

Space Activities Amendment Regulations 2003 (No. 1) 2003 No. 33

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 33

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

Space Activities Act 1998

Space Activities Amendment Regulations 2003 (No. 1)

Outline

The *Space Activities Act 1998* (the Act) establishes a system for the regulation of space activities carried on either from Australia or by Australian nationals outside Australia. The Act also seeks to implement certain obligations Australia has under 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.

The Space Activities Regulations 2001 (as amended by the Space Activities Amendment Regulations 2002 (No. 1) (the principal Regulations) specify, amongst other things, the information to be submitted with applications for the grant or transfer of space licences, including technical recognition instruments (TRIs).

TRIs are instruments which allow Australia to recognise another country's licensing or certification process for space launch technology. If a TRI is in place, an applicant for a space licence may provide alternative information in substitution for information otherwise required under the Regulations.

The purpose of the amendments is to widen the definition of a TRI and to establish circumstances in which alternative information may be provided in substitution of information otherwise required to be provided under the Regulations for the purpose of demonstrating that a space launch facility, launch vehicle or kind of launch vehicle can reasonably be expected to be as effective and safe as practicable for its intended purpose having regard to its design and that purpose.

The amendments to the Regulations:

- provide the process by which applicants for space licences or transfer of a space licence wishing to rely upon a TRI, may seek the Minister's permission to provide alternative information in substitution for the information otherwise required under the principal Regulations;
- ensure, that despite a TRI being in place, the applicant for a space licence or transfer of a space licence submits the information that is necessary to demonstrate to the Minister that the launch facility and the launch vehicle are as effective and safe for their intended purpose as is reasonably practicable by allowing the Minister to determine the information required of an applicant; and
- provide for review of a decision by the Minister to refuse to grant permission in response to a request made by an applicant wishing to rely upon a TRI to provide alternative information in substitution for information otherwise required under the principal Regulations.

A detailed explanation of the Space Activities Amendment Regulations 2003 (No. 1) is provided in Attachment A.

ATTACHMENT A

DETAILED EXPLANATION OF PROPOSED REGULATIONS

Amendments to Part 1 Preliminary

1 Name of Regulations

This regulation sets out the name of the regulations as the *Space Activities Amendment Regulations 2003 (No. 1)*.

2 Commencement

This regulation provides for the amendments to the principal Regulations to commence on gazettal.

3 Amendment of the Space Activities Regulations 2001

This regulation provides that Schedule 1 of the Amendment Regulations amends the principal Regulations.

Schedule I Amendments

Item 1 Paragraph 2.06(4)(d), documentation required if a technical recognition instrument exists

This item applies where a TRI exists in relation to a launch facility or part of a launch facility. The item has the effect of amending paragraph 2.06(4)(d) of the principal Regulations by introducing a requirement that the applicant obtain the Minister's permission to submit documents specified in the TRI (and other relevant documents) in substitution for a copy of design and engineering plans and specifications for all parts of the launch facility.

The requirement to obtain the Minister's approval has been introduced to address the fact that the unamended paragraph 2.06(4)(d) requires the applicant to provide documents "as specified in the technical recognition instrument" and there is a risk that some TRIs may not clearly specify the documents that paragraph 2.06(4)(d) assumes will be "specified" in the instrument. Thus item 1 is intended to reduce the risk under paragraph 2.06(4)(d) that insufficient documentation will be provided to the Minister in substitution for design and engineering plans and specifications for all parts of the launch facility.

The requirement to obtain the Minister's approval is particularly important, given that the Amending Regulations will widen the definition of "technical recognition instrument".

Item 2 Paragraph 2.06(4)(k), documentation required if a technical recognition instrument exists

This item applies where a TRI exists in relation to a launch vehicle or kind of launch vehicle. The item has the effect of amending paragraph 2.06(4)(k) of the principal Regulations by introducing a requirement that the applicant obtain the Minister's permission to submit documents specified in the TRI (and other relevant documents) in substitution for the documents mentioned in regulation 2.15.

Similar to item 1, the requirement to obtain the Minister's approval has been introduced to address the fact that the unamended paragraph 2.06(4)(k) requires the applicant to provide documents "as specified in the technical recognition instrument" and there is a risk that some

TRIs may not clearly specify the documents that paragraph 2.06(4)(k) assumes will be "specified" in the instrument. Item 2 is therefore intended to reduce the risk under paragraph 2.06(4)(k) that insufficient documentation will be provided to the Minister in substitution for the documents mentioned in regulation 2.15.

Item 3 Subregulation 2.06(8), meaning of technical recognition instrument

This item addresses the concern that subregulation 2.06(8) in the principal Regulations may be too narrow in effect and fail to encompass agreements that Australia intends to be TRIs. The item addresses this concern by firstly removing the requirement that an agreement recognises the other country's licensing or certification system for "the purpose of demonstrating that the launch facility, launch vehicle or kind of launch vehicle can reasonably be expected to be as effective and safe as practicable for its intended purpose having regard to its design and that purpose". This amendment therefore removes the risk that an instrument (that Australia intends to be a TRI) will not fall within the definition because it does not explicitly state that it recognises the other country's licensing or certification system for the above stated purpose.

This item further addresses the concern that subregulation 2.06(8) in the principal Regulations may be too narrow in effect by amending the definition to explicitly recognise that an agreement that has limited coverage and only covers *parts* of a launch vehicle or *parts* of a launch facility may still be a TRI.

Item 4 After regulation 2.06, insertion of regulations 2.06A and 2.06B, process for seeking permission to provide alternative documents

Insertion of regulation 2.06A

This item firstly inserts a new regulation 2.06A that applies where a TRI exists in relation to a launch facility that is the subject of an application for a space licence. Subregulations (3), (4) and (5) of the new regulation 2.06A set out the process that applies to an applicant that seeks the Minister's approval to provide documents in substitution for some or all of the design and engineering plans and specifications for the facility.

More specifically, subregulation (3) sets out the information that must be included in the applicant's request to provide alternative documentation. The key feature of the applicant's request is that the request must justify why the applicant is not able, or should not be required, to provide the documents that would be required if a TRI did not exist. The request must also identify the grounds established by the TRI that provide a basis for the Minister agreeing to the submission of other documentation in substitution for some or all of the design and engineering plans and specifications for the facility.

Subregulation (4) requires the Minister to consider a request to submit documentation specified in a TRI and other documentation as soon as practicable after receiving the request and notify the applicant of any decision in relation to the documentation required as soon as practicable after making the decision. Subregulation (4) allows the Minister to specify documentation (in addition to that listed in the applicant's request) that the applicant must include in their application for a space licence.

Subregulation (5) specifies the documentation and information that must be provided in a space licence application where the applicant has been given permission to submit documents in substitution for those otherwise required under the Regulations where a TRI does not exist.

Insertion of regulation 2.06B

Item 4 also inserts a new regulation 2.06B that applies where a TRI exists in relation to a launch vehicle or kind of launch vehicle that is the subject of an application for a space licence.

Subregulations (3), (4) and (5) of regulation 2.06A set out the process that applies to an applicant that seeks the Minister's approval to provide documents in substitution for some or all of the documents required under regulation 2.15.

The process described in subregulations (3), (4) and (5) is substantially the same as that set out in subregulations (3), (4) and (5) of regulation 2.06A. Subregulation (3) specifies the information that must be included in the applicant's request and, as with subregulation (3) of the new regulation 2.06A, the applicant's request must justify why the applicant is not able, or should not be required, to provide the documents that would be required if a TRI did not exist. The request must also identify the grounds established by the TRI that provide a basis for the Minister agreeing to the submission of other documentation in substitution for the documentation otherwise required under regulation 2.15 of the principal Regulations.

Subregulation (4) of regulation 2.06B requires the Minister to consider a request to submit documentation specified in a TRI and other documentation as soon as practicable after receiving the request and notify the applicant of any decision in relation to the documentation required as soon as practicable after making the decision. Subregulation (4) allows the Minister to specify documentation (in addition to that listed in the applicant's request) that the applicant must include in their application for a space licence.

Subregulation (5) specified the documentation and information that must be provided in a space licence application where the applicant has been given permission to submit documents in substitution for those otherwise required under the Regulations where a TRI does not exist.

Item 5 Paragraph 2.08(4)(d) sets out the process for seeking permission to provide alternative documents in respect of transfer of space licence

This item replaces paragraph 2.08(4)(d) of the principal Regulations to allow an applicant for a transfer of a space licence in respect of a launch facility, that is the subject of a TRI and that is not complete or is to be modified by the applicant, to seek the Minister's permission to provide more limited information in substitution for a copy of the design and engineering plans and specifications for all parts of the launch facility.

Item 6 Alternative documents for subparagraph 2.08(4)(d)(i)

This item inserts a new regulation 2.08A.

Subregulations (1) and (2) of regulation 2.08A allow the applicant for a transfer of a space licence in respect of a launch facility that is the subject of a TRI and is incomplete (or to be modified by the applicant) to seek the Minister's permission to provide more limited information in substitution for the information otherwise required under the principal Regulations.

Subregulation (3), (4) and (5) of the new regulation 2.08A set out the process that applies to an applicant that seeks the Minister's approval to provide documents in substitution for some or all of the design and engineering plans and specifications for the facility.

More specifically, subregulation (3) sets out the information that must be included in the applicants request to provide alternative documentation. The key feature of the applicant's request is that the request state reasons why the applicant is not able, or should not be required, to provide the documents that would be required if a TRI did not exist. The request must also identify the grounds established by the TRI that provide a basis for the Minister agreeing to the submission of other documentation in substitution for some or all of the design and engineering plans and specifications for the facility.

Subregulation (4) of regulation 2.08A requires the Minister to consider a request to submit documentation specified in a TRI and other documentation as soon as practicable after receiving

the request and notify the applicant of any decision in relation to the documentation required as soon as practicable after making the decision. Subregulation (4) allows the Minister to specify documentation (in addition to that listed in the applicant's request) that the applicant must include in their application for a space licence.

Subregulation (5) of regulation 2.08A specified the documentation and information that must be provided in a space licence transfer application where the applicant has been given permission to submit documents in substitution for those otherwise required under the Regulations where a TRI does not exist.

Item 7 Subparagraph 11.02(b)(iv)

This item provides punctuation needed to make the amendment made by Item 8.

Item 8 Subparagraph 11.02(b)(iv), AAT review of decisions

This item inserts a new paragraph that provides for review of decisions by the Minister to refuse to grant permission in response to:

- (a) a request made by an applicant for a space licence to submit documents specified in a TRI and other relevant documentation in substitution for some or all of the design and engineering plans and specifications for the launch facility;
- (b) a request made by an applicant for a space licence to submit documents specified in a TRI and other relevant documentation in substitution for some or all of the launch vehicle related documents mentioned in regulation 2.15 of the principal Regulations; or
- (c) a request made by an applicant for a transfer of a space licence, in respect of a launch facility that is not complete or is to be modified by the applicant to provide documents specified in a technical recognition and other relevant information in substitution for the information otherwise required under subparagraph 2.08(4)(d)(ii) of the principal Regulations.