

Airports (Protection of Airspace) Amendment Regulations 1999 (No. 1) 1999 No. 113

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 113

Issued by the Authority of the Minister for Transport and Regional Services

Airports Act 1996

Airports (Protection of Airspace) Amendment Regulations 1999 (No. 1)

Section 252 of the Airports Act 1996 (the Act) provides that the Governor-General may make regulations prescribing matters:

- a) required or permitted by this Act to be prescribed; or
- b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Under Part 12 of the Airports Act, activities that result in intrusions into an airport's protected airspace are called controlled activities. Protected airspace is the airspace above the Obstacle Limitation Surface (OLS) or the Procedures for Air Navigation Systems Operations (PANS-OPS) surface.

Part 12 of the Airports Act requires the approval of proposals to carry out controlled activities and provides for regulations to be made in relation to the approval of controlled activities. Under the Regulations, all proposals to carry out controlled activities must be submitted to the Secretary for approval. The Secretary must approve or refuse a proposal.

The main purposes of the Regulations are: to provide a more streamlined process for approving proposals to carry out short term controlled activities; to improve the extent of consultation on proposals; and to allow a more flexible approach to dealing with proposals to carry out short term controlled activities resulting in infringements of the PANS-OPS surface.

The Regulations provide for a differentiation between short and long term controlled activities. They provide for the Secretary to delegate his or her powers to the airport operator company to approve or refuse proposals to carry out short term controlled activities; to impose conditions on approvals; and to vary the conditions of or revoke approvals. The Regulations also provide for the Secretary to delegate those same powers to an officer at the level of the Senior Executive Service, or an officer immediately below that level, performing duties in the Department of Transport and Regional Services. The Regulations provide for review by the Administrative Appeals Tribunal of the airport operator company's decision on a proposal; and impose a timeframe of 21 days on the notification of decisions on proposals.

The Regulations require the airport operator company to consult with the Civil Aviation Safety Authority and Airservices Australia before making a decision on a proposal or referring the proposal to the Secretary. The Regulations also provide for the airport operator company to approve short term intrusions of the PANS-OPS surface; and for height measurements relating to, controlled activities to be made with reference to the Australian Height **Datum**, to enable comparability with charts of OLS and PANS-OPS surfaces.

A Regulation Impact Statement for the Regulations is attached. The Regulations commence on gazettal.

REGULATION IMPACT STATEMENT: AMENDMENTS TO THE AIRPORTS (PROTECTION OF AIRSPACE) REGULATIONS

BACKGROUND

Under Part 12 of the Airports Act 1996, activities resulting in intrusions into an airport's protected airspace are called "controlled activities". The Airports (Protection of Airspace) Regulations (APAR) define protected airspace to be the airspace above the Obstacle Limitation Surface (OLS) or the Procedures for Air Navigation Systems Operations (PANSOPS) surface. The OLS is established by international standards to specify minimum clearances above obstacles under conditions where the pilot can see the ground at and around the airport. The PANSOPS surface is established to specify minimum clearances above obstacles under conditions of poor visibility, where the pilot may be relying solely on the guidance from flight instruments. The PANS-OPS surface is generally higher than the OLS. Both extend over and beyond the airport boundaries.

Part 12 and the APAR were applied to the phase 1 airports when they were leased in July 1997. The regulatory regime was then extended to the phase 2 airports and the Sydney Basin airports with their leasing in mid 1998. As more of the airports came under the airspace protection regulatory regime, it became apparent that some fine tuning of the regime would be necessary. The number of applications under the APAR has increased markedly with the leasing of the phase 2 and the Sydney Basin airports. The current rate of approvals is around 80 per year, with further increases in the rate expected. Most applications are made by crane operation and construction companies. The APAR as they stand impose a limit of 35 days for the processing of an application.

ISSUES

- * The APAR as they stand require all intrusions of the OLS to be approved by the Secretary of the Department of Transport and Regional Services, or one of his delegates within the Department. In addition, Part 12 of the Act and the APAR have been designed with a focus on long term or permanent controlled activities:
- * the administrative process established under the APAR is suited to dealing with long term controlled activities, and not short term controlled activities, such as crane operations
- * applications to operate cranes are typically lodged at short notice and require a quick response, which the established approvals process under the APAR is not capable of providing. These applications are generally less complex than those involving long term activities, and their impacts on protected airspace are less enduring
- * approvals under the APAR in their current form can be slow, and this can result in "rogue" crane operations where crane operators become impatient. Sydney Airport reports a number of occurrences of rogue cranes.
- * The APAR as they stand require the airport operator to give all applications to the Secretary (Regulation 10) and the Secretary must then consult relevant authorities before approving the application. Experience has shown that there is scope for reaching more flexible and efficient outcomes if there is consultation between the relevant authorities before they make submissions to the Department.
- * The APAR prohibit controlled activities which result in a penetration of the PANS-OPS surface. This is considered by some airport operators to be unnecessarily restrictive in relation to short term controlled activities.

UNDERLYING OBJECTIVES

The objective of the APAR - identified in Part 12 of the Airports Act - 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.

The specific objectives of the proposed amendments to the APAR are to:

- * expedite applications to carry out short term controlled activities
- * improve the extent of consultation on applications between the airport and local CASA and Airservices staff
- * allow a more flexible approach to dealing with short term PANS-OPS intrusions.

IDENTIFICATION OF OPTIONS

Option 1. Proposed amendments to the APAR

Amend the APAR to address the above mentioned issues by: distinguishing between short term and long term controlled activities giving the airport operator the option of accepting from the Secretary a delegation to approve short term controlled activities providing a separate approvals process for short term controlled activities, whereby the applications can be approved by the airport operator, subject to assessment by CASA for long term controlled activities - requiring the airport operator to consult with, and obtain submissions from, the relevant authorities before sending the application to the Department for approval providing for the airport operator to approve short term intrusions of the PANSOPS surface, subject to assessments by CASA and Airservices.

Option 2. Amend APAR to exempt short term controlled activities

The APAR could be amended to exempt short term activities from the airspace protection regulatory regime. This would return airspace protection to the previous regime, where the only protection was provided under the Civil Aviation Regulations (CAR) and Civil Aviation (Building Control) Regulations (BCR).

Option 3. No change

The APAR could continue as they currently are. This would involve the airport lessee company being required to give 0 applications -whether short or long term controlled activities - to the Secretary of the Department, who would then consult relevant authorities before making a decision on an application.

Option 4. Amend APAR to provide for airport operators to approve all controlled activities

The APAR could be amended to give the airport operator authority to approve, both short term and long term controlled activities. However this option is considered unacceptable. Because of their more enduring nature, long term controlled activities are generally more likely to involve conflicts between the airspace interests of the airport operator and the property interests of the proponent, and there is therefore a need for the Commonwealth to find a compromise between the conflicting interests. Such conflicts of interest are generally not significant with short term controlled activities.

ASSESSMENT OF OPTIONS

Option 1. Proposed amendments to the APAR

The proposed amendments would provide for more efficient protection of airspace around airports because:

- * applications to conduct short term controlled activities could be approved by the airport operator more quickly than under the current scheme - the proposed amendments provide for the processing within 14 days of applications to carry out short term controlled activities, compared to 35 days for long term controlled activities. Although the process would be shorter, the airport operator would apply the same criteria to assessing applications as does the Department under the current arrangements, and would have no less incentive than the Department to rigorously assess applications
- * improved consultative arrangements between relevant authorities, in particular CASA, Airservices and the airport operator, would result in more efficient outcomes for approvals of long term controlled activities
- * there would be flexibility to consider short term intrusions of the PANS-OPS surface.

This option would have the following impacts on the entities involved:

- * the airport operator would have the option of taking on more control and responsibility for airspace protection in relation to short term controlled activities
- * there would be some extra cost imposed on the airport operator because some of the work done currently done by the Department would be transferred to the airport operator. However the airport operators have indicated a willingness to accept that extra workload
- * airport users could benefit from improvements to managing airport safety, as the quicker processing of applications would result in fewer incidences of "rogue" cranes operating around the airport
- * the construction industry would benefit from reduced delays in processing of applications to operate cranes and therefore there would be fewer incidences of "rogue" cranes
- * DoTRS would benefit from administrative efficiencies
- * there would be little change in the workload for CASA and the airport operator - both agencies would need to carry out the same assessments as they do under the current regime, although airport operators would take a more active role in coordinating submissions from relevant authorities.

Option 2. Amend APAR to exempt short term controlled activities

This option would effectively be the airspace protection regulatory regime which

applied before the introduction of the APAR. Airport operators would be able to deal with short term controlled activities as they saw fit. While some legal support would be given to the protection of airspace by the Civil Aviation Regulations and Civil Aviation (Building Control) Regulations, that regulatory regime would not give as much protection as the APAR - one of the main reasons why Part 12 of the Airports Act and the APAR were introduced.

This option would have the following impacts:

- * as with Option 1, there would be fewer rogue cranes because approvals could be done more quickly
 - * the airport operator would be able to process applications quickly, but the lack of legal support to the regulatory regime (as a consequence of short term controlled activities not being covered by the APAR) would give the airport operator less control over its protected airspace
 - * airport users could be disadvantaged by some reduction in airport safety, as the lack of legal support to the regulatory regime could result in less control over "rogue" cranes operating around the airport
 - * the construction industry would benefit from reduced delays in crane operations and the associated building activities
- DoTRS would benefit from administrative efficiencies
- there would be much the same workload for CASA and the airport operator as in Options 1 and 2 - both agencies would need to carry out the same assessments as they do under the current regime.

Option 3. No change

There are a number of disadvantages to continuing with the APAR as they stand:

- * the requirement under this option for DoTRS to coordinate submissions and to approve all applications is not conducive to the quick turnaround which is often required for applications, and creates administrative inefficiencies
- * the requirement for DoTRS to coordinate submissions does not facilitate good consultative arrangements between CASA, the airport operator and the proponent -something which is necessary for good outcomes with approvals
- * it would see the continuation of unapproved activities by rogue cranes, posing a greater air safety risk

- * there would be unnecessary costs borne by the construction industry due to delays in approvals
- * there is no flexibility to deal with temporary PANS-OPS intrusions.

Under this option, the workloads of CASA and the airport operators would be much the same as under Option 1, as they would still need to carry out their assessments.

CONSULTATION

CASA and Airservices have been consulted in their respective roles as safety and air traffic control authorities. Both agencies have supported the fundamental elements of the proposed amendments.

The operators at all airports leased under the Airports Act have been consulted and there is general support amongst them for the proposed amendments.

CONCLUSION

Options 1 and 2 have greater net benefits than Option 3. Both options would result in quicker turnaround of applications than Option 3 and therefore reduced delays for crane operations and construction activity. However Option 1 - the proposed amendments to the APAR - has the additional benefit over Option 2 that:

- * Part 12 of the Airports Act and the APAR provide much stronger legal backing to the protection of airspace around airports, and
- * the proposed amendments establish a uniform process for all Federal airports to adhere to.

IMPLEMENTATION AND REVIEW

The only change to the existing administrative arrangements will be that the Department will arrange for delegations of the Secretary's approval powers under the APAR to those airport operators which agree to accepting the delegation.

Arrangements have already been made for the review of the Airports Act regulatory regime, within the first 5 years of its introduction, and the proposed amendments to the APAR will be reviewed as part of that regulatory regime.