

EXPLANATORY STATEMENT

Issued by the authority of the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

*Air Services Amendment Regulations 2019
made under the Air Services Act 1995*

The *Air Services Act 1995* (the Act) establishes Airservices Australia (AA) as a Corporate Commonwealth Entity to provide services to effect the safety, regularity and efficiency of air navigation. Under the Act, AA provides air traffic, rescue and fire fighting, and aeronautical information services to the aviation industry. The Act states that AA must regard the safety of air navigation as its most important consideration.

Subsection 77(1) of the Act provides that the Governor General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 77(2) of the Act states the regulations may make provision for the functions of AA and the powers that can be exercised by its employees, compensation for loss, publication of Aeronautical Information Publications (AIPs) and Notices to Airmen (NOTAMS), regulating environmental effects of Commonwealth jurisdiction aircraft, immunity from liability, records of aircraft subject to statutory lien and enabling specified documents to be *prima facie* evidence of aircraft movements.

Air Services Amendment Regulations 2019

The purpose of the *Air Services Amendment Regulations 2019* (the Regulations) is to replace section 42 of the *Air Services Regulations 2019* (the Principal Regulations) to ensure the scope of immunity set out in section 42 of the Principal Regulations falls within the scope of power set out in section 77 of the Act. Section 42 of the Principal Regulations currently has the potential to overreach its enabling legislation as specified in section 77 of the Act.

The Regulations provide immunity from civil liability to AA and its employees in the good faith exercise of their powers under the Principal Regulations. In particular, this provides immunity to AA and its employees in the exercise of their regulated powers in responding to rescue and fire fighting operations.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Department of Infrastructure, Transport, Cities and Regional Development consulted extensively with AA throughout the amendment process, as well as the Australian Government Solicitor to ensure that the amendment was fit for purpose and was within the scope of its enabling legislation. No concerns were raised regarding the draft Amendment Regulations.

Regulation Impact Statement

The Office of Best Practice Regulation advised a Regulation Impact Statement (RIS) did not need to be prepared for the Air Service Regulations 2019 (OBPR ID: 23097). No further advice has been obtained for this amendment.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights was received for the Amendment Regulations 2019 and is at Attachment A.

Commencement and making

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The *Air Services Amendment Regulations 2019* are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in Attachment B.

The *Air Services Amendment Regulations 2019* commence the day after this instrument is registered.

Authority: Subsection 77(1) of the
Air Services Act 1995

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Air Services Amendment Regulations 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

The *Air Services Amendment Regulations 2019* replace section 42 of the *Air Services Regulations 2019* to remove an inconsistency relating to immunity provisions. This amendment removes this inconsistency.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

Details of the *Air Services Amendment Regulations 2019*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Air Services Amendment Regulations 2019*.

Section 2 - Commencement

This section provides for the *Air Services Amendment Regulations 2019* to commence the day after the instrument is registered.

Section 3 - Authority

This section provides that the *Air Services Amendment Regulations 2019* is made under the *Air Services Act 1995*.

Section 4 - Schedules

This section provides that 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.

Schedule 1 - Amendments

Item 1, Section 42 – Immunity

This section repeals section 42 in the *Air Services Regulations 2019* and provides immunity from civil liability to AA and its employees in the good faith exercise of their powers under the Regulations.

In particular, this provides immunity to AA and its employees in the exercise of their regulated powers in responding to rescue and fire fighting operations.

The source of power for this immunity is section 77(2)(d) of the *Air Services Act 1995*.