



Air Navigation (Essendon Fields Airport) Regulations 2018

made under the

Air Navigation Act 1920

Compilation No. 2

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About this compilation

This compilation

This is a compilation of the *Air Navigation (Essendon Fields Airport) Regulations 2018* that shows the text of the law as amended and in force on 2 December 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Air Navigation (Essendon Fields Airport) Regulations 2018*.

3 Authority

This instrument is made under the *Air Navigation Act 1920*.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) aircraft;
- (b) the Chicago Convention.

In this instrument:

Act means the *Air Navigation Act 1920*.

alternate airport: see subsection 9(2).

Annex means volume 1 of Annex 16 to the Chicago Convention, being that Annex as amended and in force at the commencement of this instrument.

curfew period: see section 7.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

involved in an emergency: see subsection 14(4).

land: an aircraft **lands** when it touches the ground.

maximum take-off weight of an aircraft means the weight, or the highest of the weights, set out as a maximum take-off weight for the aircraft in the aircraft's certificate of airworthiness (within the meaning of the *Civil Aviation Safety Regulations 1998*) or flight manual.

noise certificate has the same meaning as in the *Air Navigation (Aircraft Noise) Regulations 2018*.

noise level of an aircraft, expressed as a figure of EPNdB, means the effective perceived noise in decibels certified in a noise certificate for the aircraft.

take off: an aircraft **takes off** when it leaves the ground.

Part 2—Restrictions applying at all times

6 Aircraft with maximum take-off weight of 45,000 kg or more

- (1) An operator of an aircraft must not engage in conduct that results in an aircraft taking off from, or landing at, Essendon Fields Airport if the aircraft has a maximum take-off weight of 45,000 kilograms or more.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the aircraft has a maximum take-off weight of no more than 50,000 kilograms and:
- (a) the take-off or landing is permitted under section 14 (aircraft involved in emergencies or police operations); or
 - (b) all of the following apply:
 - (i) the aircraft complies with the maximum noise levels specified in Chapter 4 or 14 of the Annex that are applicable to the maximum take-off weight of the aircraft (whether or not that Chapter is expressed to apply to the aircraft);
 - (ii) the aircraft is permitted by its type certificate (within the meaning of the *Civil Aviation Safety Regulations 1998*) to have a passenger seating capacity of 19 seats or fewer (other than seats for crew);
 - (iii) the aircraft is not being used in regular public transport operations (within the meaning of the *Civil Aviation Safety Regulations 1998*);
 - (iv) the take-off or landing does not occur during a curfew period;
 - (v) for a landing—the minimum amount of reverse thrust necessary for a safe landing is used.

Note: A defendant bears an evidential burden in relation to a matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Part 3—Restrictions relating to curfew periods

7 Curfew period

A *curfew period* starts at 11 pm on a day and ends at 6 am on the next day.

Note: In this instrument, references to time are references to legal time in Victoria: see section 37 of the *Acts Interpretation Act 1901*.

8 Prohibition on taking off or landing during curfew periods

- (1) An operator of an aircraft must not engage in conduct that results in an aircraft taking off from, or landing at, Essendon Fields Airport during a curfew period.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the take-off or landing is permitted under Part 4.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

9 Prohibition on use of Essendon Fields Airport as alternate airport during curfew periods

- (1) An operator of an aircraft involved in a scheduled flight commits an offence of strict liability if:
 - (a) the flight plan for the flight specifies Essendon Fields Airport as an alternate airport for the flight; and
 - (b) the flight is scheduled to end during a curfew period.

Penalty: 50 penalty units.

- (2) An *alternate airport*, for a flight, is an airport to which the flight may proceed when it becomes inadvisable to land at the airport of intended landing.

10 Failure to submit flight plan in relation to movements during curfew period

- (1) Before an aircraft does either of the following during a curfew period:
 - (a) takes off from Essendon Fields Airport on a flight;
 - (b) lands at Essendon Fields Airport at the end of a flight;the operator of the aircraft must ensure a flight plan for the flight is submitted to Airservices Australia.
- (2) An operator of an aircraft commits an offence if:
 - (a) the operator is subject to a requirement under subsection (1); and
 - (b) the operator engages in conduct; and
 - (c) the conduct contravenes the requirement.

Penalty: 50 penalty units.

Section 10

- (3) Subsections (1) and (2) do not apply in relation to the landing of an aircraft at Essendon Fields Airport during a curfew period if the landing is permitted under subsection 14(2) (aircraft involved in an emergency) or section 15 (dispensations in exceptional circumstances).

Note 1: A defendant bears an evidential burden in relation to a matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: Before granting a dispensation authorising an aircraft to land despite this section, the Secretary must be satisfied that when the aircraft took off, the operator of the aircraft reasonably believed that the aircraft would land before the start of the curfew period: see paragraph 15(3)(b) of this instrument.

Part 4—Permitted aircraft movements

Division 1—Movements permitted during curfew periods

11 Taxi clearance received, or taxiing for take-off started, before start of curfew period

An aircraft may take off from Essendon Fields Airport during a curfew period, despite section 8, if:

- (a) the aircraft received taxi clearance for the take-off before the start of the curfew period; or
- (b) air traffic control (within the meaning of the *Civil Aviation Safety Regulations 1998*) is not available, and the aircraft began taxiing for take-off before the start of the curfew period.

Note: The aircraft's maximum take-off weight must be less than 45,000 kilograms: see subsection 6(1). An operator of the aircraft must ensure a flight plan is submitted to Airservices Australia before the take-off: see subsection 10(1).

12 Propeller-driven aircraft

A propeller-driven aircraft may take off from, or land at, Essendon Fields Airport during a curfew period, despite section 8, if:

- (a) a noise certificate issued under section 8 of the *Air Navigation (Aircraft Noise) Regulations 2018* is in force for the aircraft; and
- (b) for an aircraft that has a maximum take-off weight of more than 8,168 kilograms—the noise levels of the aircraft do not exceed:
 - (i) 90 EPNdB on take-off; and
 - (ii) 95 EPNdB on landing.

Note: The aircraft's maximum take-off weight must be less than 45,000 kilograms: see subsection 6(1). An operator of the aircraft must ensure a flight plan is submitted to Airservices Australia before the take-off or landing: see subsection 10(1).

13 Helicopters

A helicopter may take off from, or land at, Essendon Fields Airport during a curfew period, despite section 8, if a noise certificate is in force for the helicopter.

Note: The helicopter's maximum take-off weight must be less than 45,000 kilograms: see subsection 6(1). An operator of the helicopter must ensure a flight plan is submitted to Airservices Australia before the take-off or landing: see subsection 10(1).

Section 14

Division 2—Emergencies, police operations and dispensations

14 Aircraft involved in emergencies or police operations

Scope

- (1) This section applies to an aircraft that has a maximum take-off weight of no more than 50,000 kilograms.

Emergencies

- (2) If the aircraft is involved in an emergency, the aircraft may:
 - (a) take off from Essendon Fields Airport despite section 6 or 8; or
 - (b) land at Essendon Fields Airport despite section 6, 8 or 10.
- (3) The aircraft may take off from Essendon Fields Airport despite section 6 or 8 to resume a flight interrupted because the aircraft was involved in an emergency.
- (4) The aircraft is *involved in an emergency* if:
 - (a) the aircraft is being used for or in connection with:
 - (i) a search and rescue operation; or
 - (ii) a medical emergency; or
 - (iii) a natural disaster; or
 - (iv) a mercy flight; or
 - (v) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates; or
 - (b) the pilot of the aircraft has declared an in-flight emergency; or
 - (c) the aircraft has insufficient fuel to be diverted to another airport; or
 - (d) there is an urgent need for the aircraft to land or take off:
 - (i) to ensure the safety or security of the aircraft or a person; or
 - (ii) to avoid damage to property.

Police operations

- (5) The aircraft may take off from, or land at, Essendon Fields Airport despite section 6 or 8 if the aircraft is being used for an operation conducted by, or on behalf of, Victoria Police.

15 Dispensations relating to curfew periods in exceptional circumstances

Scope

- (1) This section applies to an aircraft that has a maximum take-off weight of less than 45,000 kilograms.

Grant of dispensation

- (2) The aircraft may take off from, or land at, Essendon Fields Airport during a curfew period, despite a provision of this instrument, if:
 - (a) a dispensation granted by the Secretary under subsection (3) authorises the take-off or landing despite that provision; and
 - (b) the take-off or landing is in accordance with any conditions of the dispensation.
- (3) The Secretary may, on application by an operator of the aircraft, grant a dispensation authorising the aircraft to take off from Essendon Fields Airport despite section 8, or land at Essendon Fields Airport despite section 8 or 10, if the Secretary is satisfied:
 - (a) that there are exceptional circumstances that justify permitting the take-off or landing; and
 - (b) in relation to a landing despite section 10—that when the aircraft took off, the operator of the aircraft reasonably believed that the aircraft would land before the start of the curfew period.
- (4) The Secretary may grant the dispensation subject to conditions.

Example: A condition about when the take-off or landing must occur.
- (5) If the dispensation authorises the aircraft to take off or land despite section 8, the dispensation must relate only to one take-off or one landing of the aircraft (but not both).

Record keeping

- (6) The application need not be in writing. However, as soon as practicable after the grant of the dispensation, the operator must give a written statement to the Secretary explaining the exceptional circumstances that gave rise to the application.
- (7) The dispensation need not be in writing. However, the Secretary must make and keep a record of the dispensation and the reasons for granting it.

Offence

- (8) An operator of an aircraft commits an offence if:
 - (a) the operator is subject to a requirement under subsection (6); and
 - (b) the operator fails to comply with the requirement.

Penalty: 10 penalty units.

Part 5—Giving information to the Secretary

16 Giving information to the Secretary

- (1) The Secretary may, by notice in writing, require an operator of an aircraft to give the Secretary, within 30 days after receiving the notice, information relevant to determining whether a provision of this instrument has been complied with.

Example: Information about the noise level of an aircraft, or information relevant to determining whether a take-off or landing of an aircraft was permitted under section 14 (aircraft involved in emergencies or police operations).

- (2) A notice under subsection (1) must state:
- (a) the information to be given; and
 - (b) how the information is to be given; and
 - (c) that the operator must comply with the notice within 30 days after receiving the notice.
- (3) The operator of an aircraft commits an offence if:
- (a) the operator is subject to a requirement under subsection (1); and
 - (b) the operator fails to comply with the requirement.

Penalty: 10 penalty units.

Part 6—Miscellaneous

17 Delegation

- (1) The Secretary may, in writing, delegate any of the Secretary's powers or functions under this instrument (other than this power of delegation) to an APS employee in the Department who holds or performs the duties of:
 - (a) an Executive Level 1 position; or
 - (b) an equivalent or higher position.
- (2) Before delegating a power or function under subsection (1), the Secretary must have regard to:
 - (a) if the power or function is to be delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the APS employee to exercise the power or perform the function or duty; or
 - (b) otherwise—whether the APS employee has appropriate qualifications or expertise to exercise the power or perform the function.
- (3) In doing anything under a delegation under this section, the delegate must comply with any directions of the Secretary.

Part 7—Transitional provisions

18 Saving of delegations

A delegation to a person, under regulation 18 of the *Air Navigation (Essendon Fields Airport) Regulations 2001* (the **old law**), that is:

- (a) of a power or function of the Secretary under the old law described in column 1 of an item in the following table; and
- (b) in force immediately before the commencement of this section;

has effect on and after that commencement as if it were a delegation to that person, under section 17 of this instrument, of a power or function under this instrument described in column 2 of that item.

Saving of delegations

Item	Column 1 Description of delegated power or function under the old law	Column 2 Description of delegated power or function under this instrument
1	Power or function under regulation 15 relating to grant of a dispensation	Power or function under section 15 relating to grant of a dispensation
2	Power under regulation 16 to ask for information	Power under section 16 to require information to be given

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Air Navigation (Essendon Fields Airport) Regulations 2018	7 Dec 2018 (F2018L01687)	8 Dec 2018 (s 2(1) item 1)	
Civil Aviation Legislation Amendment (Flight Operations—Fees and Other Consequential Amendments) Regulations 2021	1 June 2021 (F2021L00673)	Sch 2 (items 5, 6): 2 Dec 2021 (s 2(1) item 5)	—

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (item 3): 16 Dec 2020 (s 2(1) item 2)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 4	rep LA s 48C
s 5	am F2021L00673
Part 4	
Division 1	
s 11	am F2021L00673
Division 2	
s 14	am Act No 129, 2020
Schedule 1	rep LA s 48C
