

Space Activities Amendment Regulations 2002 (No. 1) 2002 No. 166

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 166

Issued by the Authority of the Minister for Industry, Tourism and Resources

Space Activities Act 1998

Space Activities Amendment Regulations 2002 (No. 1)

OUTLINE

The *Space Activities Act 1998* (the Act) provides a framework for the licensing of space launch activities in Australia, and launches from overseas sites of payloads in which an Australian national is a responsible party. The Act also provides for the authorisation of returns to Australian territory, sets out insurance and financial requirements, provides for fees to be charged, and details recovery operations and investigation procedures in the event of an accident or incident. The Act also ensures that Australia meets its international obligations under the five United Nations treaties on space matters, which are incorporated as Schedules 1 to 5 of the Act.

Section 110 of the Act provides that the Governor-General may make regulations required or permitted by the Act or necessary or convenient for carrying out or giving effect to the Act.

Section 59 of the Act provides that fees must be paid to the Commonwealth for certain approvals under the Act connected with the launch and return of space objects.

The Space Activities Regulations 2001 (the principal Regulations) provide, *inter alia*, details of the material to be submitted with applications for instruments authorising space activities, details of fees payable, and arrangements for insurance. The principal Regulations also require compliance with a number of external documents published by the Department of Industry, Tourism and Resources. These documents include the Flight Safety Code, which is fundamental to the safety of the proposed launch operations, and the Maximum Probable Loss Methodology, which sets the minimum levels for insurance.

The purpose of the Space Activities Amendment Regulations (the amendments) is to amend the principal Regulations to improve Australia's existing licensing and safety regime for activities connected with the launch and return of space objects, to give effect to the Treasurer's Fourth Determination to exempt from the Goods and Services Tax fees payable to the Commonwealth for certain approvals connected with the launch and return of space objects, and to make a number of minor technical amendments.

The amendments:

- introduce the hazard analysis methodology at an earlier stage of the licensing process (Items 3, 8, 10, 14 and 15, Schedule 2, refer);
- allow the Minister to consider technical recognition instruments that cover launch facilities (Item 5, Schedule 2, refers, also Items 6, 9 and 11);
- incorporate the List of Designated and Protected Assets into the regulatory regime (Items 2, 21 and 24, Schedule 2, refer);

- cap the cost (to launch proponents) of accident investigations (Item 16, Schedule 2, refers);
- recognise overseas safety requirements that apply to launches conducted on foreign territory by Australian nationals (Items 27 and 29, Schedule 2, refer); and
- exempt from the GST fees payable under section 59 of the Act (Schedule 1 refers).

The amendments also address a number of minor administrative and technical matters, for example:

- consequential renumbering of existing provisions arising from the amendments (Items 7,13 and 27 refer);
- consequential amendments to cross-references affected by renumbering (Items 4 and 28, refer); and
- to correct an existing incorrect cross-reference (Item 19 refers).

Details of the amendments are set out below.

The amendments commence as follows:

- Regulations 1 to 3, and Schedule 2 (relating to the licensing and safety regime) on gazettal; and
- Schedule 1 (relating to exempting fees from the Goods and Services Tax) on 5 July 2001.

The Schedule 1 amendments apply retrospectively from 5 July 2001. As the amendments do not disadvantage nor impose liabilities on a person (other than the Commonwealth), retrospective application does not contravene subsection 48(2) of the *Acts Interpretation Act 1901*. The effect of the proposed amendments is to reduce the total amount payable to the Commonwealth under section 59 of the Act.

DETAILED EXPLANATION OF AMENDMENTS

Amendments to Part 1 Preliminary

1 Name of Regulations

This regulation sets out the name of the regulations as the *Space Activities Amendment Regulations 2002 (No. 1)*.

2 Commencement

This regulation provides for regulations 1 to 3 and Schedule 2 to commence on gazettal, and for Schedule 1 to commence on 5 July 2001.

3 Amendment of the Space Activities Regulations 2001

This regulation sets out that Schedules 1 and 2 of the regulations amend the *Space Activities Regulations 2001*.

Schedule 1 Amendments taken to have commenced on 5 July 2001

Amendments to Part 9 Fees

Item 1 Part 9

This Item gives effect to the Treasurer's fourth determination under Division 81 of *A New Tax System (Goods and Services Tax) Act 1999*, which exempts all fees payable under the *Space Activities Act 1998* from the GST.

These amendments have retrospective application so that applicants who may have already paid the GST as part of the application fee, or have incurred a liability to pay the GST, will have the GST component of the fee refunded or the liability waived.

Schedule 2 Amendments commencing on gazettal

Item 1 Regulation 1.03, definition of *Flight Safety Code*

This Item incorporates the revised Flight Safety Code as in force at 3 July 2002 into the regulations.

Item 2 Regulation 1.03, after definition of *Flight Safety Code*

This Item defines the "*List of Designated and Protected Assets*".

Designated and Protected Assets have a special status in the space safety regime in Australia. Persons wanting to undertake space activities in Australia need to achieve specific standards for these assets, as set out in the Flight Safety Code.

Designated and Protected Assets are determined by the Minister for Industry, Tourism and Resources (the Minister) according to criteria and processes set out in "*Administrative Arrangements for the Classification of Assets for Space Launch Activities*", as published by the Department.

Amendments to Part 2 Space licences

Item 3 Paragraph 2.06(1)(h)

This Item introduces the hazard analysis methodology at an earlier stage of the licensing process, the space licence application stage.

Previously, a prospective launch proponent was not required to identify which hazard analysis it proposed to use for each launch and any connected return until the launch permit application stage.

A hazard analysis is conducted to quantify the risk to the public from a potential launch or re-entry mishap and to ensure that operations that may exceed a nominated threshold are not permitted. The Risk Hazard Analysis Methodology is published by the Department, as part of the Flight Safety Code, and sets out a method for conducting the hazard analysis. The applicant may, however, use an alternative methodology for conducting the analysis, provided that the Minister is satisfied that the analysis meets the criteria set out in the regulations.

Item 4 Subregulation 2.06(4)

This Item updates the reference in subregulation 2.06(4) to reflect the insertion of a new paragraph at Item 3.

Item 5 Paragraph 2.06(4)(d)

This Item enables the Minister to consider a technical recognition instrument for a launch facility when assessing the safety aspects of that facility.

Previously, the regulations allowed consideration of a technical recognition instrument only in respect of a launch vehicle. This amendment gives prospective launch proponents the opportunity to submit a statement confirming that a technical recognition instrument covering all or part of a launch facility is in place, as an alternative to supplying copies of design and engineering plans and specifications for the facility. This amendment reduces duplication in assessing matters relating to the design and operation of launch facilities.

Design and engineering plans and specifications for those parts of the facility not covered by the technical recognition instrument will still need to be provided by the applicant.

Item 6 Subparagraph 2.06(4)(k)(ii)

This Item, with Item 11, replaces the phrase "technical recognition agreement" with "technical recognition instrument".

Previously, this regulation allowed the Minister to consider only a treaty-level agreement. This regulation was intended to include instruments of less-than-treaty status, but legal advice is that "agreement" refers to documents of treaty status and cannot be read down to include less formal arrangements. This amendment allows consideration of less formal arrangements (such as Memoranda of Understanding and exchanges of letters).

Item 7 Paragraph 2.06(4)(l)

This Item updates paragraph 2.06(4)(l) to reflect the insertion of a new paragraph at Item 8.

Item 8 After paragraph 2.06(4)(l)

This Item requires that where an applicant for a space licence proposes to use an alternative hazard analysis methodology, as nominated at paragraph 2.06(1)(h), the application for the licence must be accompanied by the documents referred to in the new subregulation 2.06(5A). These documents will assist the Minister to decide whether to approve the use of the alternative methodology.

Item 9 After subregulation 2.06(4)

This Item requires applicants to notify the Department if someone else will deliver the documents mentioned in paragraph 2.06(4)(d) relating to a technical recognition instrument for a launch facility. In some circumstances, the information required by the Department may be sensitive in nature, and this amendment allows the applicant to arrange, for example, that a government official from another country provide that information to the Department.

Item 10 After subregulation 2.06(5)

This Item details the documents mentioned in Item 8 that an applicant proposing to use an alternative hazard analysis methodology must provide with the space licence application. This Item also sets out the criteria that these documents must satisfy.

In particular, there must be a document that explains the proposed alternative methodology, and a document that includes an independent assessment that confirms that the methodology is scientifically sound and will serve the same purpose as the Risk Hazard Analysis Methodology.

These documents assist the Minister in determining the adequacy of the alternative hazard analysis methodology and ensure that the Minister has enough information to decide whether to approve the alternative methodology.

Item 11 Subregulation 2.06(8), definition of technical recognition agreement

This Item defines "technical recognition instrument". This amendment allows consideration of less formal arrangements (such as Memoranda of Understanding and exchanges of letters).

This amendment sets out that the applicant must provide a written statement that confirms that the facility is as "effective and safe as practicable", extends the technical recognition instrument to the launch facility, and allows for partial recognition of the launch facility and/or vehicle.

Item 12 Paragraph 2.08(4)(d)

This Item is concerned with the transfer of a space licence and only applies where construction of the launch facility is not completed or the transferee of a space licence proposes to modify the facility. It enables the Minister to consider a technical recognition instrument for the launch facility when assessing the safety aspects connected with the transfer of that facility. If a technical recognition instrument exists for the launch facility, the transferee must that provide that instrument (and all related documents) with the application for the transfer.

Previously, the regulations allowed consideration of a technical recognition instrument only in respect of a launch vehicle. This amendment, consistent with new paragraph 2.06(4)(d) gives transferees of a launch permit the opportunity of submitting a written statement setting out that a technical recognition instrument covering all or part of a launch facility exists, as an alternative to supplying copies of design and engineering plans and specifications for the facility. This amendment reduces duplication in assessing matters relating to the design and operation of launch facilities for the transfer of a space licence.

The transferee will still need to submit design and engineering plans and specifications for those parts of the facility not covered by the technical recognition instrument.

Item 13 Paragraph 2.08(4)(k)

This Item updates paragraph 2.08(4)(k) to reflect the insertion of a new paragraph at Item 14.

Item 14 After paragraph 2.08(4)(k)

This Item requires that if an applicant for a space licence proposes to use an alternative hazard analysis methodology, as nominated at paragraph 2.06(1)(h), an application to transfer the licence must be accompanied by the documents referred to in the new subregulation 2.08(5A). These documents are required to assist the Minister in deciding whether to approve the use of the alternative methodology.

Item 15 After subregulation 2.08(5)

This Item details the documents mentioned in Item 14 that an applicant proposing to use an alternative hazard analysis methodology must provide with the space licence transfer application. This Item also sets out the criteria that these documents must satisfy.

In particular, there must be a document that explains the proposed alternative methodology, and a document that includes an independent assessment that confirms that the methodology is scientifically sound and will serve the same purpose as the Risk Hazard Analysis Methodology.

These documents assist the Minister in determining the adequacy of the alternative hazard analysis methodology and ensures that the Minister has enough information to decide whether to approve the alternative methodology.

Amendments to Part 3 Launch permits

Item 16 Paragraph 3.02(1)(a)

This Item caps the cost to launch proponents of investigations into accidents and incidents at three million dollars. This reduces the cost burden for industry of investigations into accidents and incidents, and facilitates certainty in insurance and contingency planning.

Item 17 After paragraph 3.02(1)(d)

This Item imposes a new condition on a launch permit. The condition requires launches to be conducted under a transferred launch permit to comply with the original launch time and date. If the holder of a permit proposes to alter the date and time of the launch, they must apply for a variation of the permit. Breach of a condition of the launch permit is subject to penalties under the Act.

As specified in Item 20, the "time and date" may include a period of time in which the launch activity may take place.

Item 18 Paragraphs 3.02(1)(i) and (j)

This Item, in conjunction with Item 22, amends the regulations to impose new conditions on launch permits.

It requires a hazard analysis to have been carried out in accordance with the methodology nominated in the application for a space licence, as required by new paragraph 2.06(1)(h).

This Item also makes it a condition of a launch permit that the holder of the permit complies with notices given by the Minister under section 60 of the Act, "Request for information".

Breach of a condition of a launch permit is subject to penalties under the Act.

Item 19 Paragraph 3.02(2)(d)

This Item corrects an incorrect cross reference in the regulations.

Item 20 Paragraph 3.04(1)(d)

This Item allows the applicant for a launch permit to specify the date and time of the proposed launch as either a period in which the launch (or series of launches) and any connected return will happen, or a particular date and time for each launch, and any connected return. This allows the launch proponent and the regulator some flexibility in the approval of the launch time and date.

It is not always practical for a proponent to nominate an exact time and date at the launch permit application stage. The launch may be delayed for a number of reasons, and it would be unreasonable to require a formal variation of the launch permit if this occurred. Despite provision for a period of time to be nominated on the permit, the precise time needs to be confirmed by the launch proponent prior to the launch activity taking place, as set out in subparagraph 3.02(1)(d)(i).

Item 21 Paragraph 3.04(1)(k)

This Item clarifies that an application for a launch permit includes information relating to compliance with standards applying to assets mentioned in the List of Designated and Protected Assets, as defined at Item 2.

Item 22 Paragraphs 3.04(4)(c), (d) and (e)

This Item, in conjunction with the amendment at Item 18, consolidates the provisions relating to the hazard analysis methodology. It requires a hazard analysis for each proposed launch to accompany an application for a launch permit. The hazard analysis must be carried out by a suitably qualified expert in accordance with the methodology identified at paragraph 2.06(1)(h).

Item 23 Paragraph 3.04(4)(j)

This Item ensures that only a person who is not a "related party" may provide confirmation that the launch (or launches) and any connected return, if carried out in accordance with the flight safety plan, will satisfy the launch safety standards set out in the Flight Safety Code. "Related party" is defined in section 9 of the Act.

Item 24 After paragraph 3.06(1)(i)

Consistent with Item 21, this Item is a point of clarification and ensures that an application to transfer a launch permit is accompanied by any information required to demonstrate compliance with the Flight Safety Code, including information relating to compliance with standards applying to assets mentioned in the List of Designated and Protected Assets.

Item 25 Paragraphs 3.06(4)(c), (d) and (e)

This Item, like Item 22, consolidates the provisions relating to the hazard analysis methodology. It requires a hazard analysis for each proposed launch to accompany an application for the transfer of a launch permit. The hazard analysis must be carried out by a suitably qualified expert in accordance with the methodology identified at paragraph 2.06(1)(h).

Item 26 Paragraph 3.06(4)(i)

This Item relates to the transfer of a launch permit and ensures that only a person who is not a "related party" may provide confirmation that the launch (or launches) and any connected return, if carried out in accordance with the flight safety plan, will satisfy the launch safety standards set out in the Flight Safety Code. "Related party" is defined in section 9 of the Act.

Amendments to Part 4 Overseas launch certificates

Item 27 Paragraphs 4.03(1)(j) and (k)

This Item, in conjunction with Item 29, amends the regulations so that an applicant for an overseas launch certificate will only need to provide information about launch activities for the past 5 years if there are no safety requirements in the country in which the launch will take place, or where the Minister considers the safety requirements that do apply are inadequate. This Item requires details of those safety requirements to accompany an application.

Paragraphs 4.03(1)(k) and 4.03(1)(l) renumber old paragraphs 4.03(1)(j) and 4.03(1)(k) respectively.

Item 28 Subregulation 4.03(4)

This Item updates the reference in subregulation 4.03(4) to reflect the insertion of a new paragraph at Item 27.

Item 29 Paragraph 4.03(4)(a)

This Item, in conjunction with Item 27, describes the circumstances in which the applicant for an overseas launch certificate needs to provide information about launch activities for the past 5 years, and details the information that must be provided.

Amendments to Part 7 Insurance/financial requirements

Item 30 Subregulation 7.02(2), definition of Maximum Probable Loss Methodology

This Item incorporates the revised Maximum Probable Loss Methodology of 3 July 2002 into the regulations.

Amendments to Part 8 Launch Safety Officer

Items 31 to 34

These Items update details of State and Territory officials for notification purposes.

Other amendments

Item 35 Further amendments

This Item amends subregulations 2.02(2) and 2.03(2) and paragraph 2.11(f)(i) to replace the word "possible" with "practicable".

The applicant for a space licence is obligated to present a safety case as part of their application setting out why they should be permitted to conduct their proposed activities, and the Minister must be satisfied in respect of safety criteria before granting a space licence. These amendments require the applicant to demonstrate that the launch vehicle and launch facility are as "effective and safe as is reasonably practicable", and the risk to third parties is "as low as is reasonably practicable".