

Airports (Protection of Airspace) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Airports Act 1996*.

Dated 11 December 1996.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

JOHN SHARP
Minister for Transport and Regional Development

Citation

1. These Regulations may be cited as the Airports (Protection of Airspace) Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

Object of Regulations

2. 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.

Interpretation

3. (1) In these Regulations:

“building authority”:

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

“CASA” means the Civil Aviation Safety Authority;

“OLS” see regulation 4;

“PANS-OPS airspace” means prescribed airspace that is above a PANS-OPS surface;

“PANS-OPS surface” see regulation 4;

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

“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.]

Ascertainment of OLS and PANS-OPS surfaces

4. (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*.

Declaration as to preservation of airspace

5. (1) The Secretary may declare, in writing, that specified airspace around an airport should, in the interests of the safety, efficiency or regularity of future air transport operations into or out of the airport, be prescribed airspace.

(2) In making a declaration under this regulation, the Secretary must have regard to:

- (a) any changes to the OLS and PANS-OPS surfaces for the airport proposed in the approved master plan for the airport; and
- (b) any advice from CASA on the matter; and
- (c) any other matters the Secretary considers relevant.

(3) A declaration must specify the lower boundary of the airspace that should be prescribed.

(4) A declaration under this regulation must be notified in the *Gazette*.

Prescribed airspace

6. (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-lessee company for an airport must make available a chart of prescribed airspace around the airport, for inspection or purchase, and, if the prescribed airspace changes, must bring the chart up to date before the end of 14 days after the change.

(3) A notice of the fact that a chart or new chart is available must be published, before the end of 14 days after the chart becomes available, in at least 1 newspaper in general circulation in the State or Territory in which the airport is located.

(4) An airport-lessee company complies with subregulation (2) if it makes details of OLS and PANS-OPS surfaces available in any written form, or in any form from which a written document can be produced (for example, in the form of a computer file).

Application for approval to carry out controlled activity

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

(2) An application for the Secretary's approval must be given to the airport-lessee company for the airport, or each airport, concerned at least 28 days before the proponent's intended commencement of the controlled activity and must set out:

- (a) the proposed controlled activity; and
- (b) its proposed location; and
- (c) the proposed maximum height above ground of the proposed building, structure or thing; and

- (d) the proposed maximum height above ground of any temporary structure or equipment intended to be used in the erection of the proposed building, structure or thing; and
- (e) the purposes for which the building, structure or thing is intended to be used.

Local government body etc to give notice

8. 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-lessee company for the airport.

Intrusion into PANS-OPS airspace

9. (1) If a proposed controlled activity would, if carried out, intrude into PANS-OPS airspace for an airport, the airport-lessee company for the airport must give written notice of that fact 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-lessee company, and must inform the proponent and the building authority that the application cannot be approved.

[Note: see regulation 14.]

Intrusion into other prescribed airspace

10. If a proposed controlled activity would, if carried out, intrude into prescribed airspace other than PANS-OPS airspace, then, before the end of 7 days after application for approval of the controlled activity is given to the airport-lessee company for the airport, the airport-lessee company must:

- (a) give the application to the Secretary for approval; and

- (b) give written notice that it has done so to:
 - (i) the proponent of the controlled activity; and
 - (ii) the building authority concerned.

Request for further information

11. The Secretary may request the proponent, in writing, to give any further information that is reasonably necessary for proper consideration of the proposal, and need not make a decision under regulation 14 until the requested information is provided.

Secretary must inform other relevant authorities

12. (1) The Secretary must give written notice of a proposal to carry out a controlled activity to, and invite submissions from:

- (a) CASA; and
- (b) Airservices Australia; and
- (c) if the airport concerned is a joint-user airport—the Department of Defence; and
- (d) the building authority concerned.

(2) If an authority mentioned in subregulation (1) so requests, the Secretary must give the authority a copy of the application, or of any information given by the applicant under regulation 11.

Consideration of application

13. 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-lessee company; and
- (c) any opinion of CASA; and
- (d) any opinion of Airservices Australia; and

- (e) if the airport concerned is a joint-user airport—any opinion of the Department of Defence; and
- (f) any opinion of the building authority concerned; and
- (g) any other matters the Secretary considers relevant.

Secretary to approve, or refuse to approve, proposal

14. (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) A proposal must not be approved if the controlled activity would, if carried out, result in a building, structure or thing intruding into PANS-OPS airspace.

(3) A proposal must not be approved 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.

(4) A proposal must be approved unless the Secretary is satisfied that the carrying out of 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.

(5) Approval may be granted subject to conditions only if the only matter of concern is that the carrying out of the controlled activity otherwise than in accordance with the conditions 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.

(6) Conditions of an approval may relate to:

- (a) the carrying out of the controlled activity; or
- (b) the marking or lighting of a building, structure or thing.

Notification of Secretary's decision

15. (1) Before the end of 28 days after the Secretary receives notice of a proposal, or, if further information is requested under regulation 11, after the Secretary receives the further information, the Secretary must give written notice of his or her decision to:

- (a) the proponent of the controlled activity; and
- (b) the airport-lessee company for the airport concerned; and
- (c) CASA; and
- (d) Airservices Australia; and
- (e) if the airport concerned is a joint-user airport—the Department of Defence; and
- (f) the building authority concerned.

(2) If the Secretary does not give written notice of his or her decision before the end of the period mentioned in subregulation (1), the Secretary is taken to have refused the proposal.

Variation of conditions, etc., of approval

16. 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.

Review of Secretary's decisions

17. (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-lessee company; or
- (c) the building authority concerned.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 12 December 1996.