

## **REPLACEMENT EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Infrastructure, Transport, Regional Development and Local Government

*Air Navigation Act 1920*

*Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021*

### **Purpose and operation**

The *Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021* (the Amendments) are made by the Governor-General under section 26 of the *Air Navigation Act 1920* (the Act). The Act gives effect to the International Convention on Civil Aviation (the Chicago Convention) which regulates all aspects of international air transport.

The Amendments amend the *Air Navigation (Aircraft Noise) Regulations 2018* (the Regulations) to control significant noise risks arising from the use of Remotely Piloted Aircraft (RPA), and to articulate regulatory procedures and obligations in seeking approval to engage RPA in air navigation.

The Amendments amend Parts 1, 2, 4, and 5 of the Regulations to:

- (a) exempt specific types and operations of RPA from requiring approval under these Amendments to engage in air navigation;
- (b) require that non-exempt RPA must apply for approval to be engaged in air navigation;
- (c) specifies the manner in which an owner or operator of an RPA may seek approval to engage in air navigation, as well as the manner in which the approval is communicated or revoked; and
- (d) provide that the Secretary may arrange for the use of a computer program to grant approval.

RPA owners or operators may be required to seek additional approvals to engage in air navigation under other relevant instruments. An approval or an exemption under these Amendments does not override the obligation to seek other approvals as required.

### *Exemption of specific types and operations of RPA*

The Regulations make noise management provisions for traditional aircraft and require certain aircraft to hold a noise certificate or an approval to operate. RPA and drones are currently classified as 'aircraft' and subject to the same conditions. Therefore RPA owners or operators must either seek a noise certification, or an approval under the regulations. There are currently no noise certification standards for RPA, nor criteria or guidance on how approvals should be applied for RPA.

The nature and operational profiles of RPA and drones differ from those of traditional aircraft (such as passenger planes). Most RPA in use emit less noise (typically between 55dB and 69dB) than traditional aircraft (typically between 65dB and 95dB). Amending the Regulations to account for the unique nature of RPA will effectively control significant noise risks and clarify the regulatory framework to assist in the growth of the industry.

The Amendments provide a targeted and risk-based measure to regulate noise impacts arising from RPA use. The Amendments exempt micro RPAs (those that weigh 250g or less) and RPAs that are being operated for agricultural, environmental, fire fighting, medical, policing, sport or recreation purposes from requiring approval. Due to their size, use case and location of operation, these RPA types and operations present a low risk of significant noise impact to the community, or are reasonable in the circumstances (i.e. emergency response).

The Amendments also exempt RPA operating within existing standardised operating conditions, which contain community safeguards requiring RPA operators to:

- \* Operate the RPA within visual line of sight;
- \* Operate the RPA at or below 400 feet by day;
- \* Avoid operating the RPA within 30m from another person; and
- \* Avoid operating the RPA over a populous area.

Any RPA types or operations that do not fall under the exempt criteria must apply for an approval to be engaged in navigation.

#### *Significant noise impact*

Under Section 16(A), the Secretary may revoke an approval if the RPA operation has had, and is likely to continue to have, a significant noise impact on the public. Significant noise impact is the effect of disrupting persons' general amenity through noise generated by an RPA's operations.

Community feedback and complaints are an important part of informing the Secretary on whether there are or will be significant noise impacts. RPA noise complaints can be directed to [dronenoise@infrastructure.gov.au](mailto:dronenoise@infrastructure.gov.au). An online form is also available on the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department)'s website alongside the self-assessment computer process for noise approvals.

#### *Non-exempt RPA must apply for approval to be engaged in air navigation*

The Amendments require owners or operators of a non-exempt RPA to apply to the Secretary to engage in air navigation. As part of the application, an applicant must provide any information relating to the aircraft as is reasonably required by the Secretary, and will be notified of the outcome of the application in writing. The Secretary will also notify the period in which the aircraft may engage in air navigation, and any conditions upon which the applicant must comply. Where an operator of an RPA does not comply with the conditions, they commit an offence under the proposed Amendments.

The Amendments specify that strict liability applies to non-compliant RPA owners or operators.

*The Secretary may arrange for the use of a computer program to grant approval*

The Amendments allow for the Secretary to establish a self-service computer process, by which RPA owners and operators can seek approval. The Amendments do not preclude an applicant from having their application assessed by a person delegated by the Secretary.

Applicants can complete a questionnaire on a website that automatically assesses the responses, and RPA owners or operators may be granted approvals by a computer program to engage in air navigation where specific requirements are satisfied. The questionnaire is designed to determine the risk of the RPA operations having a significant noise impact, and considers factors such as the proximity to noise sensitive sites, the ongoing nature of operations, and the size of the RPA.

Applicants can also request a person delegated by the Secretary assess their application instead of a computer program.

Where applicants do not satisfy the automated approval requirements, they may apply to the Secretary for approval. Applicants must provide information such as:

- \* Operator details;
- \* Aircraft make/model;
- \* Maximum take-off weight;
- \* Description of the proposed operation;
- \* Area/s of operation;
- \* Proposed times of operation (daylight hours/weekdays);
- \* CASA Instrument of Approval for unmanned aircraft in an approved area reference number, in accordance with the Civil Aviation Safety Regulations 1998, Regulation 101.030, if one is held.

Where the above information is contained within a Remotely Piloted Aircraft Operator's Certificate (ReOC) application, applicants may provide their ReOC application.

### **Consultation**

In June 2019, the Department conducted a consultative review into the performance of the Regulations to determine the appropriate scope and breadth of noise regulation in relation to RPAs. The Department received 92 submissions to the review. Many submissions were positive regarding the potential benefits of new and increasing services provided by RPA, but raised concerns about the potential for RPA noise to negatively impact the community, and recognised the need for policies and regulations to manage these impacts.

The Department accepted submissions for the review between noon Friday 27 September 2019, and close of business Friday 22 November 2019.

### **Regulatory impact assessment**

The Department has prepared a Regulatory Impact Statement (RIS), which was assessed by the Office of Best Practice Regulation as compliant with the Best Practice Regulation requirements with a level of analysis commensurate with the likely impacts (OBPRD ID 01063).

The amended regulations will involve minor regulatory impacts on businesses and community organisations which conduct operations with a large number of drones. The

majority of users (particularly recreational users and commercial users operating within standard operating conditions) will be exempt from noise regulations.

**Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

**Commencement and making**

The Amendments are a legislative instrument for the purposes of the Legislation Act 2003.

***Details of the Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021***

**Part 1 - Preliminary**

Section 1 - Name

This section provides that the name of this instrument is the *Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021*.

Section 2 - Commencement

This section provides for the instrument to commence on the day after the instrument was registered.

Section 3 - Authority

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

Section 4 - Schedules

This section amends and repeals each instrument specified in the Schedule as set out.

**Schedule 1 - Amendments**

Section 1 - Subsection 4(1)

The definition of '*exempt RPA*' is inserted after subsection 4(1) of the previous regulations.

This definition operates in conjunction with section 6(2A) to remove requirements for RPA owners or operators who present a low risk of causing significant noise impacts to seek approval to engage in air navigation.

'RPA' (which is short for remotely piloted aircraft) has the same meaning as in the *Civil Aviation Safety Regulations 1998*. Regulation 101.021 provides:

An RPA is a remotely piloted aircraft, other than the following:

- a) a balloon;
- b) a kite;
- c) A model aircraft.

An '*exempt RPA*' includes a '*micro RPA*' which is defined in Regulation 101.022 of the *Civil Aviation Safety Regulations 1998* as an RPA with a gross weight of not more than 250g.

#### Section 2 - Subsection 4(2) (at the end of the definition of subsonic jet aircraft)

This amendment clarifies that 'a 'subsonic jet aircraft' is not an RPA within the meaning of the Regulation 101.021 of the *Civil Aviation Safety Regulations 1998*. This excludes the operation of subsonic jets from the amended regulations.

#### Section 3 - After subsection 6(2)

This amendment inserts explicit regulation that RPA pilots must not engage in air navigation unless an approval is in force under section 16A, and pilots comply with any conditions included in the approval. This section also excludes exempt RPA from the operation of this amendment.

#### Section 4 - Subsection 6(3)

This amendment constrains all non-exempt RPA to requiring approval under section 16A of the instrument. This amendment provides clarity for RPA owners and operators as to the correct approval pathway for RPA to engage in air navigation.

#### Section 5 - Paragraph 6(4)(b)

This amendment establishes that the operator of an RPA commits an offence if the operator does not comply with the proposed section 6(2A) of the amendments.

#### Section 6 - Subsection 6(5)

This amendment specifies that strict liability applies to an operator's failure to comply with section 6(2A)(a)(i). This amendment operates in conjunction with sections 2, 4, and 5 of the amendments.

#### Section 7 - Subsection 14(1)

This amendment clarifies that RPA are not applicable for the approval process under section 14 of the Regulations. The amendment will reinforce that an RPA operator must seek approval under the proposed section 16A of the amendments to ensure consistent and clear regulation.

#### Section 8 - After section 16

This amendment establishes an explicit pathway for RPA operators to seek approval to engage in air navigation. It provides that an owner or operator of an RPA may apply to the Secretary for an approval to engage in air navigation, and must provide relevant information in their application to engage in air navigation. The amendments also provide the manner in which conditions, obligations and revocations are attached to any approval given to owners and operators.

The owner or operator of an RPA must provide any information as reasonably required by the Secretary, in their application to the Secretary for approval to engage in air navigation. The Secretary may grant approval to engage in air navigation through written notice, and provides that the Secretary must include the duration of the approval, and any conditions attached.

#### Section 9 - Subsection 17(1)

This amendment substitutes "a supersonic aircraft" with ", a supersonic aircraft or an RPA" to specifically exclude RPA from the purview of section 17 of the Regulations. The exclusion

reinforces that an RPA is an aircraft which is subject to the conditions set out in the sections 2A, 6(2A), and 16A of the amendments.

#### Section 10 - After section 22

This amendment inserts the proposed section 22A, providing that the Secretary may arrange for the use of computer programs to make decisions under Section 16A. This is the self-assessment mechanism referenced in the Regulatory Impact Statement in Annex 3: Option 3 Application Process.

This amendment enables the Secretary to make use of a computer program, under the Secretary's control, to streamline the application process. This amendment places regulatory obligations on the Secretary to take all reasonable steps to ensure the decisions made by a computer program are correct. Where the decisions are correct, the Secretary is taken to have made the decision by operation of the computer program. Where the Secretary is satisfied that the decision made by the computer program is incorrect, the Secretary may make a substitute decision.

#### Section 11 - Paragraph 23(b)

This amendment enables owners or operators of an RPA that have been refused an approval to engage in air navigation to seek review by using existing appeal pathways by inserting "16A(3)" into section 23(b) of the regulations. Owners or operators of an RPA may seek to have a refusal reviewed by the Administrative Appeals Tribunal for review of the decision.

#### Section 12 - Paragraph 23(c)

This amendment enables owners or operators of an RPA that have had a period of approval to engage in air navigation specified under the proposed Section 16A(4)(a) to seek review by using existing appeal pathways. Owners or operators may seek to have the specified period reviewed by the Administrative Appeals Tribunal.

#### Section 13 - Paragraph 23(d)

This amendment enables owners or operators of an RPA that have a condition imposed or varied in their approval to engage in air navigation to seek review by using existing appeal pathways. Applicants may seek to have the decision reviewed by the Administrative Appeals Tribunal.

#### Section 14 - Paragraph 23(e)

This amendment enables owners or operators of an RPA that have had an approval to engage in air navigation revoked by the Secretary to seek review by using existing appeal pathways. Applicants may seek to have the decision reviewed by the Administrative Appeals Tribunal.

#### Section 15 - At the end of Part 5

This amendment applies when owners or operators of an RPA had an approval to engage in air navigation under section 17, or applied for approval to engage in air navigation under section 17. The amendment allows for this approval, or application for approval, to continue as if it had been granted or submitted, respectively, under section 16A of this instrument.

**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 Disallowable Legislative Instrument**

The legislative instrument amends the *Air Navigation (Aircraft Noise) Regulations 2018* to introduce targeted regulations to reduce the risk of significant noise impact. The instrument requires RPA owners or operators to be approved by the Secretary to engage in air navigation and comply with any conditions of the approval.

The legislative instrument introduces targeted regulations by establishing specific RPA as exempt from requiring approval, on the basis of low or reasonable risk to causing significant noise risk. The legislative instrument provides the manner and process for RPA owners or operators to seek and be granted approval, with or without conditions.

The legislative instrument also enables the Secretary to provide a computer program to streamline the approvals process.

Finally, the legislative instrument makes amendments to clearly delineate the processes for RPA owners and operators to seek approval to engage in air navigation, as distinct from aircraft that is a subsonic jet aircraft, or a supersonic aircraft.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Minister for Infrastructure, Transport, Regional Development and Local Government,  
the Hon Catherine King MP.**