security declaration* to include proposed new subregulation 4.41D(3).

**Item [4] – At the end of regulation 4.41D**

This Item inserts new subregulations 4.41D(2) and (3) to enhance the clarity surrounding, and expand the meaning of, the term *security declaration*.

***New subregulation 4.41D(2)***

New subregulation 4.41D(2) is a clarifying provision, by amending the Aviation Regulations to avoid doubt regarding a security declaration that has been issued in a particular situation.

New subregulation 4.41D(2) makes clear that a document is a *security declaration* even if: (i) the airport to which the cargo is being transported is not included by the known consignor at the time of issue; and (ii) the RACA or cargo examining aircraft operator does not issue the document merely by including that information in the document. That is, the issuer would be the known consignor even if the destination airport is added to the security declaration later by a RACA or cargo examining aircraft operator. Clarifying this matter is relevant to the offence provisions in regulation 4.41F.

The purpose of this amendment is to cater for situations in which a known consignor does not know the airport to which the cargo will be transported at the time the security declaration is issued. For some known consignors, this information is not available because they deliver their goods to a distributor who then sells the goods

and makes arrangements for the cargo to be loaded onto an aircraft. The known consignor is obligated to issue a security declaration for the cargo before it goes to the distributor, but cannot always know at the time the declaration is issued to which airport the cargo is to be transported.

Where the circumstances outlined above exist, new subregulation 4.41D(2) will permit the destination airport information to initially be left blank in the security declaration by the known consignor, and will allow for that information to later be completed by a RACA or cargo examining aircraft operator prior to uplift onto a prescribed air service so that the security declaration fully complies with the regulatory requirements.

The effect of this amendment is to recognise that information about the destination airport cannot always be known by a known consignor at the time the known consignor issues a security declaration. It also acknowledges that information about the destination airport is necessary and must be included in the security declaration.

An additional purpose is to make clear that the issuer would be the known consignor even if the destination airport is added to the security declaration later by a RACA or cargo examining aircraft operator. Clarifying this matter is also relevant to the offence provisions in regulation 4.41F.

### ***New subregulation 4.41D(3)***

This item expands the meaning of the term *security declaration* in regulation 4.41D, by including provisions relating to cargo which originates outside Australia.

Previously, what was paragraph 4.41D(b) of Division 4.1A of Part 4 of the Aviation Regulations before these Amendment Regulations came into effect provided that a security declaration is a document that is in relation to cargo, issued by a person (the issuer) that is a known consignor, a RACA or a cargo examining aircraft operator, when the cargo is in the possession of the issuer.

Under regulation 4.41L of the Aviation Regulations, a known consignor, is a person who carries on a business that engages in originating cargo and is approved as a known consignor under regulation 4.41N. A RACA or a cargo examining aircraft operator is a person who has been approved or designated as such by the Secretary of the Department of Home Affairs or who has been given an examination notice by the Secretary in relation to examining cargo. These persons perform these functions in Australia.

This definition did not recognise a security declaration issued by an international entity that performs a similar function in relation to cargo that has been shipped from a location external to Australia and that is to be transhipped domestically, from one airport in Australia to another. In effect, the previous regulatory framework had the effect that inbound cargo that was to be transhipped domestically on a regulated flight could not be compliant unless a security declaration had been issued by a known consignor, a RACA or a cargo examining aircraft operator in Australia who was approved or designated to perform cargo examination functions.

New subregulation 4.41D(3) manages this situation by introducing a document, called a *foreign consignment security declaration*, which, together with the introduction of item 3, has the effect that a *foreign consignment security declaration* is included in the meaning of *security declaration* under regulation 4.41D, as amended by these Amendment Regulations.

New subregulation 4.41D(3) provides that a foreign consignment security declaration is a document that: relates to cargo that originates overseas; is issued by a person with functions like those of a known consignor, a RACA or a cargo examining aircraft operator, when the cargo is in the possession of the person overseas; and is in English or be readily translated into English by a RACA, or a cargo examining aircraft operator, who handles the cargo in Australia. It should also include details of how the person assessed the cargo and state that the cargo does not contain an unauthorised explosive.

The purpose and effect of this proposed amendment is to recognise security declarations issued in relation to cargo that originates overseas and fits the other descriptions of proposed new subregulation 4.41D(3) as meeting the meaning of a security declaration under regulation 4.41D, as amended by these Proposed Regulations. In turn, this is intended to relieve Australian RACAs and cargo examining aircraft operators from the unintended burden of having to examine and clear cargo and complete, or issue, a new Australian security declaration for international cargo that would be transhipped from one Australian airport to, or through, another on an Australian regulated aircraft.

#### **Item [5] – Paragraph 4.41F(7)(a)**

This item inserts the words “except a foreign consignment security declaration” after the words “a security declaration” in paragraph 4.41F(7)(a).

Regulation 4.41F of Division 4.1A of Part 4 of the Aviation Regulations deals with strict liability offences relating to the issuing of a security declaration in certain circumstances. Subregulation 4.41F(7) relates specifically to persons other than known consignors, RACAs and cargo examining aircraft operators.

Previously, paragraph 4.41F(7)(a) provided that a person committed an offence of strict liability if the person purported to issue a security declaration for cargo and the person was not a known consignor, RACA or cargo examining aircraft operator.

As noted in Item 4 above, a *foreign consignment security declaration* is issued by a person overseas who performs a similar function to a known consignor, RACA or cargo examining aircraft operator, when the cargo is in their possession. However, persons who perform these functions in foreign jurisdictions are not approved or designated as a known consignor, RACA or cargo examining aircraft operator by the Secretary of the Department of Home Affairs, and the Aviation Regulations do not apply in foreign jurisdictions. As a consequence, the strict liability offence in paragraph 4.41F(7)(a) does not apply to a person overseas who purported to issue a *foreign consignment security declaration*.

**Item [6] – Subregulation 4.41G(3) (paragraph (b) of the definition of *loading person*)**

This item amends paragraph (b) of the definition of *loading person* by replacing the existing reference to *a cargo examining aircraft operator* with a reference to *an aircraft operator of a prescribed air service*.

Regulation 4.41G deals with offences committed by certain persons, called *loading persons*, who either load cargo onto prescribed aircraft without having a security declaration for the cargo at the time of loading, or who enter into an arrangement with another person (not a loading person) to load cargo onto a prescribed aircraft without having a security declaration for the cargo at the time of loading, and sets out penalties for those offences.

The requirement that all cargo loaded onto relevant aircraft at relevant airports must have a security declaration is common practice for persons who load cargo onto an aircraft. Failure to comply with the requirement to conduct an activity of this type would pose an obvious risk to aviation security.

***Previous paragraph 4.41G(3)(b)***

Paragraphs 4.41G(3)(a) to (d) specified who is a *loading person* for the purposes of the Aviation Regulations. Previously, paragraph (b) of the definition made reference to *a cargo examining aircraft operator*, which is defined in regulation 1.03 of the Aviation Regulations to mean an aircraft operator of a prescribed air service whose Transport Security Plan has been approved by the Secretary and sets out procedures for receiving, processing, and clearing cargo.

Some operators of prescribed air services do not have a Transport Security Plan that sets out procedures for receiving, processing and clearing cargo, and would therefore not be permitted to issue a security declaration in relation to cargo. These operators are unable to load cargo onto their own aircraft unless another person (such as a RACA) has issued a security declaration in relation to the item of cargo.

Nevertheless, the requirement that a security declaration has been issued for cargo still applies to cargo loaded onto relevant aircraft at relevant airports (see paragraph 4.41A(2)(c)).

***New paragraph 4.41G(3)(b)***

New paragraph 4.41G(3)(b) operates to provide that a reference to *an aircraft operator of a prescribed air service* is now included in the definition of a *loading person*, replacing a reference to *a cargo examining aircraft operator*.

Prior to the commencement of the 2020 Amendment Regulations on 1 July 2020, regulation 4.41G applied to a ‘regulated business’. This included ‘an operator of a prescribed air service’. The 2020 Amendment Regulations removed the term ‘regulated business’ from the Aviation Regulations, and as a consequence, the term ‘cargo examining aircraft operator’ was substituted for the term ‘an operator of a prescribed air service’.

This resulted in the unintended consequence of removing operators of prescribed air services who do not have a Transport Security Plan from the application of the offence of, and penalties for, loading cargo onto prescribed aircraft without having a security declaration for the cargo.

This item corrects the omission by making clear that the requirement that all cargo loaded onto relevant aircraft at relevant airports must have a security declaration, and the associated penalty for non-compliance, applies to all aircraft operators of prescribed air services who load cargo onto those aircraft at the specified categories or named airports, not just to those aircraft operators of prescribed air services whose approved Transport Security Plan sets out procedures for receiving, processing and clearing cargo.

## Schedule 2—Amendments commencing later

### *Aviation Transport Security Regulations 2005*

The 2020 Amendment Regulations imposed new requirements for clearing air cargo loaded onto domestic regulated aircraft, where the air service is not a closed charter operation, in two phases.

The first phase came into effect on 1 July 2020 and applied to cargo loaded onto regulated aircraft at five specified Australian airports which collectively process approximately 90 percent of Australia’s domestic air cargo volumes. The second phase comes into effect on 1 July 2021, extending the requirements to further Australian airports. The second phase of these reforms is being modified in two stages. The first stage is set out in Part 1 of Schedule 2 to this instrument, and the second stage is set out in Part 2 of Schedule 2 to this instrument.

#### ***Phase 1 of the extended domestic air cargo examination requirements***

Regulation 4.41A of the Aviation Regulations sets out the application provisions for subdivision 4.1A.1 of those Regulations, which relate to the requirements for examining and clearing cargo.

Subregulation 4.41A(2) was introduced into the Aviation Regulations by Item 10 of Schedule 1 to the 2020 Amendment Regulations.

The subregulation provided that it applied to cargo that is intended to be transported on a domestic air service in the following circumstances:

- (a) the cargo is to be transported by an aircraft that has:
  - (i) a seating capacity of 40 or more persons; or
  - (ii) a certificated maximum take-off weight of 20,000 kg or more;
- (b) the air service is not a closed charter operation;
- (c) the cargo is to be loaded onto the aircraft at any of the following airports:
  - (i) Adelaide airport;
  - (ii) Brisbane airport;
  - (iii) Melbourne airport;
  - (iv) Perth airport;
  - (v) Sydney airport.

#### ***Phase 2 of the extended domestic air cargo examination requirements***

Previously, Schedule 2 to the Amendment Regulations would have come into effect on 1 July 2021, and represented the second phase of extending the new examination and clearance requirements to air cargo loaded onto aircraft in other Australian airports on domestic air services that meet the criteria set out in subregulation 4.41A(2).

Item 1 of Schedule 2 to the 2020 Amendment Regulations repealed both paragraphs 4.41A(2)(b) and (c) as set out above, and substituted a new paragraph (b). The amended paragraph (b) provided that the air service is not a closed charter operation.

In effect, the requirement to examine and clear air cargo loaded onto domestic air services on regulated aircraft with particular characteristics, where the air service is not a closed charter operation, would have applied at all Australian airports from 1 July 2021.

The amendments made by Schedule, 2 outlined below, will have the effect of splitting the introduction of the new examination and clearance requirements for air cargo into two stages, with the Stage 1 amendments commencing on 1 July 2021 and the Stage 2 amendments to commence on 1 July 2022.

## **Part 1 – Stage 1 amendments**

### **Item [1] – At the end of subregulation 4.41A(2)**

Item 1 of Part 1 of Schedule 2 adds new paragraph (c) to subregulation 4.41A(2).

The effect of this amendment is that subregulation 4.41A(2) applies to cargo that is intended to be transported on a domestic air service in certain circumstances, including that the cargo is to be loaded onto the aircraft at a designated airport (with the designation made by the Secretary under subsection 28(6) of the Aviation Act) or a tier 1 security controlled airport.

The primary purpose of the amendment is to reduce the immediate financial and regulatory burden of air cargo examination and clearance requirements for cargo loaded onto domestic air services in regional and remote locations, and to provide industry with certainty about the additional locations where the enhanced requirements for domestic air cargo apply from 1 July 2021.

An additional effect is that sectors of the air cargo industry will not be required to invest in additional capability to meet the enhanced requirements that could affect the viability of aviation services in remote and regional Australia. As the effects of the global pandemic have affected the aviation industry significantly, it was prudent to revise these policy settings to reduce the regulatory burden of cargo examination on remote and regional Australia and provide certainty to industry about where the requirements apply.

In line with the commencement provisions in section 2 of the Amendment Regulations, this item commences immediately after the commencement of Item 1 of Schedule 2 to the 2020 Amendment Regulations, which is slated for 1 July 2021.

### **Item [2] – In the appropriate position in Part 10**

This item inserts new Division 19 into Part 10 of the Aviation Regulations to deal with the application of amendments made by Item 1 of Schedule 2 to the 2020 Amendment Regulations.

#### **10.43 Application of paragraph 4.41A(2)(c)**

New Division 19 inserts new regulation 10.43, which provides that paragraph 4.41A(2)(c), as added by item 1 of Part 1 of Schedule 2 to the Amendment Regulations, applies to cargo that is to be loaded onto an aircraft after the commencement of that Part which, in line with the commencement provisions in section 2 of the Proposed Regulations, occurs immediately after the commencement of Item 1 of Schedule 2 to the 2020 Amendment Regulations, which is slated for 1 July 2021.

#### ***Example of when the requirement does not apply***

Cargo is intended to be transported on a domestic air service on an aircraft that has a seating capacity of 40 or more persons, where the air service is not a closed charter operation. The cargo is loaded onto the aircraft at a tier 1 security controlled airport on the afternoon and early evening of 30 June 2021, but the aircraft's departure is delayed until 7.00am on 1 July 2021.

On 30 June 2021, paragraph 4.41A(2)(c) of the Aviation Regulations provides that examination and clearance of domestic air cargo loaded onto a domestic air service on an aircraft that has a seating capacity of 40 or more persons, where the air service is not a closed charter operation applies at Adelaide, Brisbane, Melbourne, Perth and Sydney airports. These airports are not tier 1 security controlled airports.

The requirement to examine and clear domestic air cargo does not apply to cargo loaded onto the aircraft at a tier 1 security controlled airport on 30 June 2021, despite its departure being delayed until 1 July 2021.

***Example of when the requirement applies***

Cargo is intended to be transported on a domestic air service, on an aircraft that has a certificated maximum take-off weight of 20,000 kg or more and the air service is not a closed charter operation. The cargo is loaded onto the aircraft at a curfew free tier 1 security controlled airport from 1.30am on 1 July 2021 for a 2.00am flight.

New paragraph 4.41A(2)(c) would be in force, so the requirement to examine and clear the cargo prior to loading cargo onto the aircraft would apply.

**Part 2 – Stage 2 amendments**

***Stage 2 of Phase 2 of the extended domestic air cargo examination requirements***

Previously, Part 2 of Schedule 2 to the 2020 Amendment Regulations would have come into effect on 1 July 2022, and would have represented the second stage of Phase 2 of extending the new examination and clearance requirements to air cargo loaded onto aircraft in other Australian airports on domestic air services that meet the criteria set out in subregulation 4.41A(2).

The amendment made by Item 3 below will extend the application of the requirement to examine and clear cargo to an additional category of security controlled airport and the named airports set out in new paragraph 4.41A(2)(c).

**Item [3] – at the end of paragraph 4.41A(2)(c)**

Item 3 of Part 2 of Schedule 2 adds new subparagraphs (iii), (iv) and (v) to paragraph 4.41A(2)(c).

The effect of this proposed amendment is that subregulation 4.41A(2), as amended by these Amendment Regulations, applies to cargo that is intended to be transported on a domestic air service in certain circumstances, including that the cargo is to be loaded onto the aircraft at a tier 2 security controlled airport or at Bankstown Airport or Essendon Fields airport.

The purpose of the amendment is to ensure that the new domestic air cargo examination requirements are only imposed at locations commensurate with the risk profiles for those locations, as well as to provide industry with certainty about the new locations where the enhanced requirements for domestic air cargo apply, and the date on which the requirements apply.

An additional effect is that only the sector of the air cargo industry that loads cargo onto regulated aircraft in the specified categories of airports or the named airports will be required to invest in additional capability to meet the requirements. This amendment is intended to reduce the risk that a financial burden of such an investment, which may not otherwise be recoverable in fees and charges, would negatively affect the viability of aviation services in remote and regional Australia.

#### **Item [4] – At the end of Division 19 of Part 10**

This item inserts new regulation 10.44 at the end of Division 19 of Part 10 of the Aviation Regulations to deal with amendments made by item 3 of Part 2 of Schedule 2 to the Amendment Regulations.

#### **10.44 Application of amended paragraph 4.41A(2)(c)**

New regulation 10.44 provides that paragraph 4.41A(2)(c), as amended by Part 2 of Schedule 2 to the Amendment Regulations, applies to cargo that is to be loaded onto an aircraft after the commencement of that Part. In line with the commencement provisions in section 2 of the Amendment Regulations, Part 2 of Schedule 2 commences on 1 July 2022.

#### ***Example of when the requirement does not apply***

Cargo is intended to be transported on a domestic air service on an aircraft that has a seating capacity of 40 or more persons, where the air service is not a closed charter operation. The cargo is loaded onto the aircraft at Essendon Fields airport on the afternoon and early evening of 30 June 2022, but the aircraft's departure is delayed until 7.00am on 1 July 2022.

On 30 June 2022, paragraph 4.41A(2)(c) of the Aviation Regulations provides that examination and clearance of domestic air cargo loaded onto a domestic air service on an aircraft that has a seating capacity of 40 or more persons, where the air service is not a closed charter operation applies at designated and tier 1 security controlled airports.

The requirement to examine and clear domestic air cargo does not apply to cargo loaded onto the aircraft at Essendon Fields airport on 30 June 2022, despite its departure being delayed until 1 July 2022.

#### ***Example of when the requirement applies***

Cargo is intended to be transported on a domestic air service, on an aircraft that has a certificated maximum take-off weight of 20,000 kg or more and the air service is not a closed charter operation. The cargo is loaded onto the aircraft at a tier 2 security controlled airport from 1.30am on 1 July 2021 for a 2.00am flight.

As new subparagraph 4.41A(2)(c)(iii) is in force at 1.30am on 1 July 2021 when the cargo is loaded onto the aircraft at the tier 2 security controlled airport, the requirement to examine and clear the cargo prior to loading cargo onto the aircraft applies.