



Airspace Regulations 2007¹

Select Legislative Instrument 2007 No. 169

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Airspace Act 2007* and the *Airspace (Consequential and Other Measures) Act 2007*.

Dated 21 June 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

MARK VAILE
Minister for Transport and Regional Services

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Airspace Regulations 2007*.

2 Commencement

These Regulations commence on the commencement of sections 3 to 15 of the *Airspace Act 2007*.

3 Definitions

In these Regulations:

Act means the *Airspace Act 2007*.

aerodrome has the same meaning as in section 3 of the *Civil Aviation Act 1988*.

aerodrome operator means a person, organisation or enterprise engaged in, or offering to engage in, the operation of an aerodrome.

Aeronautical Information Publication or *AIP* has the meaning given by regulation 4.12 of the *Air Services Regulations 1995*.

aircraft has the same meaning as in section 3 of the *Civil Aviation Act 1988*.

aircraft operator, in relation to an aircraft, means a person, organisation or enterprise engaged in, or offering to engage in, the operation of the aircraft.

air traffic services means services:

- (a) of a kind referred to in paragraph 8 (1) (a) of the *Air Services Act 1995*; and
- (b) in accordance with Annex 11 to the Chicago Convention.

Australian territory has the same meaning as in subsection 3 (1) of the *Air Services Act 1995*.

class, in relation to airspace, means a classification applied to airspace under paragraph 5 (1) (d).

Regulation 3

control area means airspace to which a determination under paragraph 5 (1) (c) applies.

controlled aerodrome means an aerodrome to which a determination under paragraph 5 (1) (e) applies.

control zone means airspace to which a determination under paragraph 5 (1) (b) applies.

danger area means an area declared to be a danger area under regulation 6.

designated air route means an air route designated under regulation 11.

designated airway means an airway designated under regulation 11.

facilities, in relation to a designated air route or designated airway, means services and aids used to facilitate the safe navigation of aircraft within the airspace of the air route or airway, including:

- (a) visual and non-visual aids along the air route or airway; and
- (b) visual and non-visual aids to approaching and landing at an aerodrome; and
- (c) communications services; and
- (d) meteorological services; and
- (e) air traffic services.

flight has the same meaning as in the *Civil Aviation Act 1988*.

flight information area means airspace to which a determination under subparagraph 5 (1) (a) (i) applies.

flight information region means airspace to which a determination under subparagraph 5 (1) (a) (ii) applies.

flying training area means an area designated under regulation 8 to be a flying training area.

ICAO means the International Civil Aviation Organization referred to in the Chicago Convention.

Notice to Airmen or **NOTAM** has the meaning given by subregulation 1.03 (1) of the *Air Services Regulations 1995*.

prohibited area means an area declared to be a prohibited area under regulation 6.

Regulation 3

restricted area means an area declared to be a restricted area under regulation 6.

volume, in relation to airspace, means a volume of airspace defined by reference to specified horizontal and vertical points.

Note Annex 11 of the Chicago Convention defines the following terms:

Aerodrome. A defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft.

Air traffic service. A generic term meaning variously, flight information service, alerting service, air traffic advisory service, air traffic control service (area control service, approach control service or aerodrome control service).

Alerting service. A service provided to notify appropriate organizations regarding aircraft in need of search and rescue aid, and assist such organizations as required.

Controlled aerodrome. An aerodrome at which air traffic control service is provided to aerodrome traffic.

(Note.— The term “controlled aerodrome” indicates that air traffic control service is provided to aerodrome traffic but does not necessarily imply that a control zone exists.)

Flight information region. An airspace of defined dimensions within which flight information service and alerting service are provided.

Flight information service. A service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights.

Regulation 4

Part 2 Airspace management**4 Purpose of Part 2**

The provisions of this Part are for the purpose of enabling CASA to perform the functions and exercise the powers in connection with the administration and regulation of Australian-administered airspace.

5 Determination of airspace and controlled aerodromes etc

- (1) CASA may, in writing, make a determination on any of the following matters:
 - (a) that a volume of airspace is:
 - (i) a flight information area; or
 - (ii) a flight information region;
 - (b) that a volume of airspace extending upwards from ground or water to a specified altitude is a control zone;
 - (c) that a volume of airspace extending upwards from a specified altitude is a control area;
 - (d) that a volume of airspace is airspace classified, in accordance with Annex 11 to the Chicago Convention, as Class A, B, C, D, E, F or G;
 - (e) that an aerodrome is a controlled aerodrome.
- (2) If a determination under paragraph (1) (d) provides that a volume of airspace of a specified class ceases to be airspace of that class and becomes airspace of another specified class, the determination must specify:
 - (a) one or more of the following:
 - (i) the dates or days on which the airspace is determined to be of a particular class;
 - (ii) the times when the airspace is determined to be of a particular class;

Regulation 6

- (iii) the class of the airspace on all other dates or days, and times, other than those specified under subparagraph (i) or (ii); or
- (b) the conditions under which the volume of airspace of the specified class ceases to be airspace of that class and becomes airspace of another specified class.

- (3) A determination made under this regulation must be made to take effect on, or after, the day on which the determination is published in the AIP or a NOTAM.

Note Under subsection 12 (1) of the *Legislative Instruments Act 2003*, a legislative instrument can take effect from, among others, the day specified in the instrument or the day of the occurrence of an event that is specified in the instrument for the purposes of the commencement of the instrument.

- (4) Unless sooner revoked, a determination ceases to have effect:
 - (a) on the day, or on the day and time, specified in the determination; or
 - (b) on the day, or on the day and time, of the occurrence of an event specified in the determination; or
 - (c) in the circumstances specified in the determination.
- (5) However, a determination in respect of:
 - (a) a flight information area or a flight information region; or
 - (b) a control area or a control zone; or
 - (c) airspace of any class; or
 - (d) a controlled aerodrome;

has no effect during any period in which relevant air traffic services are not provided.

Note A determination made under this regulation is not subject to disallowance under section 42 of the *Legislative Instruments Act 2003* (see paragraph (a) of item 1B of Schedule 2 to the *Legislative Instruments Regulations 2004*).

6 Designation of prohibited, restricted or danger areas

- (1) CASA may, in writing, make a declaration designating an area of Australian territory to be a prohibited area, a restricted area or a danger area.

Regulation 7

- (2) CASA must not declare an area to be a prohibited area unless, in the opinion of CASA, it is necessary for reasons of military necessity to prohibit the flight of aircraft over the area.
- (3) CASA must not declare an area to be a restricted area unless, in the opinion of CASA, it is necessary in the interests of public safety or the protection of the environment to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions.
- (4) CASA must not declare an area to be a danger area unless, in the opinion of CASA, there exists within or over the area an activity that is a potential danger to aircraft flying over the area.
- (5) A declaration:
 - (a) must specify an area by reference to its boundaries; and
 - (b) may specify the boundaries of an area to extend to a volume of airspace.
- (6) A declaration made under this regulation does not take effect until published in accordance with regulation 7.
- (7) Unless sooner revoked, a declaration ceases to have effect:
 - (a) on the day, or on the day and time, specified in the declaration; or
 - (b) on the day, or on the day and time, of the occurrence of an event specified in the declaration; or
 - (c) in the circumstances specified in the declaration.

Note A declaration made under this regulation is not a legislative instrument (see paragraph (a) of item 1A of Part 2 of Schedule 1 to the *Legislative Instruments Regulations 2004*).

7 Publication of a designation

- (1) CASA must cause a declaration designating an area to be a prohibited area, a restricted area or a danger area to be published:
 - (a) if the declaration is to have effect for a period of 3 months or longer — in the AIP; or
 - (b) in any other case — in a NOTAM.

Regulation 8

- (2) Publication of a declaration of a restricted area must set out the conditions in accordance with which the flight of aircraft over the area is permitted.
- (3) Publication of a declaration of a danger area must contain sufficient information about the nature of the danger to enable the pilot in command of an aircraft to take adequate precautions.
- (4) If a declaration of a prohibited area or restricted area is to have effect for a period of 3 months or longer, CASA must, as soon as practicable, notify ICAO and its member States of:
 - (a) the declaration of the area; and
 - (b) the location and boundaries of the area.

8 Designation of flying training areas

- (1) CASA may, in writing, designate an area as a flying training area.
- (2) CASA must not designate an area as a flying training area unless, in the opinion of CASA, there exists within or over the area flying training activity that is a potential danger to aircraft flying over the area.
- (3) A designation:
 - (a) must specify an area by reference to its boundaries; and
 - (b) may specify the boundaries of a volume of airspace above that area to which the designation applies.
- (4) A designation made under this regulation must be made to take effect on, or after, the day on which the designation is published in accordance with subregulation (6).

Note Under subsection 12 (1) of the *Legislative Instruments Act 2003*, a legislative instrument can take effect from, among others, the day specified in the instrument or the day of the occurrence of an event that is specified in the instrument for the purposes of the commencement of the instrument.

- (5) Unless sooner revoked, a designation ceases to have effect:
 - (a) on the day, or on the day and time, specified in the designation; or

Regulation 9

- (b) on the day, or on the day and time, of the occurrence of an event specified in the designation; or
 - (c) in the circumstances specified in the designation.
- (6) CASA must cause a designation of a flying training area to be published:
- (a) if the designation is to have effect for a period of 3 months or longer — in the AIP; or
 - (b) in any other case — in a NOTAM.

Note A designation made under this regulation is not subject to disallowance under section 42 of the *Legislative Instruments Act 2003* (see paragraph (b) of item 1B of Schedule 2 to the *Legislative Instrument Regulations 2004*).

9 Particulars of air traffic services

- (1) CASA must cause to be published, in the AIP or a NOTAM, details of the air traffic services that are to be provided, in accordance with Annex 11 to the Chicago Convention, for:
- (a) a flight information area or a flight information region; or
 - (b) a control area or a control zone; or
 - (c) airspace of any class; or
 - (d) a controlled aerodrome;
- including details of the manner in which the services are to be provided.
- (2) If an area of Australian territory has been declared under regulation 6 to be a restricted area or a danger area (*the declared area*), CASA may make a determination that, in accordance with Annex 11 to the Chicago Convention, the air traffic services to be provided for the airspace above the declared area are services that are at variance with air traffic services that would otherwise be provided, in accordance with the Annex, for the airspace above the declared area.

Note A determination made for this subregulation is not a legislative instrument (see paragraph (b) of item 1A of Part 2 of Schedule 1 to the *Legislative Instruments Regulations 2004*).

- (3) CASA must cause details of air traffic services provided under subregulation (2) to be published in the AIP or a NOTAM.

Regulation 12

10 Notice of unavailability of air traffic services

- (1) If CASA is aware of any period during which air traffic services are not to be provided for:
 - (a) a flight information area or a flight information region; or
 - (b) a control area or a control zone; or
 - (c) airspace of any class; or
 - (d) a controlled aerodrome;CASA must cause a notice, giving details of the unavailability of the services, to be published in the AIP or a NOTAM.
- (2) A notice giving details of the unavailability of air traffic services need not be published if it is not practicable to do so.

11 Designation of air routes and airways

- (1) CASA may, in writing, designate air routes and airways in Australian-administered airspace.
- (2) CASA may, in writing, determine the conditions that apply to the use of a designated air route or airway.
- (3) A designation or determination made under this regulation must be made to take effect on, or after, the day on which the designation or determination is published in the AIP or a NOTAM.

Note 1 Under subsection 12 (1) of the *Legislative Instruments Act 2003*, a legislative instrument can take effect from, among others, the day specified in the instrument or the day of the occurrence of an event that is specified in the instrument for the purposes of the commencement of the instrument.

Note 2 A designation or determination made under this regulation is not subject to disallowance under section 42 of the *Legislative Instruments Act 2003* (see paragraph (c) of item 1B of Schedule 2 to the *Legislative Instrument Regulations 2004*).

12 Directions relating to air routes, airways and facilities

- (1) CASA may, in writing, give directions in connection with the use or operation of:
 - (a) a designated air route or airway; or
 - (b) air route or airway facilities.

Regulation 13

- (2) A direction made under this regulation must be made to take effect on, or after, the day on which the direction is published in the AIP or a NOTAM.

Note 1 Under subsection 12 (1) of the *Legislative Instruments Act 2003*, a legislative instrument can take effect from, among others, the day specified in the instrument or the day of the occurrence of an event that is specified in the instrument for the purposes of the commencement of the instrument.

Note 2 A direction given under this regulation is not subject to disallowance under section 42 of the *Legislative Instruments Act 2003* (see paragraph (d) of item 1B of Schedule 2 to the *Legislative Instrument Regulations 2004*).

13 Delegation

- (1) CASA may, in writing, delegate to an approved provider of air traffic services any functions or powers under any of the following provisions:
- (a) regulation 6;
 - (b) regulation 7;
 - (c) subregulation 9 (2);
 - (d) regulation 10;
 - (e) regulation 11;
 - (f) regulation 12.
- (2) A delegation under this regulation is subject to the same conditions and obligations to which the performance of the function or the exercise of the power by CASA would be subject if CASA performed the function or exercised the power.
- (3) In this regulation:
- approved provider of air traffic services*** means either of the following:
- (a) an ATS provider within the meaning of regulation 172.015 of the *Civil Aviation Safety Regulations 1998*;
 - (b) the Australian Defence Force.

Regulation 15

14 Obtaining information

- (1) Subject to subregulation (2), CASA may, by written notice, require:
 - (a) the operator of an aerodrome; or
 - (b) the owner of an aircraft; or
 - (c) the aircraft operator; or
 - (d) the provider of air traffic services;to give to CASA, or a person specified in the notice, information or documentation specified in the notice.
- (2) CASA may require information or documentation to be given only if the information or documentation specified in the notice:
 - (a) is in the possession, custody or control of the operator, owner or provider; and
 - (b) is reasonably necessary to allow CASA to conduct regular reviews under section 13 of the Act and regulation 15.
- (3) An operator, owner or provider that has been served with a notice under this regulation must comply with the notice within 28 days after the date of service.

Penalty: 50 penalty units.

Note Section 28A of the *Acts Interpretation Act 1901* deals with the ways a document may be served.

- (4) An offence under subregulation (3) is an offence of strict liability.

15 Review of instruments

- (1) This regulation applies to the following instruments:
 - (a) a declaration, designation, determination or direction made under this Part;
 - (b) an instrument continued in effect by subregulation 17 (1);
 - (c) an instrument mentioned in subregulation 17 (3) in respect of which CASA has exercised a power under this Part in accordance with subregulation 17 (3) or (4).

Regulation 15

- (2) CASA must cause an instrument to which this regulation applies to be reviewed at least once in each period of 5 years after the instrument is made.
- (3) The person carrying out the review must prepare a report setting out the process, and the results, of the review for each instrument reviewed.
- (4) The Minister may request a copy of any report prepared under subregulation (3).

Part 3 Miscellaneous

16 Offence of contravening instrument

- (1) A person must not do any act that contravenes a requirement or condition of any instrument mentioned in subregulation 15 (1).

Penalty: 50 penalty units.

- (2) A person must not fail to do any act required by any instrument mentioned in subregulation 15 (1).

Penalty: 50 penalty units.

- (3) An offence under subregulation (1) or (2) is an offence of strict liability.

Regulation 17

Part 4 Transitional**17 Transitional**

(1) If:

- (a) an instrument made, granted or issued by Airservices Australia under, or for the purposes of, a provision of Part 2 of the *Air Services Regulations 1995* (***the repealed provision***) was in effect immediately before the commencement of this provision (***the commencement date***); and
- (b) the repealed provision is one to which a provision of these Regulations corresponds;

the instrument continues to have effect on and after the commencement date as if it had been made, granted or issued by CASA for the purposes of that corresponding provision.

(2) If:

- (a) any act done, step taken or decision made (not being the making, granting or issuing of an instrument) by Airservices Australia under, or for the purposes of, a provision of Part 2 of the *Air Services Regulations 1995* (***the repealed provision***) was in effect immediately before the commencement of this provision (***the commencement date***); and
- (b) the repealed provision is one to which a provision of these Regulations corresponds;

the act, step or decision continues to have effect on and after the commencement date as if it had been done, taken or made by the appropriate person under, or for the purposes of, that corresponding provision.

(3) CASA may exercise any power under Part 2 in relation to:

- (a) a civil aviation instrument; or
- (b) an amended civil aviation instrument; or

Regulation 17

- (c) any aerodrome or airspace to which an instrument mentioned in paragraph (a) or (b) applies;
as if that instrument had been made under the corresponding provision in Part 2.
- (4) The powers referred to in subregulation (3) include, in the case of an instrument to which paragraph 10 (1) (b) of the *Civil Aviation Legislation Amendment Act 1995* applies, power to vary or revoke the instrument.
- (5) In subregulation (3):
- amended civil aviation instrument*** means a civil aviation instrument as amended by Airservices Australia exercising a power under a provision of Part 2 of the *Air Services Regulations 1995*, as in force immediately before its repeal, in accordance with regulation 7.05 of those regulations.
- civil aviation instrument*** means an instrument:
- (a) made under regulation 87, 99, 99AA, 140 or 141 of the *Civil Aviation Regulations 1988*; and
- (b) continued in effect by section 10 of the *Civil Aviation Legislation Amendment Act 1995*.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.