

Airports (Protection of Airspace) Regulations 1996

Statutory Rules No. 293, 1996

made under the

Airports Act 1996

**Compilation No. 5**

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**About this compilation**

**This compilation**

This is a compilation of the *Airports (Protection of Airspace) Regulations 1996* that shows the text of the law as amended and in force on 29 July 2017 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name of regulations

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:

***Act*** means the *Airports Act 1996*.

***Airports Regulations*** means the *Airports Regulations 1997*.

***building authority***:

(a) for a building activity that is proposed to be carried out on an airport site for which there is an airport lease—means the airport building controller (within the meaning of the *Airports (Building Control) Regulations 1996*) for the airport site; or

(aa) for a building activity that is proposed to be carried out on an airport site for which there is no airport lease—means the person appointed by the Secretary as the building authority for the airport site for the purposes of this paragraph; 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 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*.

Part 2—Prescribed airspace

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) if there is a final master plan for the airport—any changes to the OLS and PANS‑OPS surfaces for the airport proposed in the final master plan; 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, or, if there is no airport‑operator company for the airport, the Secretary, 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 or the Secretary complies with subregulation (2) if the company or Secretary 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).

Part 3—Matters affecting whether activities are controlled activities

6A Level of air turbulence

For subparagraph 182(1)(f)(i) of the Act, the level of air turbulence for turbulence caused by an emission from a stack or vent is upward vertical velocity of 4.3 metres per second at the point of emission.

Part 4—Notification and approval of controlled activities

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.

Note 1: A person may commit an offence against section 183 of the Act, and remedial orders may be made under section 187 of the Act, if a controlled activity is carried out other than in accordance with an approval.

Note 2: Certain controlled activities are declared to be exempt from Division 4 of Part 12 of the Act and do not require the Secretary’s approval (see Part 5 of these Regulations).

(2)An application for the Secretary’s approval 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.

(3) The proponent must give the application to whichever of the following is applicable for each airport concerned:

(a) if there is an airport‑operator company for the airport—the company;

(b) if there is no airport‑operator company for the airport—the Secretary.

(4) The proponent must give the application to the applicable person under subregulation (3) for each airport concerned at least 28 days before the proponent’s intended commencement of the controlled activity.

8 Local government body etc to give notice

(1) 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, or, if there is no airport‑operator company for the airport, to the Secretary.

Note: A building authority who fails to comply with this regulation commits an offence against section 186 of the Act. That section provides for a penalty of 50 penalty units for each such offence.

(2) Subregulation (1) does not apply in relation to a proposal for a building activity that would, if undertaken:

(a) constitute a controlled activity; and

(b) be exempt from Division 4 of Part 12 of the Act under regulation 16A (exemptions for controlled activities in relation to Sydney West Airport).

9 Intrusion into PANS‑OPS airspace

(1) Subregulation (1A) applies to an application for approval of 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 an application for approval of a proposed controlled activity, the airport‑operator company for the airport concerned, or, if there is no airport‑operator company for the airport, the Secretary, 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 or Secretary (as the case requires), 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 company (if any) for the airport concerned supports the approval.

(2) The airport‑operator company for the airport concerned, or, if there is no airport‑operator company for the airport, the Secretary, 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 company (if any) for the airport concerned supports the approval.

(4) The airport‑operator company for the airport concerned, or, if there is no airport‑operator company for the airport, the Secretary, 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 or the Secretary (as the case requires) must give it a copy of the application.

(6) The airport‑operator company or the Secretary (as the case requires) must give the notice before the end of 7 days after receiving the application for approval of the controlled activity.

11 Giving application to Secretary

(1) Subregulation (2) applies to an application to carry out a controlled activity in relation to prescribed airspace for an airport for which there is an airport‑operator company if:

(a) the activity is a short‑term controlled activity and 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) the activity is not 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 (if any) for the airport; 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: A person who carries out a controlled activity otherwise than in accordance with a condition of an approval commits an offence against section 185 of the Act. That section provides for a penalty of 250 penalty units for each such offence.

(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 company (if any) for the airport concerned 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)The Secretary must give written notice of his or her decision to approve or refuse to approve a proposed controlled activity to:

(a) the proponent of the controlled activity; and

(b) the airport‑operator company (if any) 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.

(1AA) If the application for approval of the activity is given to the Secretary by the proponent of the activity under paragraph 7(3)(b) (regardless of whether the application is also given to the Secretary by an airport‑operator company under regulation 11), the Secretary must give the notice before the end of:

(a) 49 days after the Secretary receives the application from the proponent; or

(b) if the Secretary requests further information in relation to the application under regulation 12—28 days after the Secretary receives the further information.

(1AB) If the application for approval of the activity is given to the Secretary by one or more airport‑operator companies under regulation 11 (and is not also given to the Secretary by the proponent of the activity under paragraph 7(3)(b)), the Secretary must give the notice before the end of:

(a) either:

(i) if the application concerns only one airport—28 days after the Secretary receives the application from the airport‑operator company for the airport; or

(ii) if the application concerns more than one airport—28 days after the Secretary receives the application from the first of the airport‑operator companies for the airports concerned to give the Secretary the application; or

(b) if the Secretary requests further information in relation to the application under regulation 12—28 days after the Secretary receives the further information.

(2)If the Secretary does not give written notice of his or her decision before the end of the period mentioned in subregulation (1AA) or (1AB) (as the case requires), 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 12, 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.

Part 5—Exemptions for controlled activities

16A Exemptions for controlled activities in relation to Sydney West Airport

(1) For the purposes of paragraphs 183(1)(d) and 187(1)(b) of the Act, a controlled activity for prescribed airspace for Sydney West Airport is declared to be exempt from Division 4 of Part 12 of the Act if the controlled activity is covered by subregulation (2), (3) or (4).

Activities involving buildings etc. no more than 10 metres high

(2) A controlled activity is covered by this subregulation if:

(a) the activity is referred to in paragraph 182(1)(a), (b) or (c) of the Act; and

(b) the building, structure or thing referred to in that paragraph intrudes into the prescribed airspace for Sydney West Airport but does not extend above ground level by more than 10 metres; and

(c) the activity is not carried out after 31 December 2025.

Activities involving temporary buildings etc.

(3) A controlled activity is covered by this subregulation if:

(a) the activity is a controlled activity for prescribed airspace for Sydney West Airport; and

(b) the activity is referred to in paragraph 182(1)(a), (b) or (c) of the Act; and

(c) the activity does not continue for more than 12 months; and

(d) the activity is not intended to result in, and does not involve the alteration of, a building, structure, or other thing, that:

(i) intrudes into the prescribed airspace for Sydney West Airport; and

(ii) is intended to remain in place for longer than 12 months; and

(e) the activity is not carried out after 31 December 2025.

Activities covered by airport plan for Sydney West Airport

(4) A controlled activity is covered by this subregulation if:

(a) an airport plan for Sydney West Airport is in force; and

(b) the controlled activity is, or comprises part of, a development covered by Part 3 of the airport plan; and

(c) the activity is not carried out after 30 June 2026.

Part 6—Miscellaneous

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) the airport‑operator company (if any) for the airport concerned; 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.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Number and year | FRLI registration or gazettal | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| 293, 1996 | 12 Dec 1996 | 12 Dec 1996 |  |
| 113, 1999 | 17 June 1999 | 17 June 1999 (r 2) | — |
| 55, 2001 | 29 Mar 2001 | 29 Mar 2001 (r 2) | — |
| 13, 2002 | 21 Feb 2002 | Sch 9: 21 Feb 2002 (r 2) | — |
| 122, 2015 | 24 July 2015 (F2015L01175) | Sch 1 (items 1–28): 25 July 2015 (s 2(1) item 1) | — |

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Airports (Protection of Airspace) Amendment Regulations 2017 | 28 July 2017 (F2017L00969) | 29 July 2017 (s 2(1) item 1) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 1** |  |
| Part 1 heading | ad F2017L00969 |
| r 1 | rs No 113, 1999 |
| r 3 | am No 113, 1999; No 122, 2015; F2017L00969 |
| **Part 2** |  |
| Part 2 heading | ad F2017L00969 |
| r 5 | am No 122, 2015 |
| r 6 | am No 113, 1999; No 122, 2015 |
| **Part 3** |  |
| Part 3 heading | ad F2017L00969 |
| r 6A | ad No 55, 2001 |
|  | am No 122, 2015 |
| **Part 4** |  |
| Part 4 heading | ad F2017L00969 |
| r 7 | am No 113, 1999; No 13, 2002; No 122, 2015; F2017L00969 |
| r 8 | am No 113, 1999; No 13, 2002; No 122, 2015; F2017L00969 |
| r 9 | am No 113, 1999; No 122, 2015; F2017L00969 |
| r 10 | rs No 113, 1999 |
|  | am No 122, 2015 |
| r 11 | rs No 113, 1999 |
|  | am No 122, 2015 |
| r 12 | rs No 113, 1999 |
| r 13 | am No 113, 1999; No 122, 2015 |
| r 14 | am No 113, 1999; No 13, 2002; No 122, 2015 |
| r 15 | am No 113, 1999; No 122, 2015 |
| r 15A | ad No 113, 1999 |
|  | am No 122, 2015 |
| **Part 5** |  |
| Part 5 heading | ad F2017L00969 |
| r 16A | ad F2017L00969 |
| **Part 6** |  |
| Part 6 heading | ad F2017L00969 |
| r 17 | am No 113, 1999; No 122, 2015 |
| r 18 | ad No 113, 1999 |