

EXPLANATORY STATEMENT

Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2021

The Determination amends the *Air Navigation (Exemption for Commercial Non-Scheduled Flights) Determination 2019*, which exempts certain operators from the requirement to obtain permission from the Secretary of the Department of Infrastructure, Transport, Regional Development and Communications (the Department) for certain categories of international non-scheduled flights.

This Determination removes exemptions for single charter flights carrying one or more passengers, regardless of the seating capacity of the aircraft, while the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* remains in force.

This Determination also removes the exemption for charters which are part of a program of charters, where seating capacities and number of flights do not exceed certain limits, while the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* remains in force.

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.

Sections 1 to 3 are machinery provisions associated with the making of this instrument, including the name of the instrument, the commencement date, and the authority under which the instrument is made.

Section 4 refers to Schedule 1 of the instrument which amends the previous Determination made in 2019.

The Australian Government regulates non-scheduled flights through an approvals process that enables regulatory authorities to examine compliance with relevant operational requirements and to ensure adequate consumer protection measures are in place. In addition, the approvals process tests whether the proposed non-scheduled flights meet the identified need and ensures such flights are not a substitute for regular scheduled services as provided for under Australia's bilateral air services arrangements.

Section 15A of the *Air Navigation Act 1920* (the Act) generally prohibits non-scheduled flights to or from Australia without permission from the Secretary of the Department. However, under subsection 15A(3) of the Act, the Secretary may determine that a permission is not required in relation to a category of commercial non-scheduled flights. These categories are described in sections 7 to 10 of the Determination.

Schedule 1 provides that the existing exemption for operators of certain single charter flights does not apply if the flight is carrying one or more passengers. The limit relating to aircraft

seating capacity is removed. Medical evacuation flights with any number of passengers remain exempted from the requirement to apply to the Department for permission.

Schedule 1 also provides that the existing exemption for operators of programs of charter flights is removed.

The purpose of the amendment is to support implementation of enhanced health, quarantine and border clearance processes for international travelers due to the COVID-19 pandemic, including by ensuring sufficient advance notice of flights carrying a significant number of passengers.

The amendment will apply while the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* remains in force. Other categories of exemptions remain unchanged.

The Determination was developed drawing on advice from the Civil Aviation Safety Authority, the Australian Border Force and relevant State Government agencies. Industry was consulted on the proposed Determination by seeking comments through the Department's consultation platform on its website and through a video conference with operators and industry associations noting the Department needed to act quickly in response to an emerging COVID-19 quarantine and health capacity issue from an increased number of small passenger charter flight arrivals.

The requirement to seek the Department's approval already applied to operators of multiple charter flights forming part of a program and exceeding certain aircraft seating capacity and flight number limits.

Operators of all international non-scheduled flights must comply with a number of other regulatory requirements, including those relating to safety, security, border control, and protection of the environment.

The power to make the Determination is contained in subsection 15A(3) of the *Air Navigation Act 1920*. Subsection 15A(3) allows the Secretary to make a determination that a permission is not required in relation to a category of commercial non-scheduled flights. The determination-making power in subsection 15A(3) has been delegated to the levels of Deputy Secretary and of SES2 and SES1 in Aviation and Airports Division under the Secretary's Air Navigation Delegation Instrument 2016 (No. 1) dated 5 April 2016.

In making the Determination, the Secretary (or delegate) considered the factors listed in s 15A(4) of the *Air Navigation Act 1920*, including the issue of public interest.

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 *Legislation Act 2003*.

Statement of Compatibility with Human Rights

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

Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2021

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 ensure that operators of single non-scheduled passenger flights carrying one or more passengers, regardless of aircraft seating capacity, seek permission from the Secretary of the Department of Infrastructure, Transport, Regional Development and Communication for such operations. Such conditions already apply to the operation of multiple charter flights forming part of a program. Medical evacuation flights with any number of passengers remain exempted from the requirement to apply to the Department for permission.

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.