

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 169

Issued by Authority of the Minister for Transport and Regional Services

Airspace Act 2007

Airspace (Consequential and Other Measures) Act 2007

Air Services Act 1995

Civil Aviation Act 1988

Airspace Regulations 2007

Air Services Amendment Regulations 2007 (No. 1)

Civil Aviation Amendment Regulations 2007 (No. 2)

Civil Aviation Safety Amendment Regulations 2007 (No. 2)

The *Airspace Act 2007* (the Act) and *Airspace (Consequential and Other Measures) Act 2007* establish a head of power for the Civil Aviation Safety Authority (CASA) to regulate and administer Australian-administered airspace.

Section 15 of the Act, subsection 77(1) of the *Air Services Act 1995* (the AS Act) and section 98 of the *Civil Aviation Act 1988* provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The majority of the *Airspace Regulations 2007* are in similar terms to the regulations currently contained in Part 2 of the Air Services Regulations. The *Air Services Amendment Regulations 2007 (No. 1)* repeal Part 2 of the Air Services Regulations. Item 1(2) of Schedule 3 to the *Airspace (Consequential and Other Measures) Act 2007* provide that the Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of that repeal.

Airspace Regulations 2007

The Airspace Regulations 2007 have been developed to enable CASA to perform the functions and exercise the powers needed to administer and regulate Australia-administered airspace. They are based very closely on Part 2 of the current Air Services Regulations, with minimal necessary changes that have allowed CASA to function in this role.

The Airspace Regulations 2007 include provisions for classifying and designating airspace so as to determine the level of air traffic service that must be provided in each volume, and to declare particular volumes as having a form of restricted access where necessary. They also include details regarding the timing of reviews of decisions made by the airspace regulator, and the manner in which such reviews are to be conducted.

The Airspace Regulations 2007 also provide a power for CASA to obtain information from the operators of aerodromes, the owners or operators of aircraft and/or the providers of air traffic services, to assist in activities such as reviewing their

decisions. Penalties for non-compliance with a written request for information are also included in the regulations under 11(4) of the *Airspace Act 2007*.

Consultation between the relevant portfolio agencies – the Department of Transport and Regional Services, CASA and Airservices Australia – on the broad suite of airspace changes was extensive. Consultation was also undertaken with the Department of Defence and the aviation industry, including consultative fora with both the aviation industry and general aviation. The *Airspace Act 2007* and the *Airspace (Consequential and Other Measures) Act 2007* were also the subject of a Senate inquiry, receiving widespread support from the industry.

The transfer of the airspace regulatory function from Airservices to CASA will not noticeably impact on industry; however, it will remove the perceived conflict of interest for Airservices with dual roles of both airspace regulator and air traffic service provider, and result in better processes and improved transparency in airspace regulation.

The policy approval for the majority of these regulations was given by Government in September 2006. Approval for the penalty clauses in these regulations was given by the Minister for Justice and Customs on 23 November 2006.

Details of these Regulations are included in Attachment 1.

Air Services Amendment Regulations 2007 (No. 1)

The purpose of these Regulations is to make necessary consequential amendments to replace references to regulations and subregulations in Part 2 of the Air Services Regulations with references to the *Airspace Regulations 2007*, and to repeal Part 2 of the Air Services Regulations.

Details of these Regulations are included in Attachment 2.

Civil Aviation Amendment Regulations 2007 (No. 2)

The purpose of these Regulations is to make necessary consequential amendments to replace references in the *Civil Aviation Regulations 1988* to regulations and subregulations in Part 2 of the Air Services Regulations with references to the *Airspace Regulations 2007*.

Details of these Regulations are included in Attachment 3.

Civil Aviation Safety Amendment Regulations 2007 (No. 2)

The purpose of these Regulations is to make necessary consequential amendments to replace references in the *Civil Aviation Safety Regulations 1998* to regulations and subregulations in Part 2 of the Air Services Regulations with references to the *Airspace Regulations 2007*.

Details of these Regulations are included in Attachment 4.

The *Airspace Act 2007* and *Airspace (Consequential and Other Measures) Act 2007* do not specify any conditions that needed to be satisfied before the power to make the Regulations was exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced 1 July 2007, to coincide with the commencement of the Act.

Details of the Airspace Regulations 2007

Part 1 - Preliminary

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Airspace Regulations 2007*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the commencement of sections 3 to 15 of the *Airspace Act 2007*.

Regulation 3 – Definitions

This regulation provides definitions of terms used in the Airspace Regulations 2007.

Part 2 – Airspace Management

Regulation 4 – Purpose of Part 2

This regulation provides that the provisions of Part 2 will be for the purpose of enabling CASA to perform the functions and exercise the powers in connection with the administration and regulation of Australian-administered airspace.

Regulation 5 – Determination of airspace and controlled aerodromes

This regulation provides CASA with the power to delineate Australian-administered airspace in both horizontal and vertical terms, and to give individual volumes of airspace a classification that defines both the types of flights able to access that airspace and the level of air traffic services to be provided in that airspace.

When determining the class of a particular volume of airspace CASA will describe the physical boundaries of the airspace, the times during which a particular class is applicable, and the date or event upon which the determination will be revoked.

The classes referred to are the set of classes for airspace described in Annex 11 to the Chicago Convention, or the International Civil Aviation Organization classes. This regulation also specifies that a determination made under this measure must be published appropriately and does not take effect until it is published.

This regulation also states that when relevant air traffic services are not being provided, the determination of class in a particular volume of airspace is taken to have no effect. This is a practical measure meaning, in effect, that when a pilot is notified that the expected air traffic services for a particular volume of airspace are not being provided, the pilot must act as though the airspace has no air traffic services (i.e. he or she must revert to the flying procedures used in uncontrolled airspace).

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Powers under this regulation will not be delegable.

Regulation 6 – Designation of prohibited, restricted or danger areas

This regulation provides CASA with the power to designate an area of Australian territory to be either prohibited, restricted or danger areas. Part 2 of the Air Services Regulations call for an area on the ground to be defined, and the airspace above that area to be given either prohibited, restricted or danger restrictions to access.

Regulation 6 adds that CASA may also define the vertical parameters of the airspace to which the restriction will apply. This is consistent with the Chicago Convention.

When declaring a particular volume of airspace as restricted, CASA must describe the physical boundaries of the airspace, the times during which a particular restriction is applicable, and the date or event upon which the declaration will be revoked. CASA may also specify the boundaries of an area to extend to a volume of airspace. This measure also specifies that a determination made under this measure must be published appropriately and does not take effect until it is published.

The powers under this regulation will be delegable to air traffic service providers. It is expected that air traffic service providers will be given limited powers to declare restricted areas, for example, a delegation that allows the air traffic service provider to declare a temporary restricted area for less than seven days, in circumstances where a decision as to whether to declare the area is needed in less than seven days. This would be applicable in situations such as a gaol breakout where police require restricted airspace to fly aircraft searching for the escapees.

Any delegate of this regulation will be required to act in accordance with the same conditions and obligations that CASA must adhere to.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 7 – Publication of a designation

This regulation provides that CASA must publish declarations of designated areas appropriately, and where the declaration is to have effect for more than 3 months CASA must notify the International Civil Aviation Organization.

The requirements under this regulation will be delegable to air traffic service providers. Any delegate of this regulation will be required to act in accordance with the same conditions and obligations that CASA must adhere to.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 8 – Publication of flying training areas

This regulation provides CASA with the power to designate an area as a flying training area, and requires that CASA publish such designation appropriately.

Powers under this regulation will not be delegable.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 9 – Particulars of air traffic services

This regulation provides that CASA must specify details of the air traffic services to be provided in each volume of airspace given an ICAO classification under regulation 5.

In addition, CASA may determine different levels of service in relation to individual restricted or danger areas declared under regulation 6. This particular power is required as a means of giving flexibility to CASA to account for circumstances in the restricted or danger area that are different to the circumstances of the surrounding airspace. This particular power will be delegable to air traffic service providers. It is expected that air traffic service providers will be given limited powers to vary levels of service, for example, a delegation that allows the air traffic service provider to vary levels of service for up to seven days, in circumstances where a decision is needed in less than seven days. Any delegate of this regulation will be required to act in accordance with the same conditions and obligations that CASA must adhere to.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 10 – Notice of unavailability of air traffic services

This regulation requires that CASA give notice of the unavailability of air traffic services. This regulation will be part of delegations to air traffic service providers, as they will be the party in a position to make the notification in a timely manner.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 11 – Designation of air routes and airways

This regulation provides CASA with the power to designate air routes and airways in Australian-administered airspace and the conditions of use of a designated air route or airway. This regulation will be part of delegations to air traffic service providers, as air traffic service providers need this power in order to carry out their activities. Any delegate of this regulation will be required to act in accordance with the same conditions and obligations that CASA must adhere to.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 12 – Directions relating to air routes, airways and facilities

This regulation provides CASA with the power to give directions relating to air routes and airways and airway facilities. This regulation will be part of delegations to air traffic service providers, as air traffic service providers need this power in order to carry out their activities. Any delegate of this regulation will be required to act in accordance with the same conditions and obligations that CASA must adhere to.

This regulation is similar to the current regulation in Part 2 of the Air Services Regulations.

Regulation 13 – Delegation

This regulation provides CASA with the power to delegate powers or functions under regulations 6, 7, 9(2), 10, 11 and 12 to air traffic service providers. Any delegate of these regulations will be required to act in accordance with the same conditions and obligations that CASA must adhere to.

Regulation 14 – Obtaining information

This regulation provides CASA with the power to require the operators of aerodromes, the owners or operators of aircraft, and the providers of air traffic services to provide traffic data (including type of aircraft, number of passengers, routing, etc.) and other data when requested. CASA requires this information to make

decisions under, amongst others, regulations 5 and 6 and to conduct the reviews set out in regulation 15.

There is nothing in the current Air Services Regulations empowering Airservices to collect these data, however, as Australia's civil air traffic service provider Airservices either holds or can access all the data it requires to undertake its decision-making and review processes. CASA will require a specific power allowing it to collect this information.

An operator, owner or provider who has been served with a notice under this regulation must comply with the notice within 28 days after the date of service, or face a penalty of 50 penalty units. This will be an offence of strict liability.

Regulation 15 – Review of instruments

This regulation refers to the requirements on CASA to conduct regular reviews of existing classifications and designations of airspace, and of the overall system used to administer Australian-administered airspace. There is no specific requirement in the Air Services Regulations for these reviews to be carried out – although reviews are carried out by Airservices in the absence of a regulatory requirement to do so. It is Government policy to specifically require CASA to conduct reviews and for the Government to direct CASA in the type and timing of reviews. This is reflected in section 13 of the *Airspace Act 2007*.

Part 3 - Miscellaneous

Regulation 16 – Offence of contravening instrument

A person contravening a requirement or condition of any instrument made under these Regulations, or failing to do any act required by any instrument made under these Regulations, will be subject to a penalty of 50 penalty units. This will be an offence of strict liability.

The Air Services Regulations do not include penalties, however, other regulations administered by CASA include similar penalties.

Regulation 17 – Transitionals

This regulation grandfathers instruments made under Part 2 of the Air Services Regulations.

Details of the Air Services Amendment Regulations 2007 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Air Services Amendment Regulations 2007 (No. 1)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the commencement of the *Airspace Regulations 2007*.

Regulation 3 – Amendment of Air Services Regulations

This regulation provides that the Air Services Regulations (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] - Name of Regulations

This item renames the Principal Regulations to reflect modern drafting practice.

Item [2] - Regulation 1.02

This item changes the word ‘regulations’ to ‘Regulations’ to reflect modern drafting practice.

Item [3] - Subregulation 1.03 (1)

This item changes the word ‘regulations’ to ‘Regulations’ to reflect modern drafting practice.

Item [4] - Subregulation 1.03 (1), after definition of *airspace*

This item adds the definition ‘*Airspace Regulations* means the *Airspace Regulations 2007*’.

Item [5] - Subregulation 1.03 (1), definitions of *CAA, class, control area, controlled aerodrome, control zone, designated air route and designated airway*

This item omits the definitions of ‘CAA’ and ‘class’ as they will no longer appear in the Principal Regulations.

This item also updates the following definitions so that they refer to the relevant regulation in the new Airspace Regulations:

- ***control area*** means airspace to which a determination under paragraph 5 (1) (c) of the Airspace Regulations applies.
- ***controlled aerodrome*** means an aerodrome to which a determination under paragraph 5 (1) (e) of the Airspace Regulations applies.
- ***control zone*** means airspace to which a determination under paragraph 5 (1) (b) of the Airspace Regulations applies.
- ***designated air route*** means an air route designated under regulation 11 of the Airspace Regulations.
- ***designated airway*** means an airway designated under regulation 11 of the Airspace Regulations.

Item [6] Subregulation 1.03 (1), definitions of *flight information area* and *flight information region*

This item omits the definitions of ‘flight information area’ and ‘flight information region’ as they will no longer appear in the Principal Regulations.

Item [7] Subregulation 1.03 (1), definition of *movement area*

This item updates the definition of movement area to: ***movement***, in relation to an aerodrome, means surface movement of aircraft (including the manoeuvring of aircraft in manoeuvring areas and aprons), as the term ‘movement’ appears in the Principal Regulations while the term ‘movement area’ does not.

Item [8] Subregulation 1.03 (1), definition of *prohibited area*

This item omits the definition of ‘prohibited area’ as it no longer appear in the Principal Regulations.

Item [9] Subregulation 1.03 (1), definition of *restricted area*

This item updates the definitions of ‘restricted area’ so that it refers to the relevant regulation in the Airspace Regulations: ***restricted area*** means an area declared to be a restricted area under regulation 6 of the Airspace Regulations.

Item [10] Subregulation 1.03 (1), definition of *volume*

This item omits the definition of ‘volume’ as it will no longer appear in the Principal Regulations.

Item [11] Subregulation 1.03 (2)

This item changes the word ‘regulations’ to ‘Regulations’

Item [12] Subregulation 1.03 (2), note

This item omits the words ‘Australian aircraft’ as it is no longer required.

Item [13] Part 2

This item omits Part 2 of the Principal Regulations. This is the Part that would be made in similar terms in the proposed Airspace Regulations.

Item [14] Paragraph 3.03 (1) (b)

This item updates a reference to Part 2 of the Principal Regulations to the relevant regulation in the Airspace Regulations, i.e. from ‘2.04 (1) (b)’ to ‘5 (1) (d) of the Airspace Regulations’.

Item [15] Paragraph 3.03 (3) (d)

This item updates a reference to Part 2 of the Principal Regulations to the relevant regulation in the Airspace Regulations, i.e. from ‘2.04 (1) (b)’ to ‘5 (1) (d) of the Airspace Regulations’.

Item [16] Paragraph 3.03 (4) (a)

This item updates a reference to Part 2 of the Principal Regulations to the relevant regulation in the Airspace Regulations, i.e. from ‘2.07’ to ‘regulation 6 of the Airspace Regulations’.

Item [17] Paragraph 3.03 (4) (b)

This item updates a reference to Part 2 of the Principal Regulations to the relevant regulation in the Airspace Regulations, i.e. from ‘2.04 (1) (b)’ to ‘5 (1) (d) of the Airspace Regulations’.

Item [18] Paragraph 7.04 (2) (d)

This item updates a reference to decisions made under Part 2 of the Principal Regulations, i.e. a determination under regulation 2.04, as in force immediately before its repeal, applied, or did not apply, to any specified airspace.

Item [19] Regulation 7.05

This item omits regulation 7.05 as it is no longer required.

Details of the Civil Aviation Amendment Regulations 2007 (No. 2)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Civil Aviation Amendment Regulations 2007 (No. 2)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the commencement of the *Airspace Regulations 2007*.

Regulation 3 – Amendment of Civil Aviation Regulations 1988

This regulation provides that the *Civil Aviation Regulations 1988* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] Regulation 2, definition of *class of airspace*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***class of airspace*** means a class of airspace determined under paragraph 5 (1) (d) of the *Airspace Regulations 2007*'.

Item [2] Regulation 2, definition of *control area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***control area*** means airspace to which a determination under paragraph 5 (1) (c) of the *Airspace Regulations 2007* applies.'

Item [3] Regulation 2, definition of *controlled aerodrome*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***controlled aerodrome*** means an aerodrome to which a determination under paragraph 5 (1) (e) of the *Airspace Regulations 2007* applies.'

Item [4] Regulation 2, definition of *control zone*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***control zone*** means airspace to which a determination under paragraph 5 (1) (b) of the *Airspace Regulations 2007* applies.'

Item [5] Regulation 2, definition of *danger area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***danger area*** means an area declared under regulation 6 of the *Airspace Regulations 2007* to be a danger area.'

Item [6] Regulation 2, definition of *flight information area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***flight information area*** means airspace to which a determination under subparagraph (5) (1) (a) (i) of the *Airspace Regulations 2007* applies.'

Item [7] Regulation 2, both definitions of *movement area*

This item updates this definition so that it is consistent with the definition used in the Air Services Regulations: '***movement area*** means that part of an aerodrome to be used for the surface movement of aircraft, including manoeuvring areas and aprons.'

Item [8] Regulation 2, definition of *prohibited area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***prohibited area*** means an area declared under regulation 6 of the *Airspace Regulations 2007* to be a prohibited area.'

Item [9] Regulation 2, definition of *restricted area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: '***restricted area*** means an area declared under regulation 6 of the *Airspace Regulations 2007* to be a restricted area.'

Details of the Civil Aviation Safety Amendment Regulations 2007 (No. 2)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Civil Aviation Safety Amendment Regulations 2007 (No. 2)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the commencement of the *Airspace Regulations 2007*.

Regulation 3 – Amendment of Civil Aviation Safety Regulations 1998

This regulation provides that the *Civil Aviation Safety Regulations 1998* (the Principal Regulations) are amended as set out in the Schedule.

Schedule 1 – Amendments

Item [1] Reader's Guide, paragraph 8

This item adds reference to the *Airspace Act 2007* and the *Airspace Regulations 2007*, and updates the reference to the 'Air Services Regulations' to the '*Air Services Regulations 1995*'.

Item [2] Reader's Guide, paragraph 64

This item omits this paragraph as it is no longer required, as a result of the shift of the airspace regulatory function from Airservices Australia to the Civil Aviation Safety Authority.

Item [3] Reader's Guide, paragraph 92, definition of *Controlled airspace*

This item updates this definition so that it refers to the Airspace Regulations: '***Controlled airspace*** is airspace in which aircraft are subject to air traffic control. For more details, see the *Airspace Regulations 2007* and the determinations made by CASA under regulation 5 of those Regulations.'

Item [4] Regulation 101.065, note

This item updates this note so that it refers to the correct regulation in the Airspace Regulations: '*Note For **prohibited area** and **restricted area**, see regulation 6 of the Airspace Regulations 2007. Details of prohibited or restricted areas are published in the AIP or a NOTAM.*

Item [5] Regulation 101.430, note

This item updates this note so that it refers to the correct regulation in the Airspace Regulations: ‘*Note For **prohibited area** and **restricted area**, see regulation 6 of the Airspace Regulations 2007. Details of prohibited or restricted areas are published in the AIP or a NOTAM.*’

Item [6] Regulation 172.010, definition of *airspace authority*

This item updates this definition so that it refers to the administrator of the Airspace Regulations: ‘***airspace authority** means: (a) the body having the responsibility for making determinations under regulation 5, declarations under regulation 6 and designations under regulation 8 of the Airspace Regulations 2007; or (b) if another body is given that responsibility under other regulations having the same or similar effect — that body.*’

Item [7] Dictionary, definition of *prohibited area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: ‘***prohibited area** has the same meaning as in regulation 3 of the Airspace Regulations 2007.*’

Item [8] Dictionary, definition of *restricted area*

This item updates this definition so that it refers to the correct regulation in the Airspace Regulations: ‘***restricted area** has the same meaning as in regulation 3 of the Airspace Regulations 2007.*’