



Airports (Protection of Airspace) Regulations 1996

Statutory Rules 1996 No. 293 as amended

made under the

Airports Act 1996

Consolidated as in force on 22 July 1999

(includes amendments up to SR 1999 No. 113)

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra



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1 Name of regulations [see Note 1]

These regulations are the *Airports (Protection of Airspace) Regulations 1996*.

2 Object of Regulations

The object of these Regulations is to establish a system for the protection of airspace at, and around, airports in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of airports.

3 Meaning of terms

(1) In these Regulations:

building authority:

- (a) for a building activity that is proposed to be carried out on an airport site — means the airport building controller for the airport site; or
- (b) for a building activity that is proposed to be carried out on a place that is not on an airport site — means the person or body authorised by law to regulate the carrying on of building activity in that place.

CASA means the Civil Aviation Safety Authority.

OLS see regulation 4.

PANS-OPS airspace means prescribed airspace that is above a PANS-OPS surface.

PANS-OPS surface see regulation 4.

proponent of a controlled activity means the person that proposes, under regulation 9, to carry out the controlled activity.

short-term controlled activity means a controlled activity:

- (a) that is not expected to continue longer than 3 months; or
- (b) that consists of the erection of a building, structure or thing that is not intended to remain in place for longer than 3 months.

State includes the Australian Capital Territory and the Northern Territory.

- (2) An expression used in both these Regulations and Part 12 of the Act has the same meaning in these Regulations as in that Part.

Note *controlled activity* is defined in section 182 of the Act.

- (3) An expression that is used in both these Regulations and the Airports Regulations has the same meaning in these Regulations as in those Regulations.

Note In addition to these Regulations, the Airports (Buildings Control) Regulations, the Civil Aviation Regulations and the Civil Aviation (Buildings Control) Regulations may affect a proposal to build at an airport.

4 **Ascertainment of OLS and PANS-OPS surfaces**

- (1) An OLS for an airport is a surface ascertained in accordance with the procedures in Annex 14 to the Chicago Convention.
- (2) A PANS-OPS surface for an airport is a surface ascertained in accordance with the procedures in document number 8168 OPS — 611, *Procedures for Air Navigation Services, Aircraft Operations*, published by the International Civil Aviation Organization on 11 November 1993.

Note *OLS* has customary use as an acronym for *Obstacle Limitation Surface*. *PANS-OPS* is an acronym for *Procedures for Air Navigation Systems Operations*.

- (3) In this regulation:

Chicago Convention has the same meaning as in the *Air Navigation Act 1920*.

5 **Declaration as to preservation of airspace**

- (1) The Secretary may declare, in writing, that specified airspace around an airport should, in the interests of the safety, efficiency or regularity of future air transport operations into or out of the airport, be prescribed airspace.
- (2) In making a declaration under this regulation, the Secretary must have regard to:

- (a) any changes to the OLS and PANS-OPS surfaces for the airport proposed in the approved master plan for the airport; and
 - (b) any advice from CASA on the matter; and
 - (c) any other matters the Secretary considers relevant.
- (3) A declaration must specify the lower boundary of the airspace that should be prescribed.
- (4) A declaration under this regulation must be notified in the *Gazette*.

6 Prescribed airspace

- (1) For section 181 of the Act, prescribed airspace for an airport is:
- (a) the airspace above any part of either an OLS or a PANS-OPS surface for the airport; and
 - (b) airspace declared in a declaration, under regulation 5, relating to the airport.
- (2) The airport-operator company for an airport must make available a chart of prescribed airspace around the airport, for inspection or purchase, and, if the prescribed airspace changes, must bring the chart up to date before the end of 14 days after the change.
- (3) A notice of the fact that a chart or new chart is available must be published, before the end of 14 days after the chart becomes available, in at least 1 newspaper in general circulation in the State or Territory in which the airport is located.
- (4) An airport-operator company complies with subregulation (2) if it makes details of OLS and PANS-OPS surfaces available in any written form, or in any form from which a written document can be produced (for example, in the form of a computer file).

7 Application for approval to carry out controlled activity

- (1) For section 183 of the Act, the proponent of a proposed controlled activity must obtain the approval of the Secretary.

Regulation 8

Note 1 Carrying out a controlled activity without approval is an offence punishable by a fine of up to 250 penalty units — see the Act, s 183.

Note 2 Under s 187 of the Act, if a controlled activity is carried out without approval, or is carried out otherwise than in accordance with an approval, the Federal Court may order a person to carry out remedial work on a building, structure or thing; to mark it or light it or both; to reduce its height; or to demolish, dismantle or remove it.

- (2) An application for the Secretary's approval must be given to the airport-operator company for the airport, or each airport, concerned at least 28 days before the proponent's intended commencement of the controlled activity and must set out:
- (a) the proposed controlled activity; and
 - (b) its proposed location; and
 - (c) if the proposed controlled activity consists of the erection of a building, structure or thing:
 - (i) the proposed maximum height (above the Australian Height Datum) of the proposed building, structure or thing; and
 - (ii) the proposed maximum height (above the Australian Height Datum) of any temporary structure or equipment intended to be used in the erection of the proposed building, structure or thing; and
 - (d) the purposes of the controlled activity.

8 Local government body etc to give notice

A building authority that receives a proposal for a building activity that, if undertaken, would constitute a controlled activity in relation to an airport must give notice of the proposal to the airport-operator company for the airport.

Note Failing to comply with a requirement of the regulations to give information to an airport operator about a proposed controlled activity is an offence punishable by a fine of up to 50 penalty units — see the Act, subs 186 (1) and (2).

9 Intrusion into PANS-OPS airspace

- (1) Subregulation (1A) applies to a proposed controlled activity (other than a short-term controlled activity) that consists of the erection of a building, structure or thing if:
 - (a) the building, structure or thing would, if erected, intrude into PANS-OPS airspace for the airport concerned; or
 - (b) a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS-OPS airspace for the airport.
- (1A) If this subregulation applies to a proposed controlled activity, the airport-operator company for the airport concerned must give written notice that the building, structure or thing will, if erected, intrude into PANS-OPS airspace for the airport to:
 - (a) the proponent of the controlled activity; and
 - (b) the building authority concerned.
- (2) The notice must be given before the end of 7 days after the application for approval of the controlled activity is given to the airport-operator company, and must inform the proponent and the building authority that the application cannot be approved.

Note see regulation 14.

10 Submissions about intrusion into prescribed airspace

- (1) Subregulation (2) applies to a proposed controlled activity (other than a short-term controlled activity) that would (if carried out) intrude into prescribed airspace, unless subregulation 14 (5) prevents an application to carry out the activity being approved.

Note Subregulation 14 (5) prevents an application being approved if the proposed controlled activity would, if carried out, result in an intrusion into PANS-OPS airspace, unless the controlled activity is a short-term controlled activity and the airport operator supports the approval.

- (2) The airport-operator company must give written notice of the application to carry out the activity to, and invite submissions about the activity from, the following authorities:
 - (a) CASA;
 - (b) Airservices Australia;
 - (c) if the airport is a joint-user airport — the Department of Defence;
 - (d) the building authority concerned.

- (3) Subregulation (4) applies to a proposed short-term controlled activity that would (if carried out) intrude into prescribed airspace, unless subregulation 14 (5) prevents an application to carry out the activity being approved.

Note Subregulation 14 (5) prevents an application being approved if the proposed controlled activity would, if carried out, result in an intrusion into PANS-OPS airspace, unless the controlled activity is a short-term controlled activity and the airport operator supports the approval.

- (4) The airport-operator company must give written notice of the application to carry out the activity to, and invite submissions about the activity from, the following authorities:
 - (a) CASA;
 - (b) Airservices Australia.
- (5) If any of the authorities mentioned in subregulation (2) or (4) so requests, the airport-operator company must give it a copy of the application.
- (6) The airport-operator company must give the notice before the end of 7 days after it receives the application for approval of the controlled activity.

11 Giving application to Secretary

- (1) Subregulation (2) applies to an application to carry out:
 - (a) a short-term controlled activity at an airport if an officer or employee of the airport-operator company for the airport cannot approve the carrying out of the activity as a delegate of the Secretary; or
 - (b) a controlled activity other than a short term controlled activity.

- (2) The company must refer the application to the Secretary for decision within 21 days after the airport-operator company receives it.
- (3) At the time the airport-operator company refers the application to the Secretary for decision, the company must:
 - (a) give the Secretary the application, and any submissions made about the proposal in answer to a notice under subregulation 10 (2) or (4); and
 - (b) tell the proponent in writing that it has given the application to the Secretary for decision.

12 Request for more information

- (1) The Secretary may ask the proponent of the controlled activity concerned, in writing, to give him or her any other information necessary to consider the application, and need not make a decision about the application until the proponent does so.
- (2) If an authority mentioned in subregulation 10 (2) or (4) so requests, the Secretary must give it a copy of any information given to the Secretary by the proponent about the proposal.

13 Consideration of application

In considering whether to approve a proposal, the Secretary must, in respect of the effect that the controlled activity, if carried out, will have on the efficiency or regularity of existing or future air transport operations into or out of the airport concerned, have regard to:

- (a) the opinion of the proponent of the activity; and
- (b) the opinion of the airport-operator company; and
- (c) any opinion of CASA; and
- (d) any opinion of Airservices Australia; and
- (e) if the airport concerned is a joint-user airport — any opinion of the Department of Defence; and
- (f) any opinion of the building authority concerned; and
- (g) any other matters the Secretary considers relevant.

14 Secretary to approve, or refuse to approve, proposal

- (1) The Secretary must:
 - (a) approve a proposal; or
 - (b) approve the proposal, subject to any conditions the Secretary considers appropriate; or
 - (c) refuse the proposal.
- (2) The Secretary must approve a proposal unless carrying out the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned.
- (3) The Secretary may approve a proposal subject to a condition only if carrying out the controlled activity otherwise than in accordance with the condition would not be in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned.
- (4) A condition of an approval:
 - (a) may be about how the controlled activity is carried out; or
 - (b) may require a building, structure or thing to be marked or lit (including marked or lit in a specified way).

Note Carrying out a controlled activity otherwise than in accordance with a condition of the approval is an offence punishable by a fine of up to 250 penalty units — see the Act, s 185.
- (5) If a controlled activity would, if carried out, result in a building, structure or thing intruding into PANS-OPS airspace, the Secretary may approve a proposal for the activity only if:
 - (a) the activity is a short-term controlled activity; and
 - (b) the airport operator supports the approval.
- (6) Also, the Secretary must not approve a proposal for a controlled activity if CASA has advised the Secretary that carrying out the controlled activity would have an unacceptable effect on the safety of existing or future air transport operations into or out of the airport concerned.

15 Notification of Secretary's decision

(1A) In this regulation:

Secretary does not include an officer or employee of an airport-operator company who is exercising the Secretary's powers under a delegation under subregulation 18 (2).

- (1) Before the end of 28 days after the Secretary receives notice of a proposal, or, if further information is requested under regulation 11, after the Secretary receives the further information, the Secretary must give written notice of his or her decision to:
 - (a) the proponent of the controlled activity; and
 - (b) the airport-operator company for the airport concerned; and
 - (c) CASA; and
 - (d) Airservices Australia; and
 - (e) if the airport concerned is a joint-user airport — the Department of Defence; and
 - (f) the building authority concerned.
- (2) If the Secretary does not give written notice of his or her decision before the end of the period mentioned in subregulation (1), the Secretary is taken to have refused the proposal.

15A Notification of decisions of Secretary's delegate

- (1) This regulation applies to the making of a decision by an officer or employee of an airport-operator company who is exercising the powers of the Secretary under a delegation under subregulation 18 (2).
- (2) Before the end of 21 days after the airport-operator company receives notice of a proposal, or, if further information is requested under regulation 11, after the company receives the further information, the officer or employee must give written notice of his or her decision to:
 - (a) the proponent of the controlled activity; and
 - (b) CASA; and
 - (c) Airservices Australia.

- (3) If the officer or employee does not give written notice of his or her decision before the end of the period mentioned in subregulation (2), he or she is taken to have refused the proposal.

16 Variation of conditions, etc, of approval

The Secretary may:

- (a) revoke an approval; or
- (b) impose a condition on, or vary a condition of, an approval; if he or she is satisfied that doing so is necessary in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned.

17 Review of Secretary's decisions

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary to make a declaration under regulation 5.
- (2) Subject to the *Administrative Appeals Tribunal Act 1975*, application for review of a decision of the Secretary under regulation 14 or 16 may be made to the Administrative Appeals Tribunal by:
 - (a) the proponent; or
 - (b) airport-operator company; or
 - (c) the building authority concerned.

18 Delegation

- (1) The Secretary may delegate his or her powers under these regulations to:
 - (a) an officer of the Senior Executive Service (within the meaning of the *Public Service Act 1922*) performing duty in the Department; or
 - (b) an officer performing duties in the Department classified as Executive Level 2 (within the meaning of the instrument made under section 28 of the *Public Service*

Act 1922 on 9 October 1997) or an equivalent classification.

- (2) Also, the Secretary may delegate his or her powers in relation to short-term controlled activities at a particular airport to an officer or employee of the airport-operator company for the airport.

Table of Statutory Rules

Notes to the *Airports (Protection of Airspace) Regulations 1996*

Note 1

The *Airports (Protection of Airspace) Regulations 1996* (in force under the *Airports Act 1996*) as shown in this consolidation comprise Statutory Rules 1996 No. 293 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1996 No. 293	12 Dec 1996	12 Dec 1996	
1999 No. 113	17 June 1999	17 June 1999	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 1	rs. 1999 No. 113
Heading to r. 3	rs. 1999 No. 113
R. 3	am. 1999 No. 113
R. 6	am. 1999 No. 113
R. 7	am. 1999 No. 113
Notes to subreg. 7 (1)	ad. 1999 No. 113
R. 8	am. 1999 No. 113
Note to r. 8	ad. 1999 No. 113
R. 9	am. 1999 No. 113
Rr. 10–12	rs. 1999 No. 113
R. 13	am. 1999 No. 113
Rr. 14, 15	am. 1999 No. 113
R. 15A	ad. 1999 No. 113
R. 17	am. 1999 No. 113
R. 18	ad. 1999 No. 113

