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1999B00113



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

Statutory Rules 1999 No. *h*

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I, WILLIAM PATRICK DEANE, 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 **09 JUN 1999** 1999.

**WILLIAM DEANE**  
Governor-General

By His Excellency's Command,

JOHN ANDERSON  
Minister for Transport and Regional Services



# Airports (Protection of Airspace) Amendment Regulations 1999 (No. 1)<sup>1</sup>

Statutory Rules 1999 No. 1<sup>2</sup>

made under the

*Airports Act 1996*

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## Regulation 1

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### 1 Name of regulations

These regulations are the *Airports (Protection of Airspace) Amendment Regulations 1999* (No. *h*).

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### 2 Commencement

These regulations commence on gazettal.

### 3 Amendment of Airports (Protection of Airspace) Regulations

Schedule 1 amends the Airports (Protection of Airspace) Regulations.

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2 *Airports (Protection of Airspace) Amendment Regulations* 1999, *h*  
1999 (No. *h*)

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## Schedule 1 Amendments

### Part 1 Amendments

#### [1] Regulation 1

*substitute*

##### 1 Name of regulations

These regulations are the *Airports (Protection of Airspace) Regulations 1996*.

#### [2] Regulation 3, heading

*substitute*

##### 3 Meaning of terms

#### [3] Regulation 3, after definition of *proponent*

*insert*

*short-term controlled activity* means a controlled activity:

- (a) that is not expected to continue longer than 3 months; or
- (b) that consists of the erection of a building, structure or thing that is not intended to remain in place for longer than 3 months.

**[4] Subregulation 7 (1), at the foot**

*insert*

*Note 1* Carrying out a controlled activity without approval is an offence punishable by a fine of up to 250 penalty units — see the Act, s 183.

*Note 2* Under s 187 of the Act, if a controlled activity is carried out without approval, or is carried out otherwise than in accordance with an approval, the Federal Court may order a person to carry out remedial work on a building, structure or thing; to mark it or light it or both; to reduce its height; or to demolish, dismantle or remove it.

**[5] Paragraphs 7 (2) (c), (d) and (e)**

*substitute*

- (c) if the proposed controlled activity consists of the erection of a building, structure or thing:
  - (i) the proposed maximum height (above the Australian Height Datum) of the proposed building, structure or thing; and
  - (ii) the proposed maximum height (above the Australian Height Datum) of any temporary structure or equipment intended to be used in the erection of the proposed building, structure or thing; and
- (d) the purposes of the controlled activity.

**[6] Regulation 8, at the foot**

*insert*

*Note* Failing to comply with a requirement of the regulations to give information to an airport operator about a proposed controlled activity is an offence punishable by a fine of up to 50 penalty units — see the Act, subs 186 (1) and (2).

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**[7] Subregulation 9 (1)**

*substitute*

- (1) Subregulation (1A) applies to a proposed controlled activity (other than a short-term controlled activity) that consists of the erection of a building, structure or thing if:
  - (a) the building, structure or thing would, if erected, intrude into PANS-OPS airspace for the airport concerned; or
  - (b) a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS-OPS airspace for the airport.
- (1A) If this subregulation applies to a proposed controlled activity, the airport-operator company for the airport concerned must give written notice that the building, structure or thing will, if erected, intrude into PANS-OPS airspace for the airport to:
  - (a) the proponent of the controlled activity; and
  - (b) the building authority concerned.

**[8] Regulations 10, 11 and 12**

*substitute*

**10 Submissions about intrusion into prescribed airspace**

- (1) Subregulation (2) applies to a proposed controlled activity (other than a short-term controlled activity) that would (if carried out) intrude into prescribed airspace, unless subregulation 14 (5) prevents an application to carry out the activity being approved.

*Note* Subregulation 14 (5) prevents an application being approved if the proposed controlled activity would, if carried out, result in an intrusion into PANS-OPS airspace, unless the controlled activity is a short-term controlled activity and the airport operator supports the approval.

- (2) The airport-operator company must give written notice of the application to carry out the activity to, and invite submissions about the activity from, the following authorities:
- (a) CASA;
  - (b) Airservices Australia;
  - (c) if the airport is a joint-user airport — the Department of Defence;
  - (d) the building authority concerned.

- (3) Subregulation (4) applies to a proposed short-term controlled activity that would (if carried out) intrude into prescribed airspace, unless subregulation 14 (5) prevents an application to carry out the activity being approved.

*Note* Subregulation 14 (5) prevents an application being approved if the proposed controlled activity would, if carried out, result in an intrusion into PANS-OPS airspace, unless the controlled activity is a short-term controlled activity and the airport operator supports the approval.

- (4) The airport-operator company must give written notice of the application to carry out the activity to, and invite submissions about the activity from, the following authorities:
- (a) CASA;
  - (b) Airservices Australia.
- (5) If any of the authorities mentioned in subregulation (2) or (4) so requests, the airport-operator company must give it a copy of the application.
- (6) The airport-operator company must give the notice before the end of 7 days after it receives the application for approval of the controlled activity.

## **11 Giving application to Secretary**

- (1) Subregulation (2) applies to an application to carry out:
  - (a) a short-term controlled activity at an airport if an officer or employee of the airport-operator company for the airport cannot approve the carrying out of the activity as a delegate of the Secretary; or
  - (b) a controlled activity other than a short term controlled activity.
- (2) The company must refer the application to the Secretary for decision within 21 days after the airport-operator company receives it.
- (3) At the time the airport-operator company refers the application to the Secretary for decision, the company must:
  - (a) give the Secretary the application, and any submissions made about the proposal in answer to a notice under subregulation 10 (2) or (4); and
  - (b) tell the proponent in writing that it has given the application to the Secretary for decision.

## **12 Request for more information**

- (1) The Secretary may ask the proponent of the controlled activity concerned, in writing, to give him or her any other information necessary to consider the application, and need not make a decision about the application until the proponent does so.
- (2) If an authority mentioned in subregulation 10 (2) or (4) so requests, the Secretary must give it a copy of any information given to the Secretary by the proponent about the proposal.



**[9] Subregulations 14 (2), (3), (4), (5) and (6)**

*substitute*

- (2) The Secretary must approve a proposal unless carrying out 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.
- (3) The Secretary may approve a proposal subject to a condition only if carrying out the controlled activity otherwise than in accordance with the condition 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.
- (4) A condition of an approval:
  - (a) may be about how the controlled activity is carried out; or
  - (b) may require a building, structure or thing to be marked or lit (including marked or lit in a specified way).

*Note* Carrying out a controlled activity otherwise than in accordance with a condition of the approval is an offence punishable by a fine of up to 250 penalty units — see the Act, s 185.

- (5) If a controlled activity would, if carried out, result in a building, structure or thing intruding into PANS-OPS airspace, the Secretary may approve a proposal for the activity only if:
  - (a) the activity is a short-term controlled activity; and
  - (b) the airport operator supports the approval.
- (6) Also, the Secretary must not approve a proposal for a controlled activity 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.

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**[10] Before subregulation 15 (1)**

*insert*

(1A) In this regulation:

*Secretary* does not include an officer or employee of an airport-operator company who is exercising the Secretary's powers under a delegation under subregulation 18 (2).

**[11] After regulation 15**

*insert*

**15A Notification of decisions of Secretary's delegate**

- (1) This regulation applies to the making of a decision by an officer or employee of an airport-operator company who is exercising the powers of the Secretary under a delegation under subregulation 18 (2).
- (2) Before the end of 21 days after the airport-operator company receives notice of a proposal, or, if further information is requested under regulation 11, after the company receives the further information, the officer or employee must give written notice of his or her decision to:
  - (a) the proponent of the controlled activity; and
  - (b) CASA; and
  - (c) Airservices Australia.
- (3) If the officer or employee does not give written notice of his or her decision before the end of the period mentioned in subregulation (2), he or she is taken to have refused the proposal.

**[12] After regulation 17**

*insert*

**18 Delegation**

- (1) The Secretary may delegate his or her powers under these regulations to:
  - (a) an officer of the Senior Executive Service (within the meaning of the *Public Service Act 1922*) performing duty in the Department; or
  - (b) an officer performing duties in the Department classified as Executive Level 2 (within the meaning of the instrument made under section 28 of the *Public Service Act 1922* on 9 October 1997) or an equivalent classification.
- (2) Also, the Secretary may delegate his or her powers in relation to short-term controlled activities at a particular airport to an officer or employee of the airport-operator company for the airport.

**Part 2 Additional amendments**

**[13] Additional amendments**

The following provisions are amended by omitting 'airport-lessee company' and inserting 'airport-operator company':

- subregulations 6 (2) and (4)
- subregulation 7 (2)
- regulation 8
- subregulation 9 (2)
- paragraphs 13 (b), 15 (1) (b) and 17 (2) (b).

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## Notes

1. These regulations amend Statutory Rules 1996 No. 293.
2. Made by the Governor-General on <sup>h</sup> 1999, and notified in  
the *Commonwealth of Australia Gazette* on <sup>h</sup> 1999.

9 June/  
17 June/