

EXPLANATORY STATEMENT

Issued by the authority of the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

*Air Services Regulations 2019
Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019
made under the Air Services Act 1995*

The *Air Services Act 1995* (the Act) establishes Airservices Australia (Airservices) as a Corporate Commonwealth Entity to provide services to effect the safety, regularity and efficiency of air navigation. Under the Act, Airservices provides air traffic, rescue and fire fighting, and aeronautical information services to the aviation industry. The Act states that Airservices must regard the safety of air navigation as its most important consideration.

The Governor-General's power to make regulations is granted by virtue of subsection 77(1) of the Act. Subsection 77(2) of the Act states the regulations may make provision for the functions of Airservices and the powers that can be exercised by its employees, compensation for loss, publication of Aeronautical Information Publications (AIPs) and Notices to Airmen (NOTAMS), regulating environmental effects of Commonwealth jurisdiction aircraft, immunity from liability, records of aircraft subject to statutory lien and enabling specified documents to be *prima facie* evidence of aircraft movements.

Air Services Regulations 2019 and Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019

The purpose of the Air Services Regulations 2019 and Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019 (the 2019 Regulations) is to replace the Air Services Regulations 1995 (the 1995 Regulations), which sunset on 1 April 2019. New Regulations are required to ensure continuity of the law and ensure that Airservices can carry out its functions in providing air traffic and rescue and fire fighting services.

While the policy intent of the 2019 Regulations remains the same as the 1995 Regulations, the 2019 Regulations have been amended to:

- establish priority for Airservices rescue and fire fighting personnel to provide aviation related services and clarify the ability for them to undertake additional functions utilising spare capacity (for example, provide medical first aid in situations not directly related to civil aviation activities, or mutual aid to other fire fighting services)
- reflect the changes in air traffic technology since 1995 (for example, changing the definition of 'air traffic instruction' to allow for Airservices' flex tracks – that is, the daily calculation of non-fixed routes that deliver the most efficient operational flight conditions)
- reflect current practice in the provision of electronic information and documents (for example, removing the requirement to facsimile requisition notices) and
- adhere to current drafting conventions.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Department of Infrastructure, Regional Development and Cities (the Department) consulted extensively with Airservices and also undertook initial consultation with the following entities from 10 April 2018 to 4 May 2018:

- Civil Aviation Safety Authority (CASA)
- Australian Transport Safety Bureau
- Australian Maritime Safety Authority
- Board of Airline Representatives of Australia
- Australian Strategic Air Traffic Management Group
- Regional Aviation Association of Australia
- Qantas Airways Ltd
- Virgin Australia.

The consultation process resulted in six written responses, with the majority noting or supporting the proposed amendments. Some further clarification was requested regarding interactions with other Acts, which has been provided. One entity requested changes to the definitions used in the Regulations, although these were not included to ensure consistency with International Civil Aviation Organization (ICAO) terminology.

The Department further consulted with the following entities from 21 December 2018 to 31 January 2019 regarding the draft Regulations:

- CASA
- Australian Transport Safety Bureau
- Australian Maritime Safety Authority
- Australian Airports Association
- Board of Airline Representatives of Australia
- Australian Strategic Air Traffic Management Group
- Regional Aviation Association of Australia
- Qantas Airways Ltd
- Virgin Australia
- Australian Financial Securities Agency

No significant concerns were raised regarding the draft Regulations. A small number of minor amendments were made to improve clarity.

Regulation Impact Statement

The Office of Best Practice Regulation advised a Regulation Impact Statement (RIS) did not need to be prepared (OBPR ID: 23097).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment A](#).

Commencement and making

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in [Attachment B](#).

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Air Services Regulations 2019 and Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019 commence the day after this instrument is registered.

Authority: Subsection 77(1) of the
Air Services Act 1995

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Air Services Regulations 2019

Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019

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 Regulations

The Air Services Regulations 2019 and Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019 (the Regulations) replace the Air Services Regulations 1995, which sunset on 1 April 2019, to ensure continuity of the law. The Regulations retain the policy intent of the Air Services Regulations 1995 but have been simplified to reflect updated drafting instructions.

The Regulations outline the two main operational functions of Airservices Australia (Airservices): the provision of air traffic services; and aviation rescue and fire fighting services.

The Regulations also set out the powers of Airservices employees in relation to air traffic services, directions and instructions, compensating persons for loss sustained regarding the requisitioning of an aircraft, publication of Aeronautical Information Publications (AIPs) and Notices to Airmen (NOTAMS), statutory liens, and enabling specified documents to be *prima facie* evidence of a flight.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

Details of the Air Services Regulations 2019

Part 1 – Preliminary

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the Air Services Regulations 2019.

Section 2 - Commencement

This section provides for the Regulations to commence the day after registration.

Section 3 - Authority

This section provides that the Regulations are made under the *Air Services Act 1995*.

Section 4 – Definitions

This section provides definitions of terms used within the Regulations.

Amendments to definitions include the following:

- *air route* now uses the same definition as that used in the *Civil Aviation Act 1988*.
- *air traffic instruction* has been amended to allow for Airservices' flex tracks – that is, the daily calculation of non-fixed routes that deliver the most efficient operational flight conditions – and any other advances in technology in the short to medium term.
- *airway* now uses the same definition as that used in the *Civil Aviation Act 1988*.
- *Controlled aerodrome* now uses the same definition as that used in the Airspace Regulations 2007
- *manoeuvring area* now uses the same definition as that used in the *Civil Aviation Act 1988*.

Part 2 – Functions of AA – providing services

Division 1 – Preliminary

Section 5 – Purpose of this Part

This section clarifies the three primary functions of Airservices as providing air traffic services, an aeronautical information service, and rescue and fire fighting services; and the powers that Airservices may exercise in connection with these.

Division 2 – Air traffic services

Section 6 – Functions related to providing air traffic services

This section states the functions of Airservices in relation to air traffic services while also clarifying that these functions are to be performed in accordance with the Civil Aviation Safety Regulations 1998.

Section 7 – Instructions and directions relating to air traffic services

This section replaces section 3.03 of the 1995 Regulations. Subregulations (1) and (2) stipulate that only a qualified employee may give air traffic instructions and air traffic clearances.

Subregulation (3) enables Airservices to give directions or instructions to aircraft involved in either Instrument Flight Rules (IFR) or Visual Flight Rules (VFR) flights about the use of a controlled aerodrome or in a specified class of airspace. Airservices may use this power to establish the procedures IFR or VFR aircraft are to follow at, controlled aerodromes or in a specified class of airspace.

Subregulation (4) enables Airservices to give specified instructions about the use of airspace above a restricted or danger area which vary from, and prevail over, instructions given to aircraft under subregulation (3). Subregulations (5) and (6) establish when air traffic clearances, air traffic instructions and instructions take effect.

Section 8 – Removal of safety hazards

This section outlines the circumstances in which Airservices may remove, or authorise the removal of, safety hazards in an aerodrome.

The criteria that Airservices must be satisfied of in fulfilling this duty has been broadened from section 3.04 of the 1995 Regulations to include actions that are necessary ‘in the interests of safety or for the performance of the functions of air traffic services’ provided by Airservices. This was done to ensure Airservices is able to undertake this function in all circumstances related to safety or air traffic services.

The exemption from liability clause in section 3.04 (2) of the 1995 Regulations has been moved to section 42 in these Regulations.

Section 9 – Requisitioning of aircraft

This section outlines how a qualified employee of Airservices is to requisition an aircraft deemed necessary for the performance of air traffic services and the circumstances in which an oral requisition (rather than written) is acceptable.

This section replaces section 3.05 of the 1995 Regulations and has been amended to remove the requirement for requisition notices to be facsimiled. This was done to reflect advances in technology.

Sections 10, 11 and 12 – Requisitioning of aircraft—claims for compensation for injury, loss or damage; requesting further information relevant to claims for injury, loss or damage; and dealing with claims for compensation for injury, loss or damage

These sections outline what compensation may be sought and how claims for compensation associated with requisitioning are to be dealt with and considered. A new subsection 11 has been added to allow Airservices to request further information or documents from the claimant (reasonably required in relation to the claim) and to not progress the claim further until that information has been provided. This was done to clarify that claims should be substantiated with evidence.

Section 12 outlines how Airservices may handle a claim, the requirements for notifying the claimant while also clarifying that claimants may apply for an internal review or to the Administrative Appeals Tribunal for a review of Airservices’ decision.

Division 3 – Aeronautical information service

Section 13 – Functions related to providing an aeronautical information service

This section outlines the functions of Airservices in relation to the provision of aeronautical information services.

The section replaces section 4.11 of the 1995 Regulations, and has been streamlined to remove duplication between these Regulations and Part 175 of the Civil Aviation Safety Regulations 1998 (which Airservices is required to meet in its function as a provider of an aeronautical information service).

Section 14 – The Aeronautical Information Publication

This section outlines the required content of Airservices' Aeronautical Information Publication (AIP) and the required timing for its publication. The AIP is a document that outlines aeronautical information relating to the safety, regularity and efficiency of air navigation. It may include information on, but not be limited to, aerodromes, communication and air navigation services and facilities, meteorological services, and notification of hazards to air navigation (see Part 175 of the Civil Aviation Safety Regulations 1998).

Paragraph (3)(e) includes a broad requirement for the AIP to contain information prescribed by other relevant Commonwealth law, for example, section 18 of the *Air Navigation Act 1920* which requires that certain determinations made under that Act must be included in the AIP.

Subsection 14(6) is included to assist readers, as the instrument is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

Section 15 – Notices to Airmen

This section outlines the required content of Airservices' Notices to Airmen and the required timing for their publication. The regulations have been updated to include electronic distribution of Notices to Airmen.

Subsection 15(7) is included to assist readers, as the instrument is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

Sections 14 and 15 replace section 4.12 of the 1995 Regulations.

Division 4 – Rescue and fire fighting services

Section 16 – Functions related to providing rescue and fire fighting services

This section outlines the functions of Airservices in relation to rescue and fire fighting services while also clarifying that these functions are to be performed in accordance with the Civil Aviation Safety Regulations 1998.

Note that 'aircraft accident' and 'aircraft incident' are defined in Part 139H of the Manual of Standards.

Note that consistent with Australia's obligations under the Chicago Convention, when providing aviation and fire fighting services, Airservices must ensure the rescue and fire fighting service is provided to create and maintain survivable conditions, to provide egress routes for occupants and to initiate the rescue of those occupants unable to make their escape without direct aid. The rescue may require the use of equipment and personnel other than those assessed primarily for rescue and fire fighting purposes.

Paragraph 16(1)(d) is intended to cover services provided before or after the relevant incident or event. This includes planning and preparation for future operations and review of past operations.

Section 17 – Officer in charge of rescue and fire fighting operations

This section defines who is the officer in charge of a rescue and fire fighting service operation and outlines the actions that the officer in charge may take.

This section replaces sections 4.03 and 4.04 of the 1995 Regulations. It removes the restriction that the officer in charge is designated for a specified aerodrome or location. This was removed to reflect that Airservices' rescue and fire fighting officers work in shifts: no single person is in charge of operations at an aerodrome consistently, as each shift has its own officer in charge.

This section also simplifies the list of permissible actions that the officer in charge may take, referring to powers outlined in Part 139H of the Civil Aviation Safety Regulations 1998.

Section 18 – Arrangements for using rescue and fire fighting resources

This section allows Airservices to make arrangements with other bodies – including State and Territory emergency services and the Australian Defence Force – in the fulfilment of its rescue and fire fighting function.

The section replaces section 4.05 of the 1995 Regulations and has been amended to allow Airservices to make such arrangements beyond just the use of rescue or fire fighting services provided by other bodies. For example, this will now allow Airservices to make arrangements with State and Territory agencies and other bodies to assist with operations in the vicinity of the aerodrome where requested.

“Authority of the Commonwealth” under subsection 18(b) is defined in the Act and includes the Defence Force, the Australian Federal Police and other bodies.

Part 3 – Additional functions of AA

Division 1 – Preliminary

Section 19 – Purpose of this Part

This section clarifies Airservices' additional functions related to providing services and facilities in emergency situations and other circumstances, dealing with claims for damage under certain circumstances and providing meteorological information.

The section replaces section 5.01 of the 1995 Regulations. It has been amended to remove the collection of certain levies, as this function is no longer performed by Airservices. The 1995 Regulations referred to Noise Levies which are no longer collected.

It has also been amended to include the provision of services and facilities to assist in emergencies and other circumstances. See the notes under section 20 below.

In relation to subsection 19(c), the provisions in this Division about meteorological information services are prescribed for the purposes of paragraph 8(1)(g) of the Act on the basis that these services are related to the function of providing an aeronautical information service mentioned in paragraph 8(1)(a) of the Act.

Division 2 – Assistance in emergencies and other circumstances

Section 20, 21 and 22 - Providing services and facilities to assist in emergencies and other circumstances; officer in charge of emergencies and other circumstances; and arrangements for using resources in emergencies and other circumstances

These sections clarify Airservices' function to provide services and facilities to assist in emergency situations and other circumstances not otherwise covered by these Regulations or the Civil Aviation Safety Regulations 1998. These functions may be undertaken at Airservices' discretion, and do not create an obligation on Airservices. These provisions are prescribed for the purposes of paragraph 8(1)(g) of the Act on the basis that these services are related to the function of providing rescue and fire fighting services, and are only to be undertaken through Airservices' 'spare capacity' as stipulated under paragraph 8(1)(j)(2) of the Act.

Assistance that may be provided by Airservices under these provisions includes, but is not limited to the following:

First Aid Incidents – situations which require the administering of first aid, performed at the request of any person, organisation or agency. For example, responding to a call from an airport operator for the suspected heart attack of a passenger in the airport terminal or other airport facility.

Mutual Aid Incidents – situations where an emergency service requests the assistance of Airservices in an emergency response. For example, responding to a request from a State or Territory fire service to draw on the specialist skills and equipment that are unique to aviation rescue and fire fighting to assist with a large scale fuel fire.

Special Services – other work performed at the request of a person, organisation or agency for which the special equipment and training of Airservices makes it particularly suitable. For example, responding to a request from an airline to help remove ice from the wing of an aircraft before take-off.

Division 3 – Wake vortices damage

Section 23 – Meaning of *damage* to property

This section clarifies that this division excludes damage to an aircraft in flight.

Section 24 – Wake vortices—claims for compensation for damage

This section further clarifies that claims may only be made on damages to property caused by wake vortices, and those only as caused by the operation of a Commonwealth jurisdiction aircraft. Claims must be substantiated with written evidence. This replaces section 5.03 of the 1995 Regulations.

Section 25 – Wake vortices—requesting further information relevant to claims for damage

A new section has been added to enable Airservices to request further information or documents from a claimant (reasonably required in relation to the claim) and to not progress the claim further until that information has been provided. This was added to clarify that claims should be substantiated with evidence.

Section 26 – Wake vortices—dealing with claims for compensation for damage

This section outlines the process that Airservices must adhere to when it receives a claim for

compensation associated with wake vortices, as well as factors that Airservices must have regard to when making a decision on the level of compensation.

This section replaces section 5.04 of the 1995 Regulations.

The right for Airservices to refuse to investigate a claim under certain circumstances has been included. This change was made to allow Airservices to prevent the use of its resources associated with investigating frivolous or vexatious claims.

The factors that Airservices must have regard to when making a decision on compensation have been expanded to include any other matters that Airservices considers appropriate.

Section 27 – No right to compensation conferred by this Division

This section clarifies that these Regulations do not confer a right to compensation. The decision on whether to award compensation rests with Airservices. However, as stipulated under section 26, claimants may request Airservices conduct an internal review of a decision or apply to the Administrative Appeals Tribunal for a review if they are not satisfied with Airservices' decision.

Division 4 – Meteorological information

Section 28 – Arrangements for providing meteorological information

This section allows Airservices to provide meteorological information where necessary for the safe, regular or efficient operation of aircraft. This section replaces section 5.06 of the 1995 Regulations.

Part 4 – Statutory liens on aircraft for unpaid service charges

Section 29 – Purpose of this Part

This section clarifies that this Part elaborates on matters relating to a charge or claim upon aircraft for payment of unpaid service charges. This Part is enabled by Division 4 of Part 5 of the Act.

Section 30 – Register of statutory liens

This section requires Airservices to keep a register of statutory liens and stipulates what information is required when entering a statutory lien against an aircraft in the register.

This section replaces sections 6.02, 6.04 and 6.06 of the 1995 Regulations. It has been amended to remove the requirement for the register to be available in hard copy in all Airservices' offices and the requirement for it to be available for public inspection during set times. Instead, the register is to be maintained electronically and is to be publicly available on Airservices' website. This change was made to reflect that documents may be published electronically on Airservices' website.

In relation to subsection (3), this provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

Section 31 – Persons who may request a certificate of statutory lien

This section outlines who may request a certificate of statutory lien in respect to an aircraft. The details of what must be contained in a certificate of statutory lien are set out in subsection 61(1) of the Act.

Section 32 – Notices relating to statutory lien

This section outlines who is to be notified of an entry into the register and what information must be included in that notice. It replaces section 6.05 of the 1995 Regulations.

Section 33 – Insurance beneficiaries of seized aircraft

This section outlines who may benefit from the insurance of a seized aircraft. It replaces section 6.07 of the 1995 Regulations.

Section 34 – Sale of aircraft

This section outlines the process that Airservices must follow to sell an aircraft under section 67 of the *Air Services Act 1995*.

This section replaces section 6.08 of the 1995 Regulations. A requirement for Airservices to also publish an intention-to-sell notice on its website has been added, reflecting the use of modern technology to communicate.

Subparagraph (1)(b)(i) has been amended to clarify that Airservices is required to publish in a newspaper circulating in the Australian Capital Territory and the Northern Territory, rather than all Australian Territories. If the aircraft to be sold is in one of Australia's other territories, Airservices is required to publish a notice in a newspaper circulating in that territory (subparagraph (1)(b)(ii)).

Sections 35, 36 and 37 – Proceeds of sale—claims for approval of security interest in aircraft; requesting further information relevant to claims for approval of security interest in aircraft; and dealing with claims for approval of security interest in aircraft

This section outlines the process that Airservices must follow to invite and process claims for proceeds of the sale of aircraft. Claims must be justified and substantiated by evidence, and are subject to Airservices' consideration. Airservices must notify claimants of its decision and the reasons underpinning its decision.

This section replaces section 6.09 of the 1995 Regulations. It has been amended to remove mandated timeframes for Airservices' process of claims and notifications of decisions.

Similar to section 34, section 35 has been amended to clarify that Airservices must publish its notice inviting claims on its website, reflecting changes in technology. It also has been amended to clarify that Airservices is required to publish in a newspaper circulating in the Australian Capital Territory and the Northern Territory, rather than all Australian territories. If necessary, Airservices may publish a notice in a newspaper circulating in other territories (paragraph 35(2)(b)).

Section 38 – Distribution of proceeds of sale of aircraft

This section outlines how Airservices is to handle and distribute the proceeds of sale of an aircraft and the order in which claims and debts are to be paid.

This section replaces section 6.10 of the 1995 Regulations. Subsection 6.10(4) relating to liability has been moved to section 42.

Part 5 – Miscellaneous

Section 39 – Review of decisions

This section outlines under what circumstances a person may apply for Airservices to review a decision it has made in relation to compensation for requisition loss; compensation for wake vortices damage; or proceeds of the sale of an aircraft. It also outlines the process that Airservices must follow when deciding whether to review its decision, including providing a written notice about the outcomes of its review.

This section replaces section 7.02 of the 1995 Regulations and has been amended to clarify that, if Airservices sets aside a previous decision following an application to review, Airservices must make another decision as appropriate. This is to prevent a situation where Airservices might set aside a previous decision but then take no action.

The section also notes that Airservices must advise applicants of their right to have the decision reviewed by the Administrative Appeals Tribunal.

Section 40 – Evidence of a flight

This section outlines the types of documents that Airservices may provide as evidence that a flight occurred, for the purpose of establishing a liability to any service charge or late payment penalty associated with that flight. It replaces section 7.03 of the 1995 Regulations.

Section 41 – Evidentiary certificates

This section authorises Airservices to certify certain documents and facts relating to its air traffic services. It replaces section 7.04 of the 1995 Regulations and includes a clarification that the proceedings referred to may be of a civil, administrative, criminal, disciplinary or other nature.

Section 42 – Protection from civil actions

This section replaces multiple references in the 1995 Regulations to the protections certain persons are afforded, including Airservices and its employees, from liability for damages that may have arisen in that person's performance of Airservices functions outlined in these Regulations or the *Air Services Act 1995*.

This section replaces sections 4.06, 3.04(2) and 6.10(4) of the 1995 Regulations.

Details of the Air Services Legislation (Repeal and Consequential Amendments) Regulations 2019

Part 1 – Repeals

Item 1

This item repeals the existing Air Services Regulations 1995 which were due to sunset on 1 April 2019.

Part 2 – Amendments

Air Navigation (Aircraft Noise) Regulations 2018

Item 2

This item updates a reference to the 1995 regulations.

Item 3

This item repeals the definition of “Aeronautical Information Service” as it will no longer be used.

Item 4

This item updates a reference to the 1995 regulations.

Item 5

This item changes a reference from “Aeronautical Information Service” to refer to Airservices directly.

Airspace Regulations 2007

Item 6

This item repeals the definition of “Aeronautical Information Publication”. This definition only refers to the acronym AIP and is replaced by the new definition inserted by item 7.

Items 7-9

These items update references to the 1995 regulations.

Item 10

This item repeals a definition which only refers to the acronym “NOTAM”. It is replaced by the definition inserted by Item 9.

Civil Aviation Regulations 1988

Item 11

This item removes the definition of “Aeronautical Information Publications”. The definition in the Civil Aviation Safety Regulations 1998 will apply.

Item 12

This item repeals the definition of “facilities”. The definition in the *Civil Aviation Act 1988* will continue to apply.

Item 13

This item repeals the definition of “Notices to Airmen”. The definition in the Civil Aviation Safety Regulations 1998 will apply.

Item 14

This item repeals the definition of “publications”, which is not used in the Civil Aviation Regulations 1988.

Items 15-16

These items replace references to “Aeronautical Information Publications” and “NOTAMS” to improve the consistency of terminology used.

Civil Aviation Safety Regulations 1998

Items 17-18

These items replace references to “Aeronautical Information Publications” to improve the consistency of terminology used.

Item 19

This item repeals the definition of “air traffic control”. The definition in the Civil Aviation Regulations 1988 will apply.

Item 20

This item repeals the definition of “apron”. The definition in the Civil Aviation Regulations 1988 will apply.

Item 21

This item updates a reference to the 1995 regulations.

Space Activities Regulations 2001

Item 22

This item updates a reference to the aeronautical information service.

Transport Safety Investigation Regulations 2003

Items 23-25

These items repeal the definition of “control area” and “control zone” which are only used in the definition of “controlled airspace”. The revised definition of controlled airspace incorporates the substance of the repealed definitions without changing the scope of the definition of “controlled airspace”.