

EXPLANATORY STATEMENT

Minute No. 01 of 2004 - Minister for Transport and Regional Services

Subject - *Civil Aviation Act 1988*

Civil Aviation Safety Amendment Regulations 2004 (No.1)

Section 98 of the *Civil Aviation Act 1988* (the Act) provides that the Governor-General may make regulations for the purposes of the Act including in relation to the safety of air navigation.

There are currently two sets of aviation safety regulations made under section 98: the *Civil Aviation Regulations 1988* (the 1988 Regulations) and the *Civil Aviation Safety Regulations 1998* (the principal Regulations). As part of an extensive review of the aviation safety regulatory requirements in Australia, the 1988 Regulations are gradually being replaced by the principal regulations. However, both sets will continue to operate concurrently until the 1988 Regulations have been completely replaced by the principal Regulations.

Under recent amendments made to the Act by the *Civil Aviation Amendment Act 2003*, the Act makes provision for a voluntary reporting scheme and a demerit points scheme. The Act also provides that some of the detail in these schemes is to be set out in regulations (see Divisions 3C and 3D of the Act). The purpose of the Regulations is to amend the principal Regulations to prescribe the detail and operation of the voluntary reporting scheme and demerit point scheme as required by Divisions 3C and 3D of the Act.

In relation to the voluntary reporting scheme, the Regulations prescribe:

- contraventions of the 1988 regulations and the principal Regulations to which the scheme will not apply;
- the Executive Director of Transport Safety Investigation (Executive Director), established in accordance with section 12 of the Transport Safety Investigation Act 2003, as the prescribed person to whom reports should be made;
- the functions of the Executive Director in administering the scheme and his/her reporting responsibilities;
- the purposes of the scheme;
- the manner in which reports are to be made;
- and the limitations on the use of information reported.

In relation to the demerit points scheme, the Regulations prescribe:

- the offences to which the demerit points scheme will apply;
- the number of points that will be incurred in relation to an offence;
- the classes of civil aviation authorisations.

The Regulations commenced on the commencement of item 15 of Schedule 1 to the *Civil Aviation Amendment Act 2003* to coincide with the introduction of the voluntary reporting scheme and demerit point scheme (ie 21 February 2004).

Authority: Section 98 of the *Civil Aviation Act 1988*

Civil Aviation Safety Amendment Regulations 2004 (No.1)

DETAILS OF THE REGULATIONS

Regulation 1- Name of Regulations

Regulation 1 is a formal provision specifying the name of the Regulations.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations to commence upon commencement of item 15 of Schedule 1 to the *Civil Aviation Amendment Act 2003*. Item 15 commenced on 21 February 2004.

Regulation 3 - Amendment of *Civil Aviation Safety Regulations 1998*

Regulation 3 provides for the amendment of the *Civil Aviation Safety Regulations 1998* in accordance with Schedule 1.

SCHEDULE 1- AMENDMENT

Item 1- Part 13

Part 13 ENFORCEMENT PROCEDURES

**Subpart 13.K VOLUNTARY REPORTING AND DEMERIT POINTS
SCHEMES**

Division 13.x.1- Aviation Self Reporting Scheme

New regulation 13.320 - Definitions

This regulation introduces two new definitions specifically for this Division – *Aviation Self Reporting Scheme (ASRS)* and *Executive Director*.

New regulation 13.325 - Contraventions that are not reportable

This regulation specifies the regulations which are not subject to the ASRS. These regulations include regulation 282 of the 1988 Regulations (undertaking activities when not properly licensed or authorised) and regulations 298B and C of the 1988 regulations (cheating in examinations).

New regulation 13.330 - Prescribed person (Act s 30DM)

This regulation specifies that the Executive Director of Transport Safety Investigation is the prescribed person for the purposes of section 30DM of the Act.

New regulation 13.335 - Establishment and purpose of scheme (Act s 30DN)

This regulation establishes an Aviation Self Reporting Scheme to be administered by the Executive Director. The primary purpose of this scheme is to provide protection from administrative action for an authorisation holder who voluntarily self-reports a breach of the regulations.

New regulation 13.340 - Powers and functions of Executive Director

This regulation sets out the powers and functions of the Executive Director as administrator of the ASRS. Those powers and functions include accepting and processing reports, reviewing and publishing information contained in reports or issuing information briefs or alert bulletins in the interests of aviation safety. This may be done without the consent of the authorisation holder who made the report. However, in performing these functions, the Executive Director must not release personal information within the meaning of the Privacy Act 1988 (see regulation 13.440), however the person who made the report may consent to its disclosure.

New regulation 13.345 - Manner in which reports to be made (Act s 30DN (2)(b))

This regulation stipulates the manner in which reports are to be made by a holder of a civil aviation authorisation who has committed a reportable contravention. The particular information required for the report made to the Executive Director must be in writing in a form approved by the Executive Director and must be reported no later than ten days after the reportable contravention. The report must include the name and address of the reporter, the time, date and place of the contravention and a description of the circumstances of the contravention.

New regulation 13.350 - Processing of reports

This regulation obliges the Executive Director to accept on its face, a report which satisfies regulation 13.425, except where it appears that the contravention for which the report is made is not a reportable contravention as specified in section 30DL of the Act. Under that section, contraventions which are deliberate, fraudulent, cause or contribute to an accident, or are specifically prescribed (see regulation 13.405) are not reportable contraventions. This regulation also sets out how the Executive Director must deal with a report of a reportable contravention and other reports. A report must be stamped and dated and given a unique receipt number. The report is then returned to the reporter together with a receipt from the Executive Director after relevant information has been taken for files/database.

New regulation 13.355 - Reports relating to unlawful interference

This regulation obliges the Executive Director to give to the aviation security duty officer within the Department of Transport and Regional Services any report that relates to an act of unlawful interference as defined in ICAO Document 9713 '*International Civil Aviation Vocabulary*'. That definition currently provides that:

Acts of Unlawful Interference (Definition given for guidance purposes)

These are acts or attempted acts such as to jeopardise the safety of civil aviation and air transport, i.e.

- unlawful seizure of an aircraft
- unlawful seizure of an aircraft on the ground
- hostage-taking on board aircraft or aerodromes
- forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility
- introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes
- communication of false information such as to jeopardise the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility.

New regulation 13.360 - Use of information contained in reports (Act s 30DN (2)(c))

This regulation deals with the use of the information contained in a report of a reportable contravention. In particular, it enables the Executive Director to disclose the information (other than information that is personal information within the meaning of the *Privacy Act 1988*) without the consent of the authorisation holder who made the report if that disclosure is for a purpose mentioned in regulation 13.415(3). Those purposes include aviation safety research involving human factors; the identification of deficiencies and problems within the Australian aviation system; and the provision of data for planning and improvements to the Australian aviation safety system.

New regulation 13.365 - Delegation by Executive Director

This regulation empowers the Executive Director to delegate any power, function or duty of the Executive Director under ASRS (other than the power of delegation) to a person engaged to perform duties in the Department. A delegate must comply with any directions of the Executive Director.

Division 13.x.2 - Demerit points scheme.

New regulation 13.370 - Offences to which demerit points scheme applies (Act 30DT)

This regulation stipulates that all strict liability offences under the 1988 Regulations and the principal Regulations are offences to which the demerit points scheme will apply. The regulation also specifies the number of points that are incurred in relation to an offence based on the maximum number of penalty units applying to each offence. An offence with a maximum penalty not exceeding 10 penalty units will attract 1 demerit point. An offence with a maximum penalty between 11 and 25 penalty units will attract 2 demerit points. An offence with a maximum penalty between 26 penalty units and 50 penalty units will attract 3 demerit points.

New regulation 13.375 - Classes of civil aviation authorisations

This regulation specifies, for the purpose of section 30DU of the Act, the class to which particular civil aviation authorisations belongs, having regard to the activities covered by the civil aviation authorisations.

New regulation 13.380 - Effect of subsequent suspension or cancellation in certain situations (Act s 30DV)

This regulation provides that where an authorisation has been cancelled and a second cancellation or suspension would have had effect but for the first cancellation, and that first cancellation is subsequently set aside by the Administrative Appeals Tribunal, the second suspension or cancellation has effect immediately after the decision of the AAT to set aside the first cancellation.