



Air Services Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 March 2019

Peter Cosgrove
Governor-General

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 Services Regulations 2019*.

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.	26 March 2019

Note: This table relates only to the provisions of this instrument as originally made.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 Services Act 1995*.

4 Definitions

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

- (a) AA (short for Airservices Australia);
- (b) aircraft;
- (c) authorised employee;
- (d) CASA (short for Civil Aviation Safety Authority);
- (e) Chicago Convention;
- (f) Commonwealth jurisdiction aircraft;
- (g) Register;
- (h) service charge;
- (i) statutory lien.

In this instrument:

Act means the *Air Services Act 1995*.

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

Aeronautical Information Publication or *AIP* means the Aeronautical Information Publication published in accordance with section 14, as amended from time to time.

Section 4

aeronautical information service means a service provided in accordance with Division 3 of Part 2.

AIP: see ***Aeronautical Information Publication***.

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

airspace means Australian-administered airspace.

Note: For the definition of ***Australian-administered airspace***, see section 3 of the Act.

air traffic has the same meaning as in the *Civil Aviation Regulations 1988*.

air traffic clearance means an authorisation for an aircraft to proceed in accordance with conditions specified in the authorisation.

air traffic instruction includes:

- (a) a direction to an aircraft to conduct its flight in the manner specified in the direction; and
- (b) a direction to an aircraft to conduct its flight using an air route other than a designated air route.

air traffic services means services provided in accordance with Division 2 of Part 2.

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

controlled aerodrome has the same meaning as in the *Airspace Regulations 2007*.

damage, in relation to property to which Division 3 of Part 3 applies, has a meaning affected by section 23.

designated air route has the same meaning as in the *Airspace Regulations 2007*.

Director of Meteorology means the Director of Meteorology under the *Meteorology Act 1955*.

fire fighter, in relation to an operation of a kind mentioned in section 16 or an incident or circumstance of a kind mentioned in section 20, means:

- (a) a qualified employee taking part in the operation, incident or circumstance; or
- (b) a member of a fire brigade, or of a rescue or fire fighting service, who is taking part in the operation, incident or circumstance in accordance with an arrangement under section 18 or 22.

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

IFR flight means an I.F.R. flight within the meaning of the *Civil Aviation Regulations 1988*.

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

NOTAM: see ***Notice to Airmen***.

Notice to Airmen or ***NOTAM*** means a Notice to Airmen published in accordance with section 15.

qualified employee, in relation to the provision of a service, means an employee of AA who:

- (a) holds the appropriate licence, rating and endorsement, or any other authorisation, required by CASA to be held by a provider of the service; or
- (b) meets the requirements of any standard, set by CASA to be met by a provider of the service; or
- (c) meets the requirements of any standard set by AA in relation to the provision of the service by AA.

rescue and fire fighting services means services provided in accordance with Division 4 of Part 2.

VFR flight means a V.F.R. flight within the meaning of the *Civil Aviation Regulations 1988*.

volunteer, in relation to an operation of a kind mentioned in section 16 or an incident or circumstance of a kind mentioned in section 20, means a person who has volunteered to help in the operation, incident or circumstance under the direction of the officer in charge.

Part 2—Functions of AA—providing services

Division 1—Preliminary

5 Purpose of this Part

For the purposes of paragraphs 77(2)(a) and (b) of the Act, this Part prescribes:

- (a) the functions of AA in relation to the following:
 - (i) air traffic services (see paragraph (a) of the definition of *services* in subsection 8(1A) of the Act);
 - (ii) an aeronautical information service (see paragraph (b) of the definition of *services* in subsection 8(1A) of the Act);
 - (iii) rescue and fire fighting services (see paragraph (e) of the definition of *services* in subsection 8(1A) of the Act); and
- (b) the powers that may be exercised in connection with those services.

Division 2—Air traffic services

6 Functions related to providing air traffic services

In providing air traffic services, AA has the following functions:

- (a) to facilitate the safe and efficient conduct of aircraft flights;
- (b) to facilitate the safe movement of aircraft on the manoeuvring areas of aerodromes;
- (c) to facilitate and maintain a safe, orderly and expeditious flow of air traffic;
- (d) to provide advice and information that is necessary for the safe and efficient conduct of flights;
- (e) to notify appropriate organisations about aircraft known to be, or believed to be, in need of search and rescue aid, and to appropriately assist those organisations.

Note 1: AA must perform its functions in accordance with the Act, including in a manner that is consistent with Australia's obligations under the Chicago Convention—see section 9 of the Act.

Note 2: Under Part 172 of the *Civil Aviation Safety Regulations 1998*, any air traffic service provided by AA as an ATS provider must be in accordance with the requirements of that Part and the Manual of Standards for that Part.

7 Instructions and directions relating to air traffic services

Instructions to aircraft

- (1) A qualified employee may give air traffic instructions and air traffic clearances to an aircraft:
 - (a) at a controlled aerodrome; or
 - (b) in airspace to which a determination under paragraph 5(1)(d) of the *Airspace Regulations 2007* applies.
- (2) An air traffic clearance given in conjunction with air traffic instructions forms part of those air traffic instructions.

Instructions to aircraft engaged in IFR flights and VFR flights

- (3) AA may give instructions to aircraft engaged in IFR flights or VFR flights about the use of:
 - (a) a controlled aerodrome; or
 - (b) airspace to which a determination under paragraph 5(1)(d) of the *Airspace Regulations 2007* applies.

Instructions about use of Territory airspace

- (4) AA may give instructions about the use of airspace above an area of Australian territory if:
 - (a) the area has been declared under regulation 6 of the *Airspace Regulations 2007* to be a restricted area or a danger area; and
 - (b) airspace above that area is airspace to which a determination under paragraph 5(1)(d) of the *Airspace Regulations 2007* applies.

Section 8

When instructions take effect

- (5) An air traffic clearance or air traffic instruction given under subsection (1) takes effect immediately or at a later time specified in the clearance or instruction.
- (6) An instruction given under subsection (3) or (4) does not take effect until published in the Aeronautical Information Publication or a Notice to Airmen.
- (7) If an instruction in force under subsection (4) is inconsistent with an instruction in force under subsection (3):
 - (a) the instruction under subsection (4) prevails; and
 - (b) the instruction under subsection (3) has no effect to the extent of the inconsistency.

8 Removal of safety hazards

- (1) AA, or a person authorised by AA, may take either or both of the following actions:
 - (a) remove an aircraft, vehicle, animal or other thing from any part of an aerodrome;
 - (b) move an aircraft, vehicle, animal or other thing from one part of an aerodrome to another.
- (2) Before taking action under subsection (1), AA must be satisfied that the action is necessary:
 - (a) in the interests of safety; or
 - (b) for the performance of the functions of AA relating to air traffic services.
- (3) A person may assist AA, or a person authorised by AA, take action under subsection (1) if AA is satisfied that the assistance is necessary and reasonable in the circumstances.
- (4) In this section, a reference to an aerodrome includes a reference to an aerodrome in respect of which an arrangement under section 20 of the *Civil Aviation Act 1988* (Defence aerodromes) is in force.

9 Requisitioning of aircraft

- (1) If satisfied that it is necessary to requisition an aircraft for the performance of air traffic services, a qualified employee may:
 - (a) requisition the aircraft; and
 - (b) engage persons to operate it.
- (2) Except as set out in subsection (3), a requisition must be made in writing.
- (3) A requisition of an aircraft may be made orally, but only if a qualified employee is satisfied that:
 - (a) the circumstances require urgent action; or
 - (b) it is impracticable to make a requisition in writing.
- (4) A requisition made orally must be recorded in writing within 24 hours after the requisition is made.

- (5) A requisition in writing, or the written record of an oral requisition, must include the following information:
- (a) the name of the person making the requisition;
 - (b) the person's authority to make the requisition;
 - (c) details of the aircraft to be requisitioned;
 - (d) the period for which the aircraft is to be requisitioned.

10 Requisitioning of aircraft—claims for compensation for injury, loss or damage

- (1) The owner of an aircraft requisitioned under section 9 may apply in writing to AA for compensation for any injury, loss or damage sustained by the owner as a result of the requisitioning of the aircraft, including any:
- (a) cost or expense incurred by the owner; and
 - (b) loss of income suffered by the owner.
- (2) A person who is engaged by AA to operate an aircraft requisitioned under section 9 may apply in writing to AA for compensation for any injury, loss or damage sustained by the person as a result of that engagement, including any:
- (a) cost or expense incurred by the person; and
 - (b) loss of income suffered by the person.
- (3) A claim for compensation under subsection (1) or (2) must be:
- (a) accompanied by written evidence substantiating the nature and extent of the injury, loss or damage claimed; and
 - (b) made within 2 years after the end of the period of requisition.

11 Requisitioning of aircraft—requesting further information relevant to claims for injury, loss or damage

- (1) AA may request a person who has made a claim under section 10 to give AA such further information or documents as AA reasonably requires in relation to the claim.
- (2) AA may decline to consider, or further consider, the claim until the further information or documents are given.

12 Requisitioning of aircraft—dealing with claims for compensation for injury, loss or damage

- (1) Subject to section 11, as soon as practicable after receiving a claim made in accordance with section 10, AA must consider the claim and decide to:
- (a) pay the full amount of compensation claimed; or
 - (b) refuse to pay any amount of compensation claimed; or
 - (c) refuse to pay the full amount of compensation claimed and pay a part of the compensation claimed.

Note: Decisions about claims are reviewable under section 39.

- (2) AA must give notice to the claimant of a decision under subsection (1).

Section 12

- (3) The notice must include:
- (a) a statement of reasons for the decision; and
 - (b) a statement to the effect that a person whose interests are affected by the decision may:
 - (i) apply to AA for review of the decision in accordance with section 39; and
 - (ii) subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for a review of a decision made by AA under subsection 39(3).
- (4) In making a decision under subsection (1), AA must have regard to the following:
- (a) any evidence provided by the claimant;
 - (b) if the claim is for compensation for loss sustained as a result of the requisitioning of an aircraft:
 - (i) charter rates applicable to an aircraft of that type; and
 - (ii) the connection between any expense claimed and the use, during the period of the requisition, of the aircraft; and
 - (iii) the likely cost of repairing any damage to the aircraft that occurred as a result of its use during the period of the requisition, including the cost of restoring the aircraft to the condition it was in immediately before it was requisitioned;
 - (c) if the claim is for compensation for an injury to a person—the amount that would be payable in respect of the injury in accordance with the *Safety, Rehabilitation and Compensation Act 1988*.

Division 3—Aeronautical information service

13 Functions related to providing an aeronautical information service

In providing an aeronautical information service, AA has the function of collecting and disseminating aeronautical information relevant to the safety, regularity or efficiency of air navigation, including the following:

- (a) publishing the Aeronautical Information Publication;
- (b) publishing Notices to Airmen;
- (c) providing other aeronautical information products and services.

Note 1: AA must perform its functions in accordance with the Act, including in a manner that is consistent with Australia's obligations under the Chicago Convention—see section 9 of the Act.

Note 2: Under Part 175 of the *Civil Aviation Safety Regulations 1998*, a service provided by AA as an AIS provider as part of its AIS (short for Aeronautical information service) must be in accordance with the requirements of that Part.

14 The Aeronautical Information Publication

When the AIP is published

- (1) If required under a law mentioned in subsection (3), AA must publish on its website or another electronic facility a publication to be known as the Aeronautical Information Publication (AIP).
- (2) In addition to the circumstances mentioned in subsection (1), AA may publish the Aeronautical Information Publication at any other time.

Information in the AIP

- (3) The Aeronautical Information Publication must include aeronautical information required to be included by any of the following:
 - (a) these Regulations;
 - (b) the *Civil Aviation Act 1988*;
 - (c) the *Civil Aviation Regulations 1988*;
 - (d) the *Civil Aviation Safety Regulations 1998*;
 - (e) any other Commonwealth law;
 - (f) the Chicago Convention.
- (4) The Aeronautical Information Publication may include any other matter that AA is satisfied is relevant to air navigation.

Timing and manner of publication

- (5) AA must publish the Aeronautical Information Publication:
 - (a) if a law mentioned in subsection (3) applies—within the period (if any) and in the manner (if any) specified by that law; or
 - (b) otherwise—within a reasonable time and in the manner AA determines is appropriate.

Section 15

AIP not a legislative instrument

- (6) The Aeronautical Information Publication is not a legislative instrument.

15 Notices to Airmen

When NOTAMs are published

- (1) If required under a law mentioned in subsection (4), AA must publish notices to be known as Notices to Airmen (NOTAM) on an information system accessible on AA's website or another electronic facility.
- (2) AA may make the information system available to persons approved by AA.
- (3) In addition to the circumstances mentioned in subsection (1), AA may publish Notices to Airmen on the information system at any other time.

Information in NOTAMs

- (4) A Notice to Airmen must include aeronautical information required to be included by any of the following:
- (a) these Regulations;
 - (b) the *Civil Aviation Act 1988*;
 - (c) the *Civil Aviation Regulations 1988*;
 - (d) the *Civil Aviation Safety Regulations 1998*;
 - (e) any other Commonwealth law;
 - (f) the Chicago Convention.
- (5) Notices to Airmen may include any other matter that AA is satisfied is relevant to air navigation and that could not more appropriately or effectively be dealt with in the Aeronautical Information Publication.

Timing and manner of publication

- (6) AA must publish a Notice to Airmen:
- (a) if a law mentioned in subsection (4) applies—within the period (if any) and in the manner (if any) specified by that law; or
 - (b) otherwise—within a reasonable time and in the manner AA determines is appropriate.

NOTAM not a legislative instrument

- (7) A Notice to Airmen is not a legislative instrument.

Division 4—Rescue and fire fighting services

16 Functions related to providing rescue and fire fighting services

- (1) In providing rescue and fire fighting services, AA has the following functions:
- (a) to conduct operations to rescue people or property from, or to protect people or property threatened because of, an aircraft fire, aircraft accident or aircraft incident:
 - (i) at an aerodrome; or
 - (ii) in the vicinity of an aerodrome;
 - (b) to conduct operations to protect people or property threatened by a fire, accident or incident (other than an aircraft fire, aircraft accident or aircraft incident) in an area of an aerodrome connected with, or used for the purposes of, activities related to aviation;
 - (c) to conduct operations to control and extinguish a fire referred to in paragraph (a) or (b);
 - (d) to perform activities and provide services related to an operation or a circumstance mentioned in paragraph (a), (b) or (c).

Note 1: AA must perform its functions in accordance with the Act, including in a manner that is consistent with Australia's obligations under the Chicago Convention—see section 9 of the Act.

Note 2: Under Subpart 139.H of the *Civil Aviation Safety Regulations 1998*, an ARFFS (short for aerodrome rescue and fire-fighting service) provided by AA as an ARFFS provider must be in accordance with the requirements of that Subpart and the Manual of Standards for that Subpart.

Note 3: AA may also provide services and facilities in emergencies and other circumstances—see section 20.

- (2) In carrying out its functions under this section, AA must give priority to operations that are conducted:
- (a) at an aerodrome; or
 - (b) within 1000 metres of any boundary of an aerodrome.

17 Officers in charge of rescue and fire fighting operations

Officer in charge of an operation

- (1) The officer in charge of an operation of a kind mentioned in section 16 is:
- (a) if AA designates a person under subsection (2) in relation to the operation—that person; or
 - (b) if there is an arrangement in force under section 18 (arrangements for using rescue and fire fighting resources) and the person in control of the operation is providing services in accordance with that arrangement—that person.
- (2) AA may designate a qualified employee to be the officer in charge of an operation.

Section 18

Powers of officer in charge

- (3) The officer in charge of the operation may:
- (a) give directions to fire fighters, volunteers and other persons participating in or assisting with an operation; and
 - (b) exercise the powers of an officer in charge of an ARFFS operation within the meaning of Subpart 139.H of the *Civil Aviation Safety Regulations 1998*, as set out in that Subpart; and
 - (c) take any other action that the officer in charge considers necessary and reasonable.

Powers of fire fighters

- (4) For the purposes of an operation, a fire fighter may exercise the powers of a firefighter in relation to an ARFFS operation within the meaning of the *Civil Aviation Safety Regulations 1998*, set out in Subpart 139.H of those regulations.

Other persons assisting AA

- (5) A person may assist AA, or a person authorised by AA, to take action under section 16 if AA is satisfied that the assistance is necessary and reasonable.

18 Arrangements for using rescue and fire fighting resources

Without limiting subsection 11(3) of the Act (AA's general powers), for the purposes of providing rescue and fire fighting services, the arrangements that AA may make under that subsection include the following:

- (a) an arrangement with a State or a Territory, or an authority of a State or a Territory, including in relation to the use of a State or Territory fire brigade established under a law of a State or Territory;
- (b) an arrangement with the Commonwealth, or an authority of the Commonwealth, including in relation to the use of a fire fighting service provided by the Commonwealth, or an authority of the Commonwealth;
- (c) an arrangement with any other person or body, including an arrangement in relation to the use of rescue and fire fighting services provided by another person or body.

Part 3—Additional functions of AA

Division 1—Preliminary

19 Purpose of this Part

For the purposes of paragraphs 8(1)(e) and (g) of the Act, this Part prescribes the following functions of AA:

- (a) providing services and facilities to assist in emergencies and other circumstances;
- (b) dealing with claims for damage to property resulting from, or associated with, wake vortices caused by the operation of Commonwealth jurisdiction aircraft;
- (c) making arrangements for the provision of meteorological information.

Section 20

Division 2—Assistance in emergencies and other circumstances

20 Providing services and facilities to assist in emergencies and other circumstances

- (1) AA has the function of providing services and facilities to assist in an incident or circumstance that causes, or threatens to cause, any of the following:
 - (a) death or injury to persons;
 - (b) damage to property;
 - (c) harm to the environment;
 - (d) disruption to essential services.

Note 1: For example, AA may provide first aid to a person at an airport or firefighting services to assist control a fire that is not near an aerodrome.

Note 2: AA must perform its functions in accordance with the Act, including in a manner that is consistent with Australia's obligations under the Chicago Convention—see section 9 of the Act.

- (2) Subject to the requirements mentioned in paragraph 8(1)(j) of the Act, AA may provide such services and facilities in relation to the incident or circumstance as AA considers necessary and reasonable.

Note: Under subsection 8(3) of the Act, the extent to which AA provides services and facilities is subject to AA's discretion.

- (3) In carrying out its functions under this section, AA must give priority to incidents or circumstances that occur:
 - (a) at an aerodrome; or
 - (b) within 1000 metres of any boundary of an aerodrome.

21 Officer in charge of emergencies and other circumstances

- (1) The officer in charge of an incident or circumstance of a kind mentioned in section 20 is:
 - (a) if AA designates a person in relation to the incident or circumstance—that person; or
 - (b) if there is an arrangement in force under section 22 and the person in control of the incident or circumstance is providing services in accordance with that arrangement—that person.

- (2) AA may designate a qualified employee to be the officer in charge of the incident or circumstance.

Powers of officer in charge

- (3) The officer in charge of the incident or circumstance may:
 - (a) give directions to fire fighters, volunteers and other persons participating in, or assisting with, the incident or circumstance; and
 - (b) take any other action that the officer in charge considers necessary and reasonable.

Other persons assisting AA

- (4) A person may assist AA, or a person authorised by AA, to take action under section 20 if AA is satisfied that the assistance is necessary and reasonable.

22 Arrangements for using resources in emergencies and other circumstances

Without limiting subsection 11(3) of the Act (AA's general powers), for the purposes of providing services and facilities to assist in an incident or circumstance of a kind mentioned in section 20, the arrangements that AA may make under that subsection include the following:

- (a) an arrangement with any person or body, including:
 - (i) an arrangement with a State or a Territory, or an authority of a State or a Territory; and
 - (ii) an arrangement with the Commonwealth, or an authority of the Commonwealth;
- (b) an arrangement in relation to any matter, including:
 - (i) the use of services and facilities provided by another person or body (including firefighting services); and
 - (ii) the provision of services and facilities by AA (including firefighting services).

Section 23

Division 3—Wake vortices damage

23 Meaning of *damage* to property

In this Division, and any other provision of these Regulations to the extent that it relates to this Division, a reference to *damage* to property does not include a reference to damage to an aircraft in flight.

24 Wake vortices—claims for compensation for damage

- (1) An owner of property that has been damaged as a result of, or in association with, wake vortices caused by the operation of a Commonwealth jurisdiction aircraft may apply in writing to AA for compensation in respect of that damage.
- (2) A claim for compensation under subsection (1) must be accompanied by written evidence substantiating the nature and extent of the damage claimed.

25 Wake vortices—requesting further information relevant to claims for compensation for damage

- (1) AA may request a person who has made a claim under section 24 to give AA such further information or documents as AA reasonably requires in relation to the claim.
- (2) AA may decline to consider, or further consider, the claim until the further information or documents are given.

26 Wake vortices—dealing with claims for compensation for damage

- (1) Subject to section 25, as soon as practicable after receiving a claim made in accordance with section 24, AA must consider the claim.
- (2) AA may deal with a claim by deciding:
 - (a) to investigate the claim; or
 - (b) not to investigate the claim if AA has reasonable grounds for believing that:
 - (i) the claim is frivolous or vexatious or is not made in good faith; or
 - (ii) the investigation, or any further investigation, of the claim is not justified having regard to all the circumstances.
- (3) On completing an investigation, AA may decide to:
 - (a) pay the full amount of compensation claimed; or
 - (b) refuse to pay any amount of compensation claimed; or
 - (c) refuse to pay the full amount of compensation claimed and pay a part of the compensation claimed.

Note: Decisions about claims are reviewable under section 39.

- (4) AA must give notice to the claimant of a decision under subsection (2) or (3).
- (5) The notice must include:

- (a) a statement of reasons for the decision; and
- (b) a statement to the effect that a person whose interests are affected by the decision may:
 - (i) apply to AA for review of the decision in accordance with section 39; and
 - (ii) subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for a review of a decision made by AA under subsection 39(3).
- (6) In making a decision under subsection (3), AA must have regard to the following:
 - (a) any evidence provided by the claimant;
 - (b) the nature of the damage that may generally be expected to be caused by wake vortices;
 - (c) the areas that are likely to be affected by wake vortices;
 - (d) whether, at the relevant time and having regard to the weather in the area at that time, the nature of aircraft operations in the area where the damage occurred was likely to generate wake vortices of sufficient force to cause the damage;
 - (e) the likely cost of repairing the damage, including the cost of restoring the property to the condition it was in immediately before it was damaged;
 - (f) any other matter that AA considers appropriate.

27 No right to compensation conferred by this Division

Nothing in this Division is taken to confer a right on any person to receive compensation for damage resulting from, or associated with, wake vortices caused by the operation of Commonwealth jurisdiction aircraft.

Division 4—Meteorological information

28 Arrangements for providing meteorological information

- (1) Without limiting subsection 11(3) of the Act (AA's general powers), the arrangements that AA may make under that subsection include arrangements with the Director of Meteorology for the provision of meteorological information:
 - (a) in relation to any place or area; and
 - (b) in any form or manner;that AA considers necessary for the safe, regular or efficient operation of aircraft in accordance with the Chicago Convention.
- (2) If there is any information of a kind referred to in subsection (1) that cannot be provided under an arrangement made under that subsection, AA may make any other arrangements with any other person or body that are necessary for the provision of that information.

Part 4—Statutory liens on aircraft for unpaid service charges

29 Purpose of this Part

For the purposes of Division 4 of Part 5 of the Act, this Part prescribes various matters relating to statutory liens on aircraft for payment of unpaid service charges.

30 Register of statutory liens

- (1) For the purposes of subsections 59(1) and 62(2) of the Act, an entry in the Register in relation to an aircraft must include the following:
 - (a) the registration mark of the aircraft;
 - (b) a description of the aircraft;
 - (c) the name and address of the person by whom the service charge in respect of the aircraft is payable;
 - (d) the identifying number of the statutory lien to which the entry relates; and
 - (e) the time and date when the entry is made;
 - (f) if the statutory lien has ceased to have effect under subsection 62(1) of the Act—notice to that fact and the date of cessation.
- (2) For the purposes of subsection 64(2) of the Act, the Register must be:
 - (a) maintained by electronic means; and
 - (b) made available for inspection on AA's website.
- (3) The Register is not a legislative instrument.

31 Persons who may request a certificate of statutory lien

For the purposes of subsection 61(1) of the Act, the following persons are prescribed in relation to an aircraft:

- (a) the holder of the certificate of registration of the aircraft;
- (b) the owner, or the agent of the owner, of the aircraft;
- (c) if an authorised employee is satisfied that a person has a security interest in the aircraft—that person;
- (d) a person authorised in writing by a person referred to in paragraph (a), (b) or (c).

32 Notices relating to statutory lien

Notice in Gazette

- (1) For the purposes of paragraph 63(1)(a) of the Act, a notice of an entry made in the Register in respect of an aircraft must contain the following:
 - (a) the identifying number of the statutory lien to which the entry relates;
 - (b) the date and time when the entry was made;

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- (c) the description and registration mark of the aircraft;
- (d) the name and address of the person by whom the service charge to which the statutory lien relates is payable;
- (e) if the statutory lien has ceased to have effect under subsection 62(1) of the Act—the date of cessation.

Serving copies of notices

- (2) For the purposes of paragraph 63(1)(b) of the Act, the following persons are prescribed in relation to a notice in respect of an aircraft:
 - (a) each person who is the owner, operator, lessee, hirer, charterer or pilot in command, of the aircraft;
 - (b) if the person (the **liable person**) by whom the relevant service charge is payable is not a person referred to in paragraph (a)—the liable person;
 - (c) if an authorised employee is satisfied that a person (the **interest holder**) has a security interest in the aircraft—the interest holder.

33 Insurance beneficiaries of seized aircraft

For the purposes of subsection 66(2) of the Act, the insurance of an aircraft is for the benefit of the following persons:

- (a) AA;
- (b) the owner of the aircraft;
- (c) if an authorised employee is satisfied that a person has a security interest in the aircraft—that person.

34 Sale of aircraft

- (1) For the purposes of paragraph 67(2)(a) of the Act, in order to effect the sale of an aircraft, AA must:
 - (a) ascertain the aircraft's value by means of a survey of the aircraft; and
 - (b) publish a notice, stating AA's intention to sell the aircraft and setting out the proposed method of sale:
 - (i) in a national newspaper or a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory; and
 - (ii) in another newspaper circulating in the State or Territory in which it is intended to sell the aircraft; and
 - (iii) on AA's website; and
 - (c) if satisfactory terms and conditions of sale can be agreed between AA and a purchaser—sell the aircraft in accordance with the proposed method of sale.
- (2) For the purposes of subsection 67(3) of the Act, at least 14 days before the date on which it is intended to sell an aircraft, AA must publish a notice of the proposed sale:
 - (a) in each newspaper in which a notice was published under paragraph (1) (b); and
 - (b) if AA considers it necessary, for the purpose of drawing attention to the proposed sale to the persons referred to in section 31, to publish a notice of the proposed sale in another newspaper—in that newspaper; and

- (c) on AA's website.

35 Proceeds of sale—claims for approval of security interest in aircraft

Notice inviting claims

- (1) For the purposes of section 68 of the Act, as soon as practicable after the sale of an aircraft, AA must publish a notice:
 - (a) inviting persons claiming a security interest in the aircraft that was created before the date of sale of the aircraft to make a claim for approval of that interest in accordance with this section; and
 - (b) stating that the claim for approval must be made before the end of a period, specified in the notice, ending at least 21 days after the date of the notice.
- (2) The notice must be published:
 - (a) in a national newspaper or a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory; and
 - (b) if AA considers it necessary, for the purpose of drawing attention to the sale to the persons referred to in paragraph (1)(a), to publish a notice of the proposed sale in another newspaper—in that newspaper; and
 - (c) on AA's website.

Requirements for claims

- (3) A claim for approval must:
 - (a) be in writing signed by, or on behalf of, the claimant; and
 - (b) set out particulars of the security interest, including:
 - (i) when the interest was created; and
 - (ii) when the debt secured by the interest was incurred; and
 - (c) be given to AA, together with written evidence substantiating the nature and extent of the interest claimed, before the end of the period specified in the notice.

36 Proceeds of sale—requesting further information relevant to claims for approval of security interest in aircraft

- (1) AA may request a person who has made a claim under subsection 35(3) to give AA such further information or documents as AA reasonably requires in relation to the claim.
- (2) AA may decline to consider, or further consider, the claim until the further information or documents are given.

37 Proceeds of sale—dealing with claims for approval of security interest in aircraft

- (1) Subject to section 36, as soon as practicable after receiving a claim made in accordance with subsection 35(3), AA must consider the claim and do one of the following:
 - (a) approve the claim;

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- (b) approve part of the claim and refuse to approve the remaining part of the claim;
- (c) refuse to approve the claim.

Note: Decisions about claims are reviewable under section 39.

- (2) AA must give notice to the claimant of a decision under section (1).
- (3) The notice must include:
 - (a) a statement of reasons for the decision; and
 - (b) a statement to the effect that a person whose interests are affected by the decision may:
 - (i) apply to AA for review of the decision in accordance with section 39; and
 - (ii) subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for a review of a decision made by AA under subsection 39(3).
- (4) In making a decision under subsection (1), AA must have regard to the following:
 - (a) any evidence provided by the claimant;
 - (b) any other matter that AA considers appropriate.

38 Distribution of proceeds of sale of aircraft

- (1) For the purposes of section 68 of the Act, AA must:
 - (a) pay the proceeds of sale of a seized aircraft into a trust account approved by the Finance Minister; and
 - (b) hold the proceeds in that trust account until they are dealt with in accordance with this section.
- (2) AA must distribute the proceeds in the following order:
 - (a) first, in payment of expenses incurred by AA in relation to the performance of any functions, or the exercise of any powers, under this Division or section 65 or 67 of the Act;
 - (b) second, in payment of a debt incurred before the registration of the statutory lien, to the extent that the debt is secured by a security interest that:
 - (i) is approved under subsection 37(1); and
 - (ii) is not a floating charge; and
 - (iii) was created before the registration;
 - (c) third, in payment of an outstanding amount secured by the statutory lien;
 - (d) fourth, in payment of a debt that is not secured, or to the extent that it is not secured, by a security interest of a kind mentioned in paragraph (b).
- (3) After the proceeds are distributed, AA must:
 - (a) cause the remainder (if any) of the proceeds to be paid to the person who was the owner of the aircraft immediately before the sale, or to the agent of that person; and
 - (b) give a written statement, containing particulars of the distribution, to that person, or to the agent of the person.

Part 5—Miscellaneous

39 Review of decisions

Application for internal review

- (1) A person whose interests are affected by a decision made under any of the following sections may apply to AA for review of the decision:
 - (a) section 12 (which deals with claims for compensation for requisition loss);
 - (b) section 26 (which deals with claims for compensation for wake vortices damage);
 - (c) section 37 (which deals with claims for approval of security interest in aircraft).
- (2) An application for review under subsection (1) must:
 - (a) be in writing; and
 - (b) set out the reasons for the application; and
 - (c) be made within:
 - (i) 28 days after the decision first came to the notice of the applicant; or
 - (ii) if AA allows a longer period (whether before or after the end of the 28 day period)—that longer period.

Decision on internal review

- (3) Within 28 days after receiving the application, AA must:
 - (a) review the decision; and
 - (b) affirm, vary or set aside the decision; and
 - (c) if AA sets aside the decision—make such other decision AA thinks appropriate.

Notice of decision on internal review

- (4) After making a decision under subsection (3), AA must give the applicant a written notice containing:
 - (a) the terms of the decision; and
 - (b) reasons for the decision; and
 - (c) notice of the applicant's right to have the decision reviewed by the Administrative Appeals Tribunal.

Review by the AAT

- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision under subsection (3).

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40 Evidence of a flight

- (1) For the purpose of establishing liability to any service charge or late payment penalty, a flight by an aircraft may be identified by documentation that includes, but is not limited to, any of the following:
 - (a) a flight strip summary issued by AA for the purpose of enabling employees to compile records of aircraft movements in relation to aerodromes;
 - (b) a message extracted from the message switching system known as the Aeronautical Fixed Telecommunication Network and referred to in Annex 10 to the Chicago Convention;
 - (c) a flight plan submitted to AA by the pilot in command of the aircraft;
 - (d) an invoice containing a printout of computerised records of each flight to which the invoice relates.
- (2) A document of a kind referred to in paragraph (1)(a), (b), (c) or (d) is prima facie evidence of the matters stated in it.

41 Evidentiary certificates

- (1) AA may certify in writing that:
 - (a) a document annexed to the certificate is a true copy of an extract from the Aeronautical Information Publication, or of a Notice to Airmen, determination, declaration, direction, instruction, authority, notice or other document made, given or issued under these Regulations; and
 - (b) the document of which the document annexed to the certificate is certified to be a true copy, was, on a specified date or between specified dates, posted to a specified person in connection with any proceedings.
- (2) AA may certify in writing that during a specified period, or on a specified date:
 - (a) any airspace was, or was not, a designated air route or a designated airway within the meaning of the *Airspace Regulations 2007*; or
 - (b) any facility was, or was not, established in relation to an air route or airway; or
 - (c) an aerodrome was, or was not, a controlled aerodrome.
- (3) In proceedings covered by subsection (4), a certificate purporting to have been given under this section:
 - (a) is taken to be a certificate given by AA unless the contrary is proved; and
 - (b) is prima facie evidence:
 - (i) of the matters stated in the certificate; and
 - (ii) if the certificate certifies as to a matter referred to in paragraph (1)(b)—that the document to which the certificate relates was received by the specified person on or about the time at which it would have been received in the ordinary course of post.
- (4) This subsection covers proceedings including:
 - (a) proceedings in a court or tribunal (whether the proceedings are of a civil, administrative, criminal, disciplinary or other nature); and
 - (b) any other proceedings under the Act or these Regulations; and

- (c) proceedings to which this section is stated, by any other Commonwealth law, to apply.

42 Protection from civil actions

- (1) A person covered by subsection (2) is not liable to an action or other proceeding for damages for or in relation to any act done, or omitted to be done, in good faith:
 - (a) in the performance, or purported performance, of any function conferred on AA by the Act or these Regulations; or
 - (b) in the exercise, or purported exercise, of any power conferred on AA by the Act or these Regulations.
- (2) This subsection covers the following persons:
 - (a) the Commonwealth;
 - (b) AA;
 - (c) an employee or agent of AA acting in the course of the person's employment or agency;
 - (d) a person assisting AA under subsection 8(3) (removal of safety hazards);
 - (e) a fire fighter, volunteer or other person assisting AA in an operation of a kind mentioned in section 16 (which deals with rescue and fire fighting services) or an incident or circumstance of a kind mentioned in section 20 (which deals with emergencies etc.);
 - (f) a person acting in accordance with an arrangement under section 18 (about using rescue and fire fighting resources) or 22 (about using resources in emergencies etc.).