

PROCESSING APPLICATIONS UNDER THE AIRPORTS (PROTECTION OF AIRSPACE) REGULATIONS 1996

GUIDELINES FOR OPERATORS OF FEDERAL LEASED AIRPORTS

Legislative Requirements

Part 12 of the *Airports Act 1996* (the Act) and the *Airports (Protection of Airspace) Regulations 1996* (the Regulations) establish a framework for the protection of airspace at federally-leased airports. The Department of Infrastructure, Transport, Cities and Regional Development (the Department) administers the Act and Regulations.

The Act defines certain activities that result in an intrusion into an airport's protected airspace to be “controlled activities”, and requires that controlled activities cannot be carried out without approval under the Regulations.

Carrying out a controlled activity without approval is an offence under Section 183 of the Act punishable by a fine of up to 250 penalty units. The current value of the penalty unit is \$210 per unit for individuals and \$1050 for corporations (*Crimes Act 1914*, section 4AA and 4B).

The Regulations (through delegation) provide for the Department or the airport operator to approve applications to carry out controlled activities, and to impose conditions on an approval. The delegation to airport operators relates only to certain short-term (no longer than three months) controlled activities. The purpose of this guideline is to assist airport operators with their role in processing applications and in discharging their responsibilities as a delegate under the Regulations.

Prescribed (Protected) Airspace

Under Regulation 6 of the Regulations, prescribed airspace for an airport is defined as:

- the airspace above any part of either the Obstacle Limitation Surface (OLS) or a Procedures for Air Navigational Services—Aircraft Operations (PANS-OPS) surface; and
- airspace declared in a declaration made under Regulation 5 of the Regulations.

The Secretary may declare, in writing that specified airspace around an airport, in the interests of the safety, efficiency or regularity of future air transport operations into or out of the airport, be prescribed airspace.

Controlled Activities

Controlled activities are defined in section 182 of the Act (copy attached), and include the following, if they result in an intrusion into prescribed airspace:

- constructing or altering a permanent or temporary structure such as building, communications tower or crane;
- any other activity attached to or on the ground (eg. transient objects such as trucks, machinery and equipment); and
- activities causing non-structural intrusions into the protected airspace (eg. air turbulence).

Please note: under the Regulations applications may only be made for a ‘**proposed** controlled activity’. There is **no mechanism which would enable retrospective approval** to be granted for any penetration of prescribed airspace after the controlled activity has been completed.

The Regulations differentiate between short-term (no longer than three months) and long-term (longer than three months) controlled activities.

Assessment of Applications

The Secretary of the Department (or his/her delegate) decides whether to approve a controlled activity.

The Regulations (in accordance with the Secretary’s delegations) provide for approvals for certain categories of controlled activities:

- short-term controlled activities, excluding PANS-OPS intrusions - the **airport operator**;
- short-term controlled activities, excluding PANS-OPS intrusions - the **Department, if referred by the airport operator**;
- long-term controlled activities, excluding PANS-OPS intrusions - the **Department**;
- short-term intrusions of the PANS-OPS surface - the **Department**; and
- long term intrusions of the PANS-OPS surface - these are **prohibited**.

The Regulations stipulate particular processes for consideration of applications for controlled activities.

Applications to carry out a controlled activity are made to the airport operator. The Regulations specify what information should be included in the application. Applications received from local government authorities should include the full details of the proponent.

The airport operator conducts an initial assessment of the application in terms of:

- whether the activity results in an intrusion into the OLS or PANS-OPS surface or airspace declared under regulation 5 of the Regulations;
- the length of time of the intrusion (no more than three months or longer than three months);
- the extent of the intrusion into prescribed airspace, measured in metres above the Australian Height Datum; and
- the precise location of the proposed development or activity (map (MGA 94) coordinates).

The airport operator is required under the Regulations to invite the following organisations to assess or comment on an application:

- the Civil Aviation Safety Authority (CASA);
- Airservices Australia (Airservices);
- the local council authority responsible for building approvals; and
- the Department of Defence in the case of joint-user airports (Townsville and Darwin International Airports).

For short term controlled activities, comments are only required from CASA and Airservices.

These guidelines cover the different processes for handling applications to carry out the following types of controlled activities:

- (i) short term (no longer than three months) intrusion of the OLS and/or declared surfaces other than PANS-OPS (Section A)
- (ii) long term (more than three months) intrusions of the OLS and/or declared surfaces other than PANS-OPS (Section B);
- (iii) short term (no longer than three months) PANS-OPS intrusions (Section C);
- (iv) long term (more than three months) PANS-OPS intrusion (Section D); and
- (v) variations or extensions of existing approvals (Section E)

Attached to this document is the text of key regulatory provisions to provide assistance.

Section A: Short term intrusions into the OLS and/or declared surfaces other than PANS-OPS

If an application is for a short term controlled activity such as the operation of a crane that is not intended to continue for longer than three months or the erection of a structure that is not intended to be in place for longer than three months, then the following points apply:

1. The Secretary of the Department has delegated his powers in relation to short-term controlled activities to certain positions within airport operator companies, which allows these officers to approve short-term controlled activities. Only officers in position titles listed in the Secretary's current delegation instrument are authorised to grant approvals under the Regulations (this includes anyone who is acting in a listed position title). It is **very important** to note that an approval given by an officer other than the official delegate at your airport will not be a legal approval, and will expose the proponent to criminal liability (as they will be undertaking a controlled activity without approval).
2. The Department updates the Secretary's delegation instrument at least annually. When re-issued, the new delegation instrument will be provided to airport operators for their reference. If there is any doubt, please contact the Department for advice on the correct and current delegates at any particular airport (contact details below).
3. If the proponent for the proposed short term controlled activity is the airport operator company, the airport operator company should refer the application to the Department for assessment and a decision. **It is not appropriate for the airport operator company to be the decision maker for its own controlled activities.**
4. Within seven days of receiving the application, the airport operator should provide CASA and Airservices with written notice of the application, including information from the airport operator's initial assessment, inviting their assessment.
5. **Airport operators must receive the assessment of both CASA and Airservices before making a decision on an application.** These assessments are critical and must be considered in making a decision.
6. The airport operator is required to make a decision on an application within 21 days of receiving the application.

7. Under Regulation 12, the delegated officer of the airport operator may exercise the Secretary's power to request from the proponent any additional information necessary for the assessment of the application. Such a request will suspend the 21 day period in which a decision must be made. The 21 day period re-commences upon receipt of the information requested.
8. The airport operator's decision on a proposal can be either to approve, refuse, approve with conditions or to refer the application to the Department.
9. Approval conditions may concern how the controlled activity is carried out (e.g. hours of operation of a crane) or may require the structure to be marked or lit in a certain way. These conditions must also be in the interest of the safety, efficiency or regularity of existing or future air transport operations.
10. If the decision is to refer the proposal to the Department, the airport operator must do so within 21 days of receiving the application and should send the assessments from CASA and Airservices with the application or as soon as possible when they are received.
11. Any decision by the airport operator as delegate, or any conditions which he or she imposes on a decision, must be made solely in the interests of the **safety, efficiency or regularity of existing or future air transport operations** into or out of the airport (for further detail on the imposition of conditions see Regulation 14 (3) in the attached legislation). The delegated officer may not impose conditions which serve the commercial or operational interests of the airport outside the scope of the above interests.
12. The airport operator delegate may revoke an approval or change the conditions of an approval, if he or she is satisfied that doing so is necessary in the interests of the **safety, efficiency or regularity of existing or future air transport operations** into or out of the airport.
13. Notification of any decision made by the airport operator delegate must be given to the proponent, CASA and Airservices.

Section B: Long term OLS intrusions and/or declared surfaces other than PANS-OPS

If an application is for a controlled activity that is of more than three months duration and would result in an intrusion of the OLS or other declared surface, other than PANS-OPS, then the following points apply:

1. Within seven days of receiving the application, the airport operator should send written notice of the application, and the information identified in the initial assessment, to CASA, Airservices and the local council, inviting them to assess/comment on the application. Any of these organisations are entitled to request a copy of the application. If the airport is a joint user airport, the Department of Defence should also be asked to provide comments. It is also good practice to invite comment from airlines, other airports that may be affected and other interested parties.
2. If the proposed activity intrudes into more than one airport's surfaces (e.g. Melbourne and Essendon Airports), the airport operator should provide the other airport with the application and seek comments on the proposal.
3. Within 21 days of receiving the application, the airport operator is required to send the application to the Department, with the assessments from CASA and Airservices (if available), its own views on the proposal, and comments (if any) from other relevant parties e.g. airlines, local councils etc. The airport operator is required by the Regulations to advise the proponent when the application has been forwarded to the Department.

- The Department has prepared a form that airport operator companies may wish to use to assist in submitting applications to the Department. A copy of the form is attached.
 - If CASA and Airservices advice is not available within 21 days, this should be forwarded to the Department as soon as it is received by the airport operator. The airport operator should keep a check on any outstanding advice from CASA and Airservices. These assessments are particularly important – the Department cannot make a decision on an application without them.
 - If the airport operator opposes the application, an explanation of the grounds for that opposition (in terms of how it would affect the safety, efficiency or regularity of air transport operations) should be provided at the time the application is forwarded to the Department.
4. The Department is required to make a decision and notify the relevant parties within 28 days of the Department's receipt of the application. The parties to be notified include the proponent, the airport operator(s), CASA, Airservices and, in the case of a joint user airport, the Department of Defence. If the Department does not receive all the information necessary to make a decision within 28 days, the application is deemed refused but the decision can be re-made when the information is received.
 5. The Department may impose conditions on an approval –these conditions are usually based on recommendations from CASA, Airservices, the airport operator or other interested parties. Conditions imposed on approvals may relate to the way the controlled activity is carried out, marking and/or lighting of the structure, or compliance conditions such as providing progress reports or updated crane plans.
 - If the airport operator is aware that the applicant has a history of non-compliance with conditions of previous approvals, this should be brought to the Department's attention when the application is forwarded to the Department.

Section C. Short term intrusions into the PAN-OPS

If an application is for a short term controlled activity that is not intended to continue for longer than three months that would result in an intrusion of the PANS-OPS, then the following points apply:

1. The **Secretary of the Department has not delegated their powers** in relation to short-term controlled activities for PAN-OPS intrusions. Airport operators are required to consult with CASA and Airservices and then refer applications to the Department for a decision.
2. Airport operators should follow the same process described under Section B.

Section D: Long term PANS-OPS intrusions

If an application is for a controlled activity that is more than three months duration and would result in an intrusion of the PANS-OPS, then the following points apply:

1. Long term controlled activities intruding into the PANS-OPS airspace are **not permitted**. No further assessment or consultation with other parties is required (unless the airport operator needs to confirm with Airservices that the intrusion is into PANS-OPS).

2. Within seven days of receiving the application, the **airport operator notifies the applicant** and, if appropriate, the local council, that the application **cannot be approved**.

Section E: Variation or extension of an existing approval

Applications for controlled activities may be for a new activity or to vary an activity for which an approval has already been granted. Examples of variations include a change to the height of a building or structure, the footprint of a building or structure, the height or location of a crane or an extension of the time period for a crane operation. The following points apply:

1. The process for these approvals is the same as if it was a new application. That is, advice is required from CASA and Airservices, to inform the decision maker (whether this is the airport operator or the Department).
2. If the Department has issued the original approval, the airport operator should generally refer an application for a variation and/or extension of the operation of a crane to the Department.

Further Information - Contacts

It is critical that airport operators follow the Regulations when processing applications and making decisions on short-term controlled activities. The Flysafe Team within the Department can provide further advice and clarification of the process.

Applications and questions should be addressed to Flysafe, Department of Infrastructure, Transport, Cities and Regional Development via the following email address:
flysafe@infrastructure.gov.au.

You can also contact the Director, Airport Safeguarding and Airspace Protection on 02 6274 6125.

Information is also available on the Department's website at:
<http://www.infrastructure.gov.au/aviation/safety/protection/index.aspx>.

Division 4—Protection of prescribed airspace

182 Controlled activities

- (1) For the purposes of this Division, the following activities are *controlled activities* in relation to a prescribed airspace:
- (a) constructing a building, or other structure, that intrudes into the prescribed airspace;
 - (b) altering a building or other structure so as to cause the building or structure to intrude into the prescribed airspace;
 - (c) any other activity that causes a thing attached to, or in physical contact with, the ground to intrude into the prescribed airspace;
 - (d) operating a source of artificial light, where:
 - (i) the intensity of the light emitted exceeds the level ascertained in accordance with the regulations; and
 - (ii) the light is capable of blinding or confusing pilots of aircraft operating in the prescribed airspace;
 - (e) operating prescribed plant, or a prescribed facility, that reflects sunlight, where:
 - (i) the intensity of the reflected sunlight exceeds the level ascertained in accordance with the regulations; and
 - (ii) the reflected sunlight is capable of blinding pilots of aircraft operating in the prescribed airspace;
 - (f) an activity that results in air turbulence, where:
 - (i) the level of the turbulence exceeds the level ascertained in accordance with the regulations; and
 - (ii) the turbulence is capable of affecting the normal flight of aircraft operating in the prescribed airspace;
 - (g) an activity that results in the emission of smoke, dust or other particulate matter, where:
 - (i) the emission exceeds the level ascertained in accordance with the regulations; and
 - (ii) the smoke, dust or particulate matter is capable of affecting the ability of aircraft to operate in the prescribed airspace in accordance with Visual Flight Rules;
 - (h) an activity that results in the emission of steam or other gas, where:
 - (i) the emission exceeds the level ascertained in accordance with the regulations; and
 - (ii) the steam or gas is capable of affecting the ability of aircraft to operate in the prescribed airspace in accordance with Visual Flight Rules.

Note: *Prescribed airspace* is defined by section 181.

- (2) Regulations must not be made for the purposes of paragraph (1)(d), (e), (f), (g) or (h) unless it is in the interests of the safety, efficiency or regularity of existing or future air transport operations to do so.
- (3) Paragraphs (1)(d), (e), (f), (g) and (h) do not apply to:
- (a) an ordinary domestic or household activity; or
 - (b) anything arising out of the operation of an aircraft.
- (4) In this section:

Chicago Convention means the Convention on International Civil Aviation concluded at Chicago on 7 December 1944, as amended by the Protocols referred to in subsection 3A(2) of the *Air Navigation Act 1920*.

Visual Flight Rules means Visual Flight Rules set out in Annex 2 to the Chicago Convention.



10 Submissions about intrusion into prescribed airspace

- (1) Subregulation (2) applies to a proposed controlled activity (other than a short-term controlled activity) that would (if carried out) intrude into prescribed airspace, unless subregulation 14 (5) prevents an application to carry out the activity being approved.

Note: Subregulation 14 (5) prevents an application being approved if the proposed controlled activity would, if carried out, result in an intrusion into PANS-OPS airspace, unless the controlled activity is a short-term controlled activity and the airport-operator company (if any) for the airport concerned supports the approval.

- (2) The airport-operator company for the airport concerned, or, if there is no airport-operator company for the airport, the Secretary, must give written notice of the application to carry out the activity to, and invite submissions about the activity from, the following authorities:

- (a) CASA;
- (b) Airservices Australia;
- (c) if the airport is a joint-user airport—the Department of Defence;
- (d) the building authority concerned.

- (3) Subregulation (4) applies to a proposed short-term controlled activity that would (if carried out) intrude into prescribed airspace, unless subregulation 14 (5) prevents an application to carry out the activity being approved.

Note: Subregulation 14 (5) prevents an application being approved if the proposed controlled activity would, if carried out, result in an intrusion into PANS-OPS airspace, unless the controlled activity is a short-term controlled activity and the airport-operator company (if any) for the airport concerned supports the approval.

- (4) The airport-operator company for the airport concerned, or, if there is no airport-operator company for the airport, the Secretary, must give written notice of the application to carry out the activity to, and invite submissions about the activity from, the following authorities:

- (a) CASA;
- (b) Airservices Australia.

- (5) If any of the authorities mentioned in subregulation (2) or (4) so requests, the airport-operator company or the Secretary (as the case requires) must give it a copy of the application.

- (6) The airport-operator company or the Secretary (as the case requires) must give the notice before the end of 7 days after receiving the application for approval of the controlled activity.

11 Giving application to Secretary

- (1) Subregulation (2) applies to an application to carry out a controlled activity in relation to prescribed airspace for an airport for which there is an airport-operator company if:

- (a) the activity is a short-term controlled activity and an officer or employee of the airport-operator company for the airport cannot approve the carrying out of the activity as a delegate of the Secretary; or
- (b) the activity is not a short-term controlled activity.

- (2) The company must refer the application to the Secretary for decision within 21 days after the airport-operator company receives it.

- (3) At the time the airport-operator company refers the application to the Secretary for decision, the company must:
 - (a) give the Secretary the application, and any submissions made about the proposal in answer to a notice under subregulation 10 (2) or (4); and
 - (b) tell the proponent in writing that it has given the application to the Secretary for decision.

12 Request for more information

- (1) The Secretary may ask the proponent of the controlled activity concerned, in writing, to give him or her any other information necessary to consider the application, and need not make a decision about the application until the proponent does so.
- (2) If an authority mentioned in subregulation 10 (2) or (4) so requests, the Secretary must give it a copy of any information given to the Secretary by the proponent about the proposal.

13 Consideration of application

In considering whether to approve a proposal, the Secretary must, in respect of the effect that the controlled activity, if carried out, will have on the efficiency or regularity of existing or future air transport operations into or out of the airport concerned, have regard to:

- (a) the opinion of the proponent of the activity; and
- (b) the opinion of the airport-operator company (if any) for the airport; and
- (c) any opinion of CASA; and
- (d) any opinion of Airservices Australia; and
- (e) if the airport concerned is a joint-user airport—any opinion of the Department of Defence; and
- (f) any opinion of the building authority concerned; and
- (g) any other matters the Secretary considers relevant.

14 Secretary to approve, or refuse to approve, proposal

- (1) The Secretary must:
 - (a) approve a proposal; or
 - (b) approve the proposal, subject to any conditions the Secretary considers appropriate; or
 - (c) refuse the proposal.
- (2) The Secretary must approve a proposal unless carrying out the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned.
- (3) The Secretary may approve a proposal subject to a condition only if carrying out the controlled activity otherwise than in accordance with the condition would not be in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned.
- (4) A condition of an approval:
 - (a) may be about how the controlled activity is carried out; or
 - (b) may require a building, structure or thing to be marked or lit (including marked or lit in a specified way).

Note: A person who carries out a controlled activity otherwise than in accordance with a condition of an approval commits an offence against section 185 of the Act. That section provides for a penalty of 250 penalty units for each such offence.

- (5) If a controlled activity would, if carried out, result in a building, structure or thing intruding into PANS-OPS airspace, the Secretary may approve a proposal for the activity only if:
 - (a) the activity is a short-term controlled activity; and
 - (b) the airport-operator company (if any) for the airport concerned supports the approval.
- (6) Also, the Secretary must not approve a proposal for a controlled activity if CASA has advised the Secretary that carrying out the controlled activity would have an unacceptable effect on the safety of existing or future air transport operations into or out of the airport concerned.

15A Notification of decisions of Secretary's delegate

- (1) This regulation applies to the making of a decision by an officer or employee of an airport-operator company who is exercising the powers of the Secretary under a delegation under subregulation 18 (2).
- (2) Before the end of 21 days after the airport-operator company receives notice of a proposal, or, if further information is requested under regulation 12, after the company receives the further information, the officer or employee must give written notice of his or her decision to:
 - (a) the proponent of the controlled activity; and
 - (b) CASA; and
 - (c) Airservices Australia.
- (3) If the officer or employee does not give written notice of his or her decision before the end of the period mentioned in subregulation (2), he or she is taken to have refused the proposal.