



Air Navigation (Essendon Fields Airport) Regulations 2018

I, the Honourable Paul de Jersey AC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 06 December 2018

Paul de Jersey AC
Administrator of the Government of the Commonwealth of Australia

By His Excellency's Command

Michael McCormack
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional
Development

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Part 1—Preliminary

1 Name

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

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	8 December 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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.

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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 Regulations 1988*) 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.

- (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

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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 Regulations 1988*) 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).

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
 - (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

Part 4 Permitted aircraft movements

Division 2 Emergencies, police operations and dispensations

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- (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

Schedule 1—Repeals

Air Navigation (Essendon Fields Airport) Regulations 2001

1 The whole of the instrument

Repeal the instrument.