

# **Airports (Protection of Airspace) Regulations 1996 No. 293**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1996 No. 293

Issued by the authority of the Minister for Transport & Regional Development

Airports Act 1996

Airports (Protection of Airspace) Regulations

Section 252 of the *Airports Act 1995* (the Act) allows the Governor-General to make regulations prescribing matters that are required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part 12 of the Act provides for the Commonwealth to regulate certain incursions into airspace around airports to which the Part applies (see section 180 of the Act).

Section 184 of the Act provides that the regulations may make provision for or in relation to approvals authorising 'controlled activities' (defined in section 182 of the Act) to be carried out in relation to "prescribed airspace" (defined in section 181 of the Act).

The Airports (Protection of Airspace) Regulations (the regulations) provide for the protection of the following airspace around airports to which the Part applies:

- \* airspace above the Obstacle Limitation Surface (OLS) - this airspace may be used for visual air navigation;
- \* airspace above the Procedures for Air Navigation Systems - Operations (PANS-OPS) surfaces - this airspace may be used for instrument air navigation; and
- \* airspace declared by the Secretary as airspace to be protected in the interests of future air transport operations at the airport, most likely defined by reference to the future OLS and PANS-OPS surfaces for the airport as projected in the airport's approved master plan.

Section 186 of the Act provides that the regulations may require a person to give information to the operator of an airport where the information is relevant to a proposal to carry out a controlled activity in relation to prescribed airspace connected with the airport. Under the regulations, if a proposed activity would lead to an incursion into protected airspace then the proponent must refer the proposal to the airport-lessee company for the airport. Also, the relevant "building authority" (usually the local council) must advise the airport-lessee company if it receives an application to conduct a controlled activity.

The approval authority for proposed controlled activities is the Secretary of the Department of Transport and Regional Development. If a proposed activity would result in an incursion into the PANS-OPS surface or if the Civil Aviation Safety Authority (CASA) advises the Secretary that in the interests of the safety of air transport the application should not be approved, then the application to conduct that activity cannot be approved. In other cases, the Secretary must assess the application having regard to the views of the proponent, the airport-lessee company, CASA, Airservices Australia, relevant building authorities and, in the case of a joint-user airport, the Department of Defence.

The proposed Regulations empower the Administrative Appeals Tribunal (AAT) to review:

- \* decisions of the Secretary on the declaration of airspace to be protected in the interests of future air transport operations at an airport; and
- \* decisions of the Secretary on applications to conduct activities which would result in incursions into protected airspace.

Details of the Regulations appear in the Attachment.

The Regulations commenced on notification in the Gazette.

## **Attachment**

### **Clause 1 - Citation**

Regulation 1 provides for citation of the regulations as the Airports (Protection of Airspace) Regulations. The regulations will commence on gazettal.

### **Clause 2 - Object of Regulations**

Regulation 2 expresses the object of the regulations in terms consistent with section 18 1 of the Airports Act 1996.

### **Clause 3 - Interpretation**

Regulation 3 defines terms used in the regulations.

Of particular note, 'building controller' for a proposed controlled activity is defined as the airport building controller (appointed under the Airports (Building Control) Regulations) W the proposed controlled activity is to be carried out on an airport site, or the person or body authorised to regulate building activity in that place if the proposed controlled activity is to be carried on elsewhere. In the latter case, the building controller will generally be a local government body.

The views of the building controller must be taken into account in determining what airspace is to be protected and in assessing applications for approvals to conduct activities which would result in intrusions into that airspace.

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

Regulation 4 explains that the OLS and PANS-OPS surfaces are ascertained in accordance with procedures set down by the International Civil Aviation Organisation.

The surfaces are too complex to be described in full in the regulations.

An OLS is an Obstacle Limitation Surface. Where an obstacle infringes the OLS it must be marked and lighted to mitigate the safety hazard to air navigation. Also, infringement of the OLS may cause an increase in the obstacle clearance altitude for an instrument approach or an associated visual circling procedure, thereby restricting the ability of an airport to cater for air traffic. PANS-OPS stands for "Procedure for Air Navigation Systems Operations". Protection of PANS-OPS surfaces is necessary to protect aircraft from collision with obstacles while flying on instruments.

### **Clause 5 - Declaration as to preservation of airspace**

Regulation 5 empowers the Secretary to declare that specified airspace around an airport should be prescribed. in the interests of the safety, efficiency or regularity of future air transport operations into or out of the airport.

In making such a declaration the Secretary must have regard to matters including the approved master plan for the! airport. Under the Airports Regulations, the master plan for an airport is required to specify the airspace protection of which would be necessary to facilitate development of the airport along the lines set out in the master plan.

### **Clause 6 - Prescribed airspace**

Regulation 6 defines prescribed airspace as airspace above any part of either the OLS or a PANS-OPS surface for an airport, and airspace declared under regulation 5. The regulation requires an airport-lessee company, defined by the Airports Act as the company that holds an airport lease, to make charts of prescribed airspace connected with the airport publicly available.

#### **Clause 7 - Application for approval to carry out controlled activity**

Regulation 7 requires the proponent of a proposed controlled activity to obtain the Secretary's approval to conduct that activity, and specifies matters to be included in an application for the Secretary's approval to be given to the relevant airport-lessee company.

The application is to be given to the airport-lessee company to streamline the assessment of proposals, It will enable the company to immediately assess whether prescribed airspace connected with the airport would be infringed and, if so, what further action is required to satisfy the regulations.

#### **Clause 8 - Local government body etc to give notice**

Regulation 8 requires building authorities to advise the relevant airport-lessee company of any proposed controlled activity of which they become aware.

The regulation is intended to ensure that all persons who propose to carry out activities which require approval under these regulations are made aware of the requirements of the regulations before they commence those activities,

#### **Clause 9 - Intrusion Into PANS-OPS airspace**

Regulation 9 requires the airport-lessee, company to advise the proponent of an activity that would infringe the PANS-OPS surfaces, and the building authority concerned, that the application cannot be approved.

Protection of the PANS-OPS surfaces is necessary to protect aircraft from collision with obstacles while flying on instruments. No intrusions are permissible. Therefore, subregulation 14(2) prevents the Secretary approving an activity which would infringe the PANS-OPS surfaces.

#### **Clause 10 - Intrusion Into other prescribed airspace**

Regulation 10 requires the airport-lessee company to forward to the Secretary an application which would not infringe the PANS-OPS but would infringe the OLS or airspace declared under regulation 5. In such cases the Secretary may approve, or refuse to approve, the application under regulation 14.

#### **Clause 11 - Request for further information**

Regulation, 11 empowers the Secretary to request an applicant for approval to provide further information which is relevant for consideration of the application.

#### **Clause 12 - Secretary must inform other relevant authorities**

Regulation 12 requires the Secretary to notify specified authorities of a proposal to carry out controlled activities and to invite submissions from them, so that he or she may make an informed decision on an application for approval,

### **Clause 13 - Consideration of application**

Regulation 13 requires the Secretary, in considering an application for approval, to have regard to the opinions of the proponent, the arborescence company, and the authorities specified in subregulation 12(1). The Secretary may have regard to other relevant matters.

### **Clause 14 - Secretary to approve, or refuse to approve, proposal**

Regulation 14 empowers the Secretary to approve, or refuse to approve, a proposal to carry out a controlled activity.

The Secretary is precluded from giving his or her approval if the proposed activity would result in an infringement of the PANSI ESS surfaces for the airport concerned, or if the Civil Aviation Safety Authority has advised that the proposal is unacceptable on aviation safety grounds. The Secretary must approve a proposal unless satisfied that the proposed controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations at the airport.

The Secretary's approval may be subject to conditions.

### **Clause 15 - Notification of Secretary's decision**

Regulation 15 requires the Secretary to notify the proponent, the arborescence company and other authorities consulted under subregulation 12(1), of his or her decision.

Notice must be given within 28 days of the Secretary receiving notice of the proposal, or further information if requested under regulation 11, or the proposal is deemed to have been refused.

### **Clause 16 - Variation of conditions, etc., of approval**

Regulation 16 empowers the Secretary to revoke an approval, impose a condition on, or vary a condition of, an approval where it is in the interests of safety, efficiency or regularity of existing or future air transport operations.

### **Clause 17 - Review of Secretary's decisions**