

Civil Aviation Act, Section 98

98 Regulations etc.

- (1) The Governor-General may make regulations, not inconsistent with this Act:
 - (a) prescribing matters required or permitted by this Act to be prescribed;
 - (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act;
 - (c) for the purpose of carrying out and giving effect to the provisions of the Chicago Convention relating to safety;
 - (d) in relation to safety of air navigation within a Territory or to or from a Territory;
 - (e) in relation to safety of air navigation, being regulations with respect to trade and commerce with other countries and among the States; and
 - (f) in relation to safety of air navigation, being regulations with respect to any other matter with respect to which the Parliament has power to make laws.
- (2) The regulations may apply in relation to state aircraft.
- (3) Without limiting the generality of subsections (1) and (2), those subsections include the power to make regulations for or in relation to the following:
 - (aa) the design and manufacture of aircraft;
 - (a) the registration, marking and airworthiness of aircraft;
 - (b) the manner of applying for AOCs, including the information that may be required, and the conditions to be satisfied, for the issue of AOCs;
 - (ba) the manner of applying for permissions under Part III, including the information that may be required, and the conditions to be satisfied, for the granting of permissions;
 - (bb) requiring specified persons to provide CASA with, or to ensure that CASA is provided with, specified information relating to the entering into, modification, cancellation, non-renewal or expiry of acceptable contracts of insurance or adequate financial arrangements in relation to specified passenger-carrying operations (within the meaning of Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959*), to the extent that the insurance or arrangements are required under this Act;
 - (c) requiring persons performing specified functions in relation to the operation or maintenance of aircraft and aerodromes to be the holders of licences, permits or certificates of specified kinds, and providing for the grant, issue, cancellation, suspension or variation of such licences, permits and certificates;
 - (d) the planning, construction, establishment, operation and use of aerodromes, including the licensing of aerodromes;
 - (e) the planning, construction, establishment, maintenance, operation and use of air route and airway facilities, including the obtaining of meteorological information;
 - (f) hygiene, sanitation and public health at aerodromes;
 - (g) the prohibition of the construction of buildings, structures or objects, the restriction of the dimensions of buildings, structures or objects, and the removal in whole or in part or the marking or lighting of buildings, structures or objects (including trees or other natural obstacles) that constitute or may constitute obstructions, hazards or potential hazards to aircraft flying in the vicinity of an aerodrome, and such other measures as are necessary to ensure the safety of aircraft using an aerodrome or flying in the vicinity of an aerodrome;
 - (h) empowering CASA, or an officer authorised by CASA, to give or issue directions or instructions to all or any of the persons holding licences, permits or certificates under this Act or the regulations, being directions or instructions with respect to matters affecting the safe navigation and operation, or the maintenance, of aircraft,

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and providing for the manner in which such directions and instructions are to be notified;

- (j) the formal proof and authentication of instruments made or issued under this Act or the regulations;
 - (k) the powers (including powers of arrest) that may be exercised by members of the crew of an aircraft, in relation to persons on board the aircraft, for the purpose of ensuring the safety of the aircraft or of its passengers, crew or cargo or otherwise for the purposes of this Act or the regulations;
 - (ka) requiring specified persons to prepare or alter flight manuals, operations manuals, procedures manuals, maintenance manuals, systems of maintenance and other specified manuals and documents relating to the safe operation of aircraft;
 - (kb) the approval by CASA of such manuals, systems and documents and of alterations of them;
 - (kc) empowering CASA to prepare and alter such manuals, systems and documents;
 - (kd) requiring specified persons to comply with such manuals, systems and documents as in force at a particular time or from time to time;
 - (m) the review of decisions made under the regulations;
 - (p) the imposition of penalties, not exceeding a fine of 50 penalty units, for a contravention of a provision of the regulations or a direction, instruction or condition issued, given, made or imposed under, or in force by virtue of, the regulations;
 - (q) enabling a person who is alleged to have contravened a specified provision of the regulations to pay to CASA, as an alternative to prosecution, a specified penalty, not exceeding an amount equal to one-fifth of the maximum penalty prescribed for contravening that provision;
 - (r) standards relating to the establishment and use of airspace;
 - (ra) formulating a scheme in relation to security status checking;
 - (s) the planning, construction, establishment, maintenance, operation and use of:
 - (i) services and facilities of the kind covered by paragraph 8(1)(a) of the *Air Services Act 1995*; and
 - (iii) services of the kind referred to in paragraph 6(1)(b) of the *Australian Maritime Safety Authority Act 1990* to the extent that those services use aircraft;and any construction associated with those facilities or services;
 - (t) the personnel engaged in anything referred to in paragraph (s);
 - (u) prescribing fees (either by specifying amounts or by prescribing a method of calculation) in relation to services, applications or requests, or the doing of anything, under this Act, the regulations or the Civil Aviation Orders, other than services provided by, applications or requests dealt with in any way by, or anything done by, an external service provider (within the meaning of section 97AB);
 - (v) prescribing fees (either by specifying amounts or by prescribing a method of calculation) in relation to services, applications or requests, or the doing of anything by CASA under the *Aviation Transport Security Act 2004*.
- (3AA) Despite the ANZA mutual recognition agreements, the regulations cannot allow for the mutual recognition of ANZA safety certifications (other than AOCs) between Australia and New Zealand. For this purpose, an **ANZA safety certification** is:
- (a) a civil aviation authorisation; or
 - (b) an aviation document, within the meaning of the Civil Aviation Act 1990 of New Zealand.

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(3AB) Subsection (3AA) does not prevent the making of regulations for purposes connected with the *Trans-Tasman Mutual Recognition Act 1997*.

(3A) The regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a written instrument or other document, as in force at a particular time or from time to time, even if the written instrument or other document does not yet exist when the regulation is made.

For this purpose, *modifications* includes omissions, additions and substitutions.

(3B) Nothing in this Act (including, in particular, subsection 9(1), subsection 13(4) and section 94) is to be taken to prevent regulations being made which provide for the delegation of:

- (a) a function conferred on CASA under subsection 9(1); or
- (b) a power of CASA for or in connection with the performance of that function; to a person who is not an officer.

(4) Where the regulations provide for the removal, marking or lighting of anything referred to in paragraph (3)(g), the regulations shall also provide for the payment of compensation to any person who suffers loss or damage or incurs expense in or as a direct result of the removal, marking or lighting.

(4A) CASA may issue Civil Aviation Orders, not inconsistent with this Act or the regulations, and not prescribing any pecuniary penalty, with respect to any matter in relation to which regulations may be made for the purposes of section 23, 23B or 28BA.

(4B) An order issued under subsection (4A) is a legislative instrument.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the order (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

(5) The regulations may provide that CASA may issue a Civil Aviation Order containing a direction, instruction, notification, permission, approval or authority.

(5AAA) A Civil Aviation Order issued under a regulation made under subsection (5) is a legislative instrument.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the Order (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

(5A) The regulations may empower CASA to issue instruments in relation to the following:

- (a) matters affecting the safe navigation and operation, or the maintenance, of aircraft;
- (b) the airworthiness of, or design standards for, aircraft.

An instrument must not prescribe a penalty.

(5AA) An instrument issued under paragraph (5A)(a) is a legislative instrument if the instrument is expressed to apply in relation to:

- (a) a class of persons; or
- (b) a class of aircraft; or
- (c) a class of aeronautical product.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

(5AB) An instrument issued under paragraph (5A)(a) is not a legislative instrument if the instrument is expressed to apply in relation to:

- (a) a particular person; or
- (b) a particular aircraft; or
- (c) a particular aeronautical product.

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- (5B) An instrument issued under a regulation made under paragraph (5A)(b) is a legislative instrument if the instrument is, or relates to:
- (a) an airworthiness directive; or
 - (b) an airworthiness standard; or
 - (c) a design standard.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

- (5BA) However, an instrument issued under a regulation made under paragraph (5A)(b) is not a legislative instrument if the instrument is expressed to apply in relation to:
- (a) a particular person; or
 - (b) a particular aircraft; or
 - (c) a particular aeronautical product.

- (5C) Subsection (5A) is not taken to affect CASA's power to issue directions or instructions under paragraph 98(3)(h).

- (5D) Despite section 14 of the *Legislation Act 2003*, a legislative instrument made under this Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time;

even if the other instrument or writing does not yet exist when the legislative instrument is made.

- (6) The preceding provisions of this section (including provisions that do not contain references to the States or to a Territory) have effect as if the Northern Territory were a State.

- (6A) The regulations may contain provisions relating to medical standards that are inconsistent with the *Sex Discrimination Act 1984* if the inconsistency is necessary for the safety of air navigation.

Note: See also Part 2 of Schedule 1 to the *Civil Aviation Amendment Act 2005*.

- (6B) The regulations may contain provisions that are inconsistent with the *Disability Discrimination Act 1992* if the inconsistency is necessary for the safety of air navigation.

Note: See also Part 2 of Schedule 1 to the *Civil Aviation Amendment Act 2005*.

- (6C) CASA must consult the Australian Human Rights Commission about any proposal that regulations be made containing provisions that are inconsistent as mentioned in subsection (6A) or (6B). However, a failure to consult the Commission does not affect the validity of any regulations so made.

- (7) A law of a Territory (not being a law of the Commonwealth) does not have effect to the extent to which it is inconsistent with a provision of the regulations having effect in that Territory, but such a law shall not be taken to be inconsistent with such a provision to the extent that it is capable of operating concurrently with that provision.