

## EXPLANATORY STATEMENT

### Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2023

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, Communications and the Arts (the Department) for certain categories of non-scheduled international flights.

This Determination removes references to the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* which ceased on 17 April 2022 and clarifies for industry that single international charter flights and a program of international charters that do not exceed certain limits on seating capacity and number of flights, do not require permission from the Department to operate in Australia.

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 international 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 international 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 international flights. These categories are described in sections 7 to 10 of the Determination.

Schedule 1 provides exemptions for categories of non-scheduled international flights, including single charter flights and a program of charters that do not exceed limits on seating capacity and number of flights, from seeking permission to operate.

The purpose of the amendment is to remove the two references to the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* which ended on 17 April 2022. All other categories of exemptions remain unchanged.

Operators of multiple international charter flights forming part of a program and exceeding certain aircraft seating capacity and flight number limits, continue to require the Department's approval to operate.

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 Act. 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 international flights. The determination-making power in subsection 15A(3) has been delegated to the levels of Deputy Secretary and of SES2 and SES1 in International Aviation, Technology and Services 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 Act, including the issue of public interest and the promotion of trade and tourism as Australia recovers from the COVID-19 pandemic. The Department also undertook consultation with Australian state and territory government agencies, Australian airlines, airports and air charter operators, who all indicated their support for these amendments.

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 2023**

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 international charter flights and operators of a program of international charters

that do not exceed limits on seating capacity and number of flights, are exempt from seeking permission from the Secretary of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts for such operations. Such conditions already apply to the operation of multiple international charter flights forming part of a program and which exceed the prescribed limits on seating capacity and number of flights.

### **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.