Civil Aviation Amendment Regulations 2002 (No. 2)

Statutory Rules 2002 No. 167

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Civil Aviation Act 1988.

Dated 26 June 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency’s Command

JOHN ANDERSON
Minister for Transport and Regional Services
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1 Name of Regulations
These Regulations are the Civil Aviation Amendment Regulations 2002 (No. 2).

2 Commencement
These Regulations commence on 1 May 2003.

3 Amendment of Civil Aviation Regulations 1998
Schedule 1 amends the Civil Aviation Regulations 1998.

4 Amendment of Civil Aviation Regulations 1988
Schedule 2 amends the Civil Aviation Regulations 1988.

5 Transitional — persons holding certain licences
(1) In this regulation:
old licence means an air traffic controller licence or a flight service officer licence issued under CAR 1988 and in force (or suspended) immediately before this regulation commenced.
(2) A person who, immediately before this regulation commenced, held an old licence (including a licence that is suspended) is taken to hold a corresponding licence issued under Part 65 of the *Civil Aviation Regulations 1998*.

(3) A rating, endorsement or qualification endorsed on an old licence is taken to continue in force for the period during which it would have been in force but for that Part of those Regulations.

(4) A licence that a person is taken to hold under subregulation (2), or a rating, endorsement or qualification mentioned in subregulation (3), may be suspended or cancelled as if it had been granted under that Part of those Regulations.

(5) An old licence that, immediately before this regulation commenced, was suspended is taken, after the commencement of this regulation, to continue to be suspended.

(6) For the purposes of action against the holder of an old licence mentioned in subregulation (5), the amendments of the *Civil Aviation Regulations 1988* by regulation 4 and Schedule 2 are to be disregarded.
Schedule 1 Amendments of Civil Aviation Regulations 1998
(regulation 3)

[1] Part 65

Air traffic services licensing

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65.005 Applicability of this Part

This Part applies to the performance of functions in connection with providing air traffic services (within the meaning of Annex 11 to the Chicago Convention) in Australian territory.

65.010 Definitions for this Part

In this Part:

currency requirement means the requirement referred to in regulation 65.030.


recency requirement means the requirement referred to in regulation 65.025.

Note Air traffic control function means a function described in a paragraph of subregulation 65.075 (2); flight service function means the function described in subregulation 65.130 (2) — see the Dictionary.
65.015 **Meaning of successful completion of training**

For this Part, a person has successfully completed training for a licence, rating, endorsement or qualification only if:

(a) he or she has passed (to the standard required by the Manual of Standards) any examination required by that Manual; and

(b) he or she has successfully completed (to the standard required by that Manual) any practical performance assessment so required.

65.020 **Effect of ATS provider’s failure to comply with this Part**

A failure by an ATS provider to comply with a requirement of or under this Part is not an offence but may be taken into account in deciding whether or not the provider’s certificate should be suspended or revoked.

65.025 **How to satisfy recency requirement**

(1) The holder of an ATC licence or a flight service licence satisfies the recency requirement in relation to an endorsement at a particular time if he or she has performed the duties required by the relevant function at the aerodrome or in relation to the airspace to which the endorsement relates, for at least 5 hours within the previous 21 days.

(2) If an ATS provider specifies in its operations manual that 2 or more endorsements are of like type for this regulation, a licence holder who performed the duties of any of those endorsements for a total of at least 5 hours within the previous 21 days also satisfies the recency requirement.

(3) A licence holder who does not satisfy the recency requirement at a particular time in relation to an endorsement is taken to satisfy that requirement at a later time after:

(a) he or she:

   (i) has carried out the relevant function at that aerodrome, or in relation to that airspace, under supervision for at least 1 normal working day for each month that has passed since he or she last
performed the function at that aerodrome or in relation to that airspace; or
(ii) has undergone any retraining required by the relevant ATS provider’s operations manual; and
(b) he or she has been assessed by the ATS provider as competent in performing the function at that aerodrome or in relation to that airspace.

65.030 How to satisfy currency requirement

(1) The holder of an ATC licence or a flight service licence satisfies the currency requirement in relation to an endorsement at a particular time if:
(a) within the previous 12 months, he or she has passed, to the standard required by the Manual of Standards, an examination in the subject-matter specific to the endorsement; and
(b) within the previous 6 months, his or her performance of the relevant function at the aerodrome, or in relation to the airspace, to which the endorsement relates, has been assessed as satisfactory.

(2) The holder of an ATC licence or a flight service licence satisfies the currency requirement in relation to a rating at a particular time if, within the previous 12 months, he or she has passed, to the standard required by the Manual of Standards, an examination in the subject-matter specific to the rating.

(3) The examination and assessment must be carried out in accordance with any relevant requirements and standards in the Manual of Standards.
Subpart B  
Authority to act in air traffic control and flight service

65.035 Authority to carry out air traffic control function

(1) A person may carry out an air traffic control function in Australian territory if, at the time the person carries out the function:

(a) he or she holds an ATC licence with a rating for the function and an endorsement for the place where, or the airspace in relation to which, he or she carries it out; and

(b) the licence, rating and endorsement are in force; and

(c) he or she:

(i) satisfies the recency and currency requirements in relation to the endorsement; and

(ii) satisfies the currency requirement in relation to the rating.

(2) A person to whom subregulation (3) applies may carry out an air traffic control function in Australian territory under the supervision of a person who meets the requirements of subregulation (1).

(3) This subregulation applies to each of the following persons:

(a) a person who CASA has authorised in writing to carry out the relevant function;

(b) a person who:

(i) holds an ATC licence with a rating for the function and an endorsement for the place where, or the airspace in relation to which, he or she carries it out; but

(ii) at the relevant time, in relation to the rating or endorsement, does not satisfy the recency or currency requirement;

(c) a person who:

(i) holds an ATC licence; and

(ii) carries out the function in the course of training for a rating or endorsement (whether or not the person holds a rating or endorsement at the time);
(d) a person (other than a person who held an ATC licence that has been cancelled) who:
   (i) has completed an approved course of training in the theory of air traffic control; and
   (ii) carries out the function in the course of undergoing practical training for an ATC licence.

65.040 Rules applicable when a person performs ATC function under supervision

(1) If a person to whom subregulation 65.035 (3) applies (the *trainee*) is carrying out an air traffic control function under the supervision of a person who meets the requirements of subregulation 65.035 (1) (the *supervisor*), this regulation applies.

(2) The trainee must comply with the supervisor’s directions.

Penalty: 25 penalty units.

(3) Any failure by the supervisor to supervise the trainee adequately is not an offence, but may be taken into account in considering whether the supervisor’s ATC licence should be suspended or cancelled.

65.045 Offences — carrying out ATC function without authority

(1) A person who is not authorised to do so by subregulation 65.035 (1) or (2) must not carry out an air traffic control function in Australian territory.

Penalty: 25 penalty units.

(2) A person to whom subregulation 65.035 (3) applies must not carry out an air traffic control function in Australian territory if the person is not acting under the supervision of a person who meets the requirements of subregulation 65.035 (1).

Penalty: 25 penalty units.
Strict liability applies to the following physical elements:
(a) in subregulation (1) — that the person is not authorised by subregulation 65.035 (1) or (2);
(b) in subregulation (2) — that the person under whose supervision the air traffic control function is carried out is a person who meets the requirements of subregulation 65.035 (1).

Note For strict liability, see section 6.1 of the Criminal Code.

It is a defence to a charge of contravening subregulation (1) or (2) that the relevant action was, in the circumstances, reasonable in the interests of the safety of aerial navigation.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (4).

65.050 Authority to carry out flight service function

(1) A person may carry out a flight service function in Australian territory if, at the time he or she carries out the function:
(a) he or she holds a flight service licence with a rating for the function and an endorsement for the place where, or the airspace in relation to which, he or she carries it out; and
(b) the licence, rating and endorsement are in force; and
(c) he or she:
   (i) satisfies the recency and currency requirements in relation to the endorsement; and
   (ii) satisfies the currency requirement in relation to the rating.

(2) A person to whom subregulation (3) applies may carry out a flight service function in Australian territory under the supervision of a person who meets the requirements of subregulation (1).

(3) This subregulation applies to each of the following persons:
(a) a person who CASA has authorised in writing to carry out the function;
(b) a person who:
   (i) holds a flight service licence with a rating for the function and an endorsement for the place where, or the airspace in relation to which, he or she carries it out; but
   (ii) at the relevant time, in relation to the rating or endorsement, does not satisfy the recency or currency requirement;

(c) a person who:
   (i) holds a flight service licence; and
   (ii) carries out the function in the course of training for a rating or endorsement (whether or not the person holds a rating or endorsement at the time);

(d) a person (other than a person who held a flight service licence that has been cancelled) who:
   (i) has completed an approved course of training in the theory of flight service; and
   (ii) carries out the function in the course of undergoing practical training for a flight service licence.

65.055 Rules applicable when a person performs flight service function under supervision

(1) If a person to whom subregulation 65.050 (3) applies (the trainee) is carrying out a flight service function under the supervision of a person who meets the requirements of subregulation 65.050 (1) (the supervisor), this regulation applies.

(2) The trainee must comply with the supervisor’s directions.

Penalty: 25 penalty units.

(3) Any failure by the supervisor to supervise the trainee adequately is not an offence, but may be taken into account in considering whether the supervisor’s flight service licence should be suspended or cancelled.
65.060 Offences — carrying out flight service function without authority

(1) A person who is not authorised to do so by subregulation 65.050 (1) or (2) must not carry out a flight service function in Australian territory.

Penalty: 25 penalty units.

(2) A person to whom subregulation 65.050 (3) applies must not carry out a flight service function in Australian territory if the person is not acting under the supervision of a person who meets the requirements of subregulation 65.050 (1).

Penalty: 25 penalty units.

(3) Strict liability applies to the following physical elements:
   (a) in subregulation (1) — that the person is not authorised by subregulation 65.050 (1) or (2);
   (b) in subregulation (2) — that the person under whose supervision the flight service function is carried out is a person who meets the requirements of subregulation 65.050 (1).

Note For strict liability, see section 6.1 of the Criminal Code.

65.065 Authority to use ground-based radio equipment

Despite subregulations 83 (2) and (3) of CAR 1988, a person who may, under regulation 65.035 or 65.050, carry out an air traffic control function or a flight service function in Australian territory may operate, for the purpose of performing that function, a radiocommunication system used for the purpose of ensuring the safety of air navigation but not installed in or carried on an aircraft.
Subpart C Licensing

Division 1 Air traffic controller licensing

65.070 Eligibility for grant of ATC licence

(1) A person is eligible to be granted an ATC licence if he or she:
   (a) has turned 18; and
   (b) holds a Class 3 medical certificate; and
   (c) has successfully completed the training (including any examination or assessment) specified in the Manual of Standards for the licence, a rating and an endorsement; and
   (d) appears to have the characteristics of personality, and other psychological attributes, necessary to carry out the duties of an air traffic controller safely and efficiently; and
   (e) speaks English clearly, and understands spoken English, to a standard that allows clear spoken two-way communication in the course of performing an air traffic control function.

(2) Without limiting the generality of paragraph (1) (d), if any of the following circumstances exists in relation to a person, the inference may be drawn that the person does not have the characteristics mentioned in that paragraph:
   (a) subject to Part VIIC of the Crimes Act 1914 — that the person has been convicted of an offence:
      (i) involving the use of alcohol or a drug; or
      (ii) the substance of which is refusal to provide a blood, breath or urine sample for analysis;
   (b) that the person has a history of alcohol abuse or the non-medical use of drugs.

(3) A statement by an ATS provider, given in accordance with procedures set out in its operations manual, that a person meets the requirements in paragraphs (1) (d) and (e) is, in the absence of contrary evidence, sufficient evidence of that fact.
65.075 Air traffic controller ratings

(1) The air traffic controller ratings for Australia are the following:
   (a) aerodrome control rating;
   (b) approach control rating;
   (c) approach radar control rating;
   (d) area control rating;
   (e) area radar control rating.

Note The air traffic controller ratings are specified in section 4.4 of Annex 1, Personnel Licensing, to the Chicago Convention. Not all the ratings specified there are in use in Australia.

(2) The function of an ATC licence holder who holds a particular rating is as follows:
   (a) if the rating is an aerodrome control rating — to provide, or supervise the provision of, aerodrome control service (including traffic information, flight information and alerting services) for the aerodrome for which the licence holder holds an endorsement;
   (b) if the rating is an approach control rating — to provide, or supervise the provision of, approach control service (including traffic information, flight information and alerting services) for the airspace for which the licence holder holds an endorsement;
   (c) if the rating is an approach radar control rating — to provide, or supervise the provision of, approach control service (including traffic information, flight information and alerting services) with the use of radar or another surveillance system for the airspace for which the licence holder holds an endorsement;
   (d) if the rating is an area control rating — to provide, or supervise the provision of, area control service (including traffic information, flight information and alerting services) for the airspace for which the licence holder holds an endorsement;
   (e) if the rating is an area radar control rating — to provide, or supervise the provision of, area control service (including traffic information, flight information and alerting services) with the use of radar or another
surveillance system for the airspace for which the licence holder holds an endorsement.

65.080 **Grant of rating on ATC licence**

(1) A person who is eligible to be granted an ATC licence is eligible to hold a rating if he or she has successfully completed the training required by the Manual of Standards for the grant of the rating.

(2) An ATS provider must set up and maintain a program to ensure that its employees who hold ATC licences maintain ratings appropriate to their duties.

(3) That program must be in accordance with any standards and requirements set out in the Manual of Standards.

(4) The provider must include details of the program, including necessary training and tests of competency, in its operations manual.

65.085 **Endorsement of ATC licences**

(1) An endorsement certifies that an ATC licence holder is competent to perform a particular air traffic control function at a particular aerodrome, or in relation to particular airspace.

(2) A person who is eligible to be granted an ATC licence is eligible to be granted an endorsement if he or she has successfully completed the training required by the Manual of Standards for the grant of the endorsement.

(3) An ATS provider must set up and maintain a program to ensure that its employees who hold ATC licences maintain endorsements appropriate to their duties.

(4) That program must be in accordance with any standards and requirements set out in the Manual of Standards.

(5) The provider must include details of the program, including necessary training and tests of competency, in its operations manual.
65.090 **ATS provider’s obligation to provide currency and recency training and assessment**

(1) An ATS provider must set up and maintain, in accordance with the Manual of Standards, programs for:

(a) continuing assessment of its employees’ competency for the purposes of ensuring that they continue to satisfy the currency requirements in relation to ratings and endorsements; and

(b) familiarisation, retraining and assessment of any of its employees who at any time do not satisfy the currency or recency requirement in relation to an endorsement.

(2) The provider must include details of the program, including necessary training and tests of competency, in its operations manual.

65.095 **Ancillary qualifications**

(1) An ATC qualification certifies that the holder is competent to perform a particular ancillary function.

(2) The functions include the following:

(a) classroom instructor;

(b) on-the-job instructor;

(c) workplace assessor.

(3) Within the limits set out in the Manual of Standards, an ATS provider may define, for the provider’s organisation, the responsibilities of the holder of an ATC qualification mentioned in paragraph (2) (a), (b) or (c).

(4) Subregulation (1) does not prevent an ATS provider defining an ancillary function for use within its own organisation.

(5) An ATS provider must set up and maintain a program to grant ATC qualifications to, and administer ATC qualifications held by, its employees.

(6) The provider must include details of the program, including necessary training and tests of competency, in its operations manual.
(7) The program must be in accordance with the standards and requirements set out in the Manual of Standards.

65.100 Conduct of practical training

An ATS provider must ensure that practical training carried out by it, or on its behalf, for the award of an ATC licence, rating, endorsement or ATC qualification, is carried out in accordance with:
(a) the standards and requirements set out in the Manual of Standards; and
(b) the provider’s operations manual.

65.105 Conduct of examinations

An ATS provider must ensure that an examination or assessment carried out by it, or on its behalf, for the award of an ATC licence, rating, endorsement or ATC qualification, is carried out in accordance with:
(a) the standards and requirements set out in the Manual of Standards; and
(b) the provider’s operations manual.

65.110 Duration of ATC licence

(1) An ATC licence is in force until it is cancelled.

(2) However, an ATC licence is not in force:
(a) during any period of suspension; or
(b) during any period during which its holder does not also hold a Class 3 medical certificate.

*Note* Suspension of a licence also suspends each rating or endorsement on it — see subregulation 65.115 (4). However, suspension of a licence, rating or endorsement does not automatically suspend an ATC qualification held by the same person — see subregulation 65.120 (3).

65.115 Periods of validity of ratings and endorsements

(1) Unless sooner cancelled, a rating on an ATC licence is valid for 12 months or until the licence is cancelled.
(2) Unless sooner cancelled, an endorsement on an ATC licence remains valid:
   (a) for the period (no longer than 6 months) specified for an endorsement in the operations manual of the ATS provider that granted it; or
   (b) if the licence is cancelled before that time — until the licence is cancelled; or
   (c) if the rating with which the endorsement is connected is cancelled before that time — until the rating is cancelled; or
   (d) until the licence holder ceases to be employed by that ATS provider.

(3) For paragraph (2) (c), an endorsement is connected with a rating if the endorsement authorises the performance, at a particular aerodrome or in relation to particular airspace, of the function of a holder of the rating.

Note For the function of the holder of each kind of rating, see subregulation 65.075 (2).

(4) A rating or endorsement is not in force:
   (a) during any period of suspension; or
   (b) during any period of suspension of the relevant licence.

65.120 Periods of validity of ATC qualifications

(1) Unless sooner cancelled, an ATC qualification remains valid:
   (a) for the period specified by the ATS provider or ATS training provider that granted it; or
   (b) if any ATC licence, rating or endorsement on which it is dependent, is cancelled before that time — until the licence, rating or endorsement is cancelled; or
   (c) until the holder ceases to be employed by that ATS provider or ATS training provider.

(2) For paragraph (1) (b), an ATC qualification is dependent on a particular licence, rating or endorsement if the ATS provider or ATS training provider that grants the qualification so specifies.
(3) A qualification is not in force during any period of suspension, but is not taken to be suspended by the suspension of any licence, rating or endorsement held by the holder of the qualification.

Division 2 Flight service officer licensing

65.125 Eligibility for grant of flight service licence

(1) A person is eligible to be granted a flight service licence with a traffic information rating if he or she:
   (a) has turned 18; and
   (b) holds a Class 3 medical certificate; and
   (c) has successfully completed the training (including any examination or assessment) specified in the Manual of Standards for the licence, the rating and an endorsement; and
   (d) appears to have the characteristics of personality, and other psychological attributes, necessary to carry out the duties of a flight service officer safely and efficiently; and
   (e) speaks English clearly, and understands spoken English, to a standard that allows clear spoken two-way communication in the course of performing a flight service function.

(2) Without limiting the generality of paragraph (1) (d), if any of the following circumstances exists in relation to a person, the inference may be drawn that the person does not have the characteristics mentioned in that paragraph:
   (a) subject to Part VIIC of the Crimes Act 1914 — that the person has been convicted of an offence:
      (i) involving the use of alcohol or a drug; or
      (ii) the substance of which is refusal to provide a blood, breath or urine sample for analysis;
   (b) that the person has a history of alcohol abuse or the non-medical use of drugs.
(3) A statement by an ATS provider, given in accordance with procedures set out in its operations manual, that a person meets the requirements in paragraphs (1) (d) and (e) is, in the absence of contrary evidence, sufficient evidence of that fact.

65.130 Flight service ratings

(1) The only flight service rating for Australia is the traffic information service rating.

(2) The function of a flight service licence holder holding a traffic information service rating is to provide, or supervise the provision of, a traffic and flight information and alerting service for the flight information area for which the licence is endorsed.

65.135 Maintenance of ratings on flight service licence

(1) An ATS provider must set up and maintain a program to ensure that its employees who hold flight service licences hold traffic information ratings.

(2) The provider must include details of that program, including necessary training and tests of competency, in its operations manual.

(3) That program must be in accordance with the standards and requirements set out in the Manual of Standards.

65.140 Endorsements on flight service licences

(1) An endorsement on a flight service licence certifies that the licence holder is competent to perform a flight service function in relation to an aerodrome or particular airspace.

(2) An ATS provider must set up and maintain a program to grant and administer endorsements on flight service licences held by its employees.

(3) The provider must include details of the program, including necessary training and tests of competency, in its operations manual.
(4) The program must be in accordance with the standards and requirements set out in the Manual of Standards.

65.145 Ancillary qualifications

(1) A flight service qualification certifies that the holder is competent to perform a particular ancillary function.

(2) The functions are the following:
   (a) classroom instructor;
   (b) on-the-job instructor;
   (c) workplace assessor.

(3) Within the limits set by the Manual of Standards, an ATS provider may define, for the provider’s organisation, the responsibilities of the holder of a flight service qualification mentioned in paragraph (2) (a), (b) or (c).

(4) Subregulation (1) does not prevent an ATS provider defining an ancillary function for use within its own organisation.

(5) An ATS provider must set up and maintain a program to grant flight service qualifications to, and administer flight service qualifications held by, its employees.

(6) The provider must include details of the program, including necessary training and tests of competency, in its operations manual.

(7) The program must be in accordance with the standards and requirements set out in the Manual of Standards.

65.150 Conduct of training

An ATS provider must ensure that training carried out by it, or on its behalf, for the award of a flight service licence, rating, endorsement or flight service qualification, is carried out in accordance with:

(a) the standards and requirements set out in the Manual of Standards; and
(b) the provider’s operations manual.
65.155 **Conduct of examinations**

An ATS provider must ensure that an examination carried out by it, or on its behalf, for the award of a flight service licence, rating, endorsement or flight service qualification, is carried out in accordance with:

(a) the standards and requirements set out in the Manual of Standards; and

(b) the provider’s operations manual.

65.160 **Duration of flight service licence**

(1) A flight service licence is in force until it is cancelled.

(2) However, a flight service licence is not in force:

(a) during any period of suspension; or

(b) during any period during which its holder does not also hold a Class 3 medical certificate.

*Note* Suspension of a licence also suspends each rating or endorsement on it — see subregulation 65.165 (3). However, suspension of a licence, rating or endorsement does not automatically suspend an ATC qualification held by the same person — see subregulation 65.170 (3).

65.165 **Periods of validity of rating and endorsement**

(1) Unless sooner cancelled, a rating on a flight service licence is valid for 12 months or until the licence is cancelled or ceases to be valid.

(2) Unless sooner cancelled, an endorsement on a flight service licence remains valid:

(a) for the period (no longer than 6 months) specified for an endorsement in the operations manual of the ATS provider that granted it; or

(b) if the licence is cancelled before that time — until the licence is cancelled; or

(c) until the licence holder ceases to be employed by that ATS provider.
(3) A rating or endorsement is not in force:
   (a) during any period of suspension; or
   (b) during any period of suspension of the relevant licence.

65.170 **Period of validity of flight service qualification**

(1) Unless sooner cancelled, a flight service qualification remains valid:
   (a) for the period specified by the ATS provider or ATS training provider that granted it; or
   (b) if a flight service licence, rating or endorsement on which it is dependent is cancelled before that time — until the licence, rating or endorsement is cancelled; or
   (c) until the holder ceases to be employed by that ATS provider or ATS training provider.

(2) For paragraph (1) (b), a flight service qualification is dependent on a flight service licence, rating or endorsement if the ATS provider or ATS training provider that granted the qualification so specifies.

(3) A qualification is not in force during any period of suspension, but is not taken to be suspended by the suspension of any licence, rating or endorsement held by the holder of the qualification.

**Subpart E Administrative functions**

**Division 1 Grant of licences**

65.175 **Definitions for this Subpart**

In this Subpart:

*licence* means an ATC licence or a flight service officer licence.

*qualification* means an ATC qualification or a flight service qualification.
65.180 How to apply

(1) A person must apply for the grant of a licence in the way set out in this regulation.

(2) The application must be in writing.

(3) The application must give details of the applicant’s training, qualifications and experience, so far as relevant.

(4) The application must be accompanied by:
   (a) a copy of any document that shows that the applicant has completed that training, holds that qualification or has that experience; and
   (b) evidence that the applicant holds a Class 3 medical certificate; and
   (c) evidence of the kind mentioned in subregulation 65.070 (3) or 65.125 (3), as the case requires.

65.185 Who to apply to

The application must be made to CASA.

65.190 Application for licence cancelled previously

If a person who applies for a licence has previously held a licence, and the previously held licence was cancelled for a reason mentioned in paragraph 65.265 (1) (a), (b), (c) or (d), the person must include with the application any available evidence tending to show that the person could now properly exercise the powers or carry out the functions that would be conferred by the licence applied for.

65.195 Other things CASA can ask individual applicant to do — test or interview

(1) CASA may ask an applicant, in writing, to:
   (a) undertake a test or tests of competence; or
   (b) come to a specified CASA office at a specified reasonable time to be interviewed.
(2) If CASA asks an applicant to undertake a test, or come for interview, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant undertakes the tests or participates in the interview.

65.200 Other things CASA can ask applicant to do — provide more information

(1) If CASA reasonably needs more information or another document to allow it to consider an application, CASA may ask the applicant in writing to give it information, or a copy of a document, specified in the request.

(2) In particular, CASA may ask an applicant to provide a written statement by any ATS provider that has employed the applicant as to the applicant’s service history.

(3) If CASA asks for more information, or a copy of a document, under subregulation (1) or (2), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the information or copy.

65.205 Statutory declarations to verify applications

(1) CASA may ask an applicant, in writing, to verify, by statutory declaration, any statement in an application.

(2) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

65.210 Statutory declarations about certain offences etc

(1) Subject to Part VIIC of the *Crimes Act 1914*, and to any relevant law of a State or Territory about spent convictions, CASA may ask an applicant, in writing, to make a statutory declaration about whether he or she has been convicted of:

(a) an offence involving the use of alcohol or a drug; or

(b) an offence the substance of which is refusal to provide a blood, breath or urine sample for analysis.
(2) For subregulation (1), a person is taken to have been convicted of an offence if:
   (a) he or she was charged with the offence, and a court found that the offence had been proved, but declined to record a conviction; or
   (b) he or she asked for the offence to be taken into account when being dealt with by a court for another offence.

(3) Also for that subregulation, a person is taken to have been convicted of an offence if:
   (a) a law provides for the issue, in relation to an alleged offence, of a notice requiring payment of a penalty as an alternative to prosecution; and
   (b) under that law, a notice was issued to the person in relation to the offence; and
   (c) the person paid the penalty required.

(4) If CASA asks an applicant to make a statutory declaration under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

65.215 Matters that CASA may or must take into account

(1) In making a decision on an application, CASA may take into account:
   (a) anything in the application or in any other document submitted by the applicant; and
   (b) anything in its records about the applicant; and
   (c) the contents of any statutory declaration made by the applicant under regulation 65.205 or 65.210.

(2) However, before taking into account anything in its records about an applicant, CASA must:
   (a) tell the applicant in writing that it intends to do so, and the substance of what CASA intends to take into account; and
   (b) invite the applicant in writing to make a written submission about the matter within a specified reasonable time.
(3) If the applicant makes a written submission within the specified time, CASA must take the submission into account.

(4) When deciding whether to grant a new licence to an applicant who previously held a licence that was cancelled, CASA must take into account:
   (a) the fact of the cancellation; and
   (b) the reasons for the cancellation; and
   (c) any evidence of the kind mentioned in regulation 65.190 that the person submits.

65.220 Statutory declarations to verify statements in submissions

(1) CASA may ask an applicant to verify any statement in a submission under subregulation 65.215 (3) by statutory declaration.

(2) CASA must, in making a decision on the application concerned, take such a submission into account.

(3) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

65.225 When CASA must grant a licence

(1) Subject to paragraph 30A (4) (b) of the Act, if a person has applied for the grant of a licence in accordance with this Subpart, CASA must grant the licence if:
   (a) the person is eligible for the grant of the licence; and
   (b) all other requirements for the grant of the licence by or under these Regulations by or in relation to the person are satisfied; and
   (c) no other provision of these Regulations forbids CASA to grant the licence, or makes the person ineligible for the grant of the licence; and
   (d) granting the licence would not be likely to have an adverse effect on the safety of air navigation.
(2) In subregulation (1), a reference to satisfying the requirements for the grant of a licence includes:
   (a) having any qualifications required by or under these Regulations for the grant of the licence; and
   (b) having any experience required by or under these Regulations for that grant; and
   (c) having successfully completed any training required by or under these Regulations for that grant; and
   (d) having attained the standard of medical fitness standard required for that grant, and having been granted an appropriate medical certificate; and
   (e) if particular attributes of character are required by or under these Regulations for that grant — having those attributes.

(3) CASA may grant the licence subject to:
   (a) any conditions specified in these Regulations as applicable to a licence; and
   (b) any other condition necessary in the interests of the safety of air navigation.

65.230 When decision must be made

(1) If CASA does not make a decision about an application within 21 days after receiving it, CASA is taken to have refused the application.

(2) However, if CASA makes a request under regulation 65.195 or 65.200, the time between when CASA makes the request, and when the applicant undertakes the test, or comes in for interview, or gives CASA the information or copy requested, does not count towards the 21 days.

(3) Also, if CASA asks an applicant to make a statutory declaration under regulation 65.205, 65.210 or 65.220, the time between when CASA asks the applicant to do so and when the applicant gives CASA the statutory declaration does not count towards the 21 days.
(4) Also, if CASA invites an applicant to comment under subregulation 65.215 (2), the time between when CASA gives the invitation and when the applicant comments does not count towards the 21 days.

65.235 Notice of decision

After making a decision on an application for a licence, CASA must tell the applicant in writing, as soon as practicable:
(a) the decision; and
(b) if the decision was to refuse the application, or to grant the licence subject to a condition not sought by the applicant, the reasons for the decision.

65.240 When licence comes into effect

A licence comes into effect:
(a) on a day stated in the notice under regulation 65.235; or
(b) if no day is so stated, on the date of the notice.

65.245 Licence document

(1) CASA must issue to a licence holder a licence document that complies with Chapter 5 of Annex 1 to the Chicago Convention.

(2) CASA may issue a replacement document if anything set out on such a document is no longer correct.

(3) If CASA issues a document to a licence holder and the licence is cancelled, the person who held the licence must return the relevant licence document to CASA immediately.

Penalty: 1 penalty unit.

Note A person is not guilty of an offence of failing to do something that he or she is not capable of doing: see section 4.2 of the Criminal Code.

(4) An offence against subregulation (3) is an offence of strict liability.

Note For strict liability, see section 6.1 of the Criminal Code.
(5) It is a defence to a charge of contravening subregulation (3) that the defendant returned the licence document to CASA as soon as practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (5).

Division 2        Ongoing proficiency and medical testing

65.250 Re-examination or re-assessment of licence or qualification holder

(1) If:
   (a) there is evidence that the holder of a licence or a qualification is not adequately performing his or her duties (whether because of lack of proficiency, injury, illness or for any other reason); and
   (b) it is necessary, in the interests of the safety of air navigation, to require the holder to demonstrate his or her proficiency or fitness to perform those duties;
   CASA may, at a reasonable time and on reasonable notice, direct the holder to undertake:
   (c) an appropriate examination or performance assessment; or
   (d) a medical assessment by a designated aviation medical examiner.

(2) In paragraph (1) (d):
   medical includes psychological and psychiatric.

Division 3        Suspension and cancellation of licences

65.255 Provisional suspension of licence pending examination or assessment

(1) If under regulation 65.250 CASA directs the holder of a licence or qualification to undergo an examination, performance assessment or medical assessment, CASA may provisionally suspend the licence or a rating or endorsement on it, or the qualification, by notice in writing to the holder.
(2) The provisional suspension has effect from the time the notice is served on the holder.

(3) As soon as practicable after the examination or assessment, CASA must either:
   (a) give the holder a notice under regulation 65.265 to show cause why the licence, rating, endorsement or qualification should not be cancelled or further suspended; or
   (b) revoke the provisional suspension and tell the holder in writing that it has done so.

(4) CASA may revoke the provisional suspension at any time by notice in writing.

(5) If CASA gives the holder a show cause notice, the provisional suspension remains in effect (unless sooner revoked) until CASA decides, or is taken to have decided, whether or not to cancel the licence, rating, endorsement or qualification, or to further suspend it.

(6) However, if the holder does not comply with the direction within the time allowed by the notice to do so (or any extension of that time allowed by CASA), the licence, rating, endorsement or qualification remains suspended until the holder does so.

65.260 Provisional suspension of ATS licence etc during investigation

(1) If there is evidence that the holder of an ATS licence:
   (a) may have contravened a provision of the Act or these Regulations; or
   (b) may not meet a requirement of, or under, these Regulations in relation to getting or keeping the licence, rating, endorsement or qualification; or
   (c) may have failed in his or her duty in a way that might adversely affect the safe navigation or operation of an aircraft; or
   (d) may not have the characteristics of personality, and other psychological attributes, necessary to carry out the duties of an air traffic controller or flight service officer, or the
holder of a qualification of the relevant kind, safely and efficiently;
CASA may provisionally suspend the holder’s licence, or a rating, endorsement or qualification, by notice in writing to the holder.

(2) CASA may revoke the provisional suspension at any time by notice in writing.

(3) The provisional suspension has effect from the time notice under subregulation (1) is served on the holder, and remains in effect (unless sooner revoked) until:
(a) if CASA gives to the holder a show cause notice — CASA decides, or is taken to have decided, whether or not to cancel the licence, rating, endorsement or qualification, or to further suspend it; or
(b) the end of 7 days after the time the notice under subregulation (1) is served on the holder.

65.265 Show cause procedure

(1) If there is evidence that the holder of an ATS licence:
(a) may have contravened a provision of the Act or these Regulations; or
(b) may not meet a requirement of, or under, these Regulations in relation to getting or keeping the licence, rating, endorsement or qualification; or
(c) may have failed in his or her duty in a way that might adversely affect the safe navigation or operation of an aircraft; or
(d) may not have the characteristics of personality, and other psychological attributes, necessary to carry out the duties of an air traffic controller or flight service officer, or the holder of a qualification of the relevant kind, safely and efficiently;
CASA may give to the holder a notice in accordance with this regulation (a show cause notice).
(2) Also, CASA may give to the holder of an ATS licence a show cause notice if:
(a) under regulation 65.250, CASA has directed the holder to undertake an examination or a performance assessment or medical assessment; and
(b) the holder has not done so within the time allowed by the direction (or any extension of that time allowed by CASA).

(3) The notice must be in writing.

(4) The notice must set out the facts and circumstances that appear to justify cancellation or suspension of the licence, rating, endorsement or qualification.

(5) The notice must invite the holder to show cause in writing, within a reasonable period stated in the notice, why the licence, rating, endorsement or qualification should not be cancelled or further suspended.

65.270 CASEA’s powers in respect of licence etc

(1) CASA may cancel or suspend a licence, rating, endorsement or qualification if the holder:
(a) has contravened a provision of the Act or these Regulations; or
(b) does not meet a requirement of, or under, these Regulations in relation to getting or keeping the licence, rating, endorsement or qualification; or
(c) has failed in his or her duty in a way that adversely affects the safe navigation or operation of an aircraft; or
(d) appears not to have the characteristics of personality, and other psychological attributes, necessary to carry out the duties of an air traffic controller or flight service officer, or the holder of a qualification of the relevant kind, safely and efficiently.
(2) Without limiting the generality of paragraph (1) (d), if any of the following circumstances exists in relation to a person, the inference may be drawn that the person does not have the characteristics mentioned in that paragraph:

(a) subject to Part VIIC of the Crimes Act 1914 — that the person has been convicted of an offence:
   (i) involving the use of alcohol or a drug; or
   (ii) the substance of which is refusal to provide a blood, breath or urine sample for analysis;
(b) that the person has a history of alcohol abuse or the non-medical use of drugs.

65.275 Choice between cancellation and suspension

(1) This regulation sets out how CASA decides whether to cancel a person’s licence, rating, endorsement or qualification, or suspend it.

(2) If the person has contravened a provision of the Act or these Regulations, or has failed in his or her duty in a way that adversely affects the safe navigation or operation of an aircraft:

(a) where CASA is satisfied that the contravention or failure is not likely to recur, CASA may do either or both of the following:
   (i) suspend the person’s licence, rating, endorsement or qualification for an appropriate period;
   (ii) direct the person to receive appropriate counselling or training; and
(b) where CASA is not satisfied as mentioned in paragraph (a), CASA may:
   (i) if the contravention or failure is sufficiently serious, or has occurred before — cancel the licence, rating, endorsement or qualification; or
   (ii) take either or both of the courses mentioned in paragraph (a).

(3) If:
   (a) the person does not meet a requirement of, or under, these Regulations in relation to getting or keeping the licence, rating, endorsement or qualification; or
(b) does not have the characteristics and attributes referred to in paragraph 65.270 (1) (d);
but there is a reasonable prospect that he or she will be able to do so within a reasonable time, CASA may suspend the licence, rating, endorsement or qualification:
(c) until the happening of a specified event; or
(d) until the holder successfully completes specified training; or
(e) for a specified period within which the holder is likely either to become able to meet the requirement, or to acquire the characteristics and attributes.

(4) If:
(a) the person does not meet a requirement of, or under, these Regulations in relation to getting or keeping the licence, rating, endorsement or qualification; or
(b) does not have the characteristics and attributes referred to in paragraph 65.270 (1) (d);
and there is no reasonable prospect that he or she will be able to do so within a reasonable time, CASA must cancel the licence, rating, endorsement or qualification.

65.280 Procedure for decision

(1) When considering whether to cancel or suspend a licence, rating, endorsement or qualification, CASA must take into account any submission that the holder makes within the time allowed by the relevant show cause notice.

(2) CASA must tell the holder in writing of its decision.

(3) If CASA has not decided whether or not to cancel or further suspend the licence, rating, endorsement or qualification within 30 days after the end of the period allowed for submissions by the show cause notice, CASA is taken to have decided, at the end of that 30-day period, neither to cancel nor further suspend the licence, rating, endorsement or qualification.
(4) If the licence, rating, endorsement or qualification is provisionally suspended, and CASA decides, or is taken under subregulation (3) to have decided, neither to cancel nor further suspend it, the provisional suspension ceases to have effect when CASA makes, or is taken to have made, that decision.

[2] Part 139

substitute

Part 139 Aerodrome certification and operation

Subpart A General

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Subpart H  Aerodrome rescue and fire fighting services

Note As a signatory to the Chicago Convention, Australia is obliged to require, as part of its domestic law, that certain classes of airport provide rescue and firefighting services of an adequate standard. (See generally section 9.2 of chapter 9 of Annex 14 to the Chicago Convention.) To satisfy that obligation, this Subpart requires operators of aerodromes that have scheduled international traffic, or specified levels of domestic passenger traffic, to provide those services, and sets out the standards that apply to such services. Aerodromes that are not obliged to provide an ARFFS may choose to do so, and this Subpart will apply to a service so provided until the operator gives reasonable notice that it will no longer provide such a service.

Division 1  General

139.700 Applicability of this Subpart

(1) This Subpart applies to aerodrome rescue and firefighting services.

(2) This Subpart sets out:
   (a) the obligation, applicable to certain aerodrome operators, to provide aerodrome rescue and firefighting services; and
   (b) how a person receives approval as a provider of such a service; and
   (c) the operating and technical standards applicable to such a service.

Note Failure by an aerodrome licensee to comply with the requirements of this Subpart is grounds for revocation of the relevant aerodrome licence — see regulation 269 of CAR 1988.

139.705 Definitions for this Subpart

(1) In this Subpart:
   airside of an aerodrome has the same meaning as airside of an airport in the Airports Act 1996.
   
   ARFFS means aerodrome rescue and fire-fighting service.
   
   ARFFS operation means an operation undertaken in carrying out a function mentioned in paragraph 139.710 (1) (a) or (b).
ARFFS provider for an aerodrome means the person or organisation that provides ARFFS for the aerodrome.

category of an aerodrome means its category worked out by the method set out in section 9.2 of chapter 9 of Annex 14 to the Chicago Convention.

ERSA means the part of AIP known as En Route Supplement Australia.

Manual of Standards means the document called ‘Manual of Standards (MOS) – Part 139’ published by CASA, as in force from time to time.

(2) A reference in this Subpart to an AFC certificate of a particular level is a reference to:

(a) a certificate of that level issued under the Australian Fire Competencies Scheme (that is, the training scheme administered by the Australian Fire Authorities Council); or

(b) a certificate accepted by CASA as indicating that the certificate holder has successfully completed a training program of a standard equivalent to that required for the issue of an AFC certificate of that level.

(3) A reference in this Subpart to Annex 14 to the Chicago Convention, or a provision of that Annex, is a reference to that Annex or provision as in effect on 1 January 2000.

139.710 Functions of ARFFS

(1) The functions of an ARFFS for an aerodrome are:

(a) to rescue persons and property from an aircraft that has crashed or caught fire during landing or take-off; and

(b) to control and extinguish, and to protect persons and property threatened by, a fire on the aerodrome, whether or not in an aircraft.

(2) Nothing in subregulation (1) prevents the ARFFS provider for an aerodrome from performing fire control services or rescue services elsewhere than on an aerodrome, but the provider must give priority to operations mentioned in subregulation (1).
139.715 Effect of Manual of Standards

(1) If CASA sets out, in the Manual of Standards, a way of complying with a requirement of this Subpart, an ARFFS provider who uses that way is taken to have complied with the requirement unless the contrary is shown.

(2) CASA may take the extent to which an ARFFS provider complies with the Manual into account in deciding whether the service provided by the provider is adequate.

Division 2 ARFFS obligations of aerodrome operator

139.720 Aerodromes that must have ARFFS

(1) The operator of an aerodrome to which subregulation (3) applies must ensure that the aerodrome has available, throughout each day on which the aerodrome is open for use by aircraft, an ARFFS of the standard required by section 9.2.2 of Annex 14 to the Chicago Convention.

   Penalty: 50 penalty units.

(2) Strict liability applies to the physical element in subregulation (1) that the standard is the standard required by section 9.2.2 of Annex 14 to the Chicago Convention.

   Note For strict liability, see section 6.1 of the Criminal Code.

(3) This subregulation applies to:

   (a) an aerodrome from or to which an international passenger air service operates; and

   (b) any other aerodrome through which more than 350,000 passengers passed on air transport flights during the previous financial year.

   Note Australia does not require aerodromes other than those mentioned in paragraphs (3) (a) and (b) to provide ARFFS. However, nothing in subregulation (1) prevents an aerodrome operator that is not required to provide an ARFFS from doing so. If such an operator does provide an ARFFS, the service must be to the standard required by the Manual of Standards — see regulation 139.725.
(4) In paragraph (3) (a):

**international passenger air service** means:

(a) an international air service (within the meaning given by subsection 3 (1) of the *Air Navigation Act 1920*) that carries passengers, other than a non-scheduled service (within the meaning given by that subsection); or

(b) a non-scheduled flight, or program of flights, carried out under a permission granted under section 15D of the *Air Navigation Act 1920*; or

(c) a non-scheduled flight, or program of flights, carrying passengers, in a category in respect of which the Secretary to the Department has determined, under subsection 15A (3) of that Act, that such a permission is not required.

(5) For paragraph (3) (b), the number of passengers that pass through an aerodrome is to be determined according to statistics published by the Department.

*Note* Department means the Department administered by the Minister who administers these Regulations (see the *Acts Interpretation Act 1901*, subsection 19A (3) and section 46). At present that Department is the Department of Transport and Regional Services.

### 139.725 Standard of ARFFS at other aerodromes

If an aerodrome operator that is not required to provide an ARFFS announces in ERSA that it provides such a service, the service must be of the standard set out for such an aerodrome in the Manual of Standards.

### 139.730 Response time of ARFFS

(1) An ARFFS must be able to meet the criteria for response time set out in sections 9.2.19 and 9.2.20 of Annex 14 to the Chicago Convention.

(2) Subregulation (1) applies to an ARFFS whether or not Annex 14 to the Chicago Convention applies to the service.
139.735 Discontinuing service when service no longer required

If an aerodrome operator that is not required by this Subpart to provide an ARFFS provides such a service, the operator must not discontinue providing the service unless the disestablishment criteria set out in the Manual of Standards are met in relation to the aerodrome.

139.740 Buildings and emergency facilities

(1) There must be, at an aerodrome referred to in regulation 139.720, necessary buildings and facilities for the service, including:
   (a) a fire station; and
   (b) communications facilities; and
   (c) facilities for the maintenance of vehicles and equipment; and
   (d) training facilities; and
   (e) storage facilities; and
   (f) if there is a body of water within 1 000 metres of a runway threshold — a boat ramp and boat launching facilities.

(2) Those buildings and facilities must comply with any applicable requirements (including requirements as to location) in the Manual of Standards.

(3) There must be a facility, in accordance with the requirements of that Manual, for replenishing the water supply of a fire fighting vehicle.

(4) There must be appropriate emergency roads on the aerodrome in accordance with the requirements of that Manual.

(5) There must be, at an aerodrome referred to in regulation 139.725, the following facilities:
   (a) a standby point for an emergency vehicle that will allow the vehicle to achieve the response time required by the Manual of Standards;
   (b) storage for a reserve stock of extinguishing agents.
139.745 Officer in charge

(1) An aerodrome operator that must provide, or provides, an ARFFS must appoint, as officer in charge of ARFFS operations for the aerodrome:
   (a) for an aerodrome categorised as Category 6 or above — a person who holds an AFC Advanced Diploma; or
   (b) for an aerodrome categorised as Category 5 or below — a person who holds an AFC Diploma.

(2) In paragraphs (1) (a) and (b):
   
   *AFC* means Australian Fire Competencies.

(3) However, CASA may approve the appointment, as officer in charge of ARFFS operations for a particular aerodrome, of a person who does not have the qualification required by subregulation (1) if:
   (a) the appointment of the person is not likely to have an adverse effect on the safety of air navigation; and
   (b) it is not reasonably possible to obtain the services of a person who has that qualification.

Division 3 Requirements to be complied with by ARFFS provider

139.750 Requirements in this Division

A requirement in this Division for there to be a system or procedure to do something is a requirement that the system or procedure:
   (a) must exist; and
   (b) must be in use.
139.755 Definition for Division — applicable standards and requirements

In this Division:

applicable standards and requirements, for an aerodrome of a particular category, means:

(a) for an aerodrome that is obliged to provide an ARFFS — the standards and requirements for an aerodrome of its category set out in:
   (i) section 9.2 of chapter 9 of Annex 14 to the Chicago Convention; and
   (ii) the Manual of Standards; or

(b) for an aerodrome that is not obliged to provide ARFFS — the standards and requirements for an aerodrome of its category set out in the Manual of Standards.

139.760 Inconsistency between Manual and chapter 9 of Annex 14

If a requirement of the Manual of Standards, as it applies to a particular aerodrome, is inconsistent with a requirement of chapter 9 of Annex 14 to the Chicago Convention, as it applies to that aerodrome, the requirement of the Manual prevails to the extent of the inconsistency.

139.765 Knowledge, equipment and expertise to deal with aviation hazards

An ARFFS provider must have the knowledge, equipment and expertise to deal with any hazard likely to arise during an aviation accident or incident, including any hazard mentioned in the Manual of Standards.

139.770 General obligation to maintain service

(1) An ARFFS provider must ensure that the service is available during the period or periods published in ERSA as the period or periods of its availability.
(2) Subregulation (1) does not prevent the level of protection provided during predictable periods of reduced activity at the aerodrome from being reduced, within the limit allowed by section 9.2.6 of Annex 14 to the Chicago Convention.

139.775 Notice about times service is available etc

(1) An ARFFS provider must ensure that notice is published in ERSA of the hours during which the service is available.

(2) If for some reason (such as an emergency on the aerodrome) it becomes temporarily impossible to provide an ARFFS to the standard required by this Subpart, the provider must tell the Australian NOTAM Office:
   (a) of the reduction in the service; and
   (b) how long it is likely to be before the full service is restored.

(3) The provider must tell CASA in writing of any proposed reduction in the standard of service that:
   (a) will last longer than 24 hours; or
   (b) reduces the standard of ARFFS provided at the airport concerned to a greater extent than is permissible under section 9.2.2 of Annex 14 to the Chicago Convention.

139.780 Agreements with other fire fighting bodies

(1) An ARFFS provider may make an arrangement:
   (a) for an aerodrome that is a joint user airport (within the meaning of the *Airports Act 1996*) — with the Defence Force for the provision of the ARFFS provider’s services to the Defence Force for the part of the aerodrome under the control of the Force; or
   (b) with a State or Territory, or another person or body, for the services of the provider for firefighting or rescue in the State or Territory beyond the airside of the aerodrome concerned.

(2) If a provider makes such an arrangement, the provider must ensure that it is recorded in writing.
139.785 Stock of fire extinguishing agents

(1) There must be, on the aerodrome, a stock of fire-extinguishing agents of the kind or kinds, and meeting the performance standards, required by the applicable standards and requirements.

(2) The fire-extinguishing agents must be held in at least the quantities required by those standards and requirements.

139.795 Extinguishing equipment and vehicles

(1) There must be, on the aerodrome, vehicles and equipment for delivering extinguishing agent onto a fire.

(2) There must be at least as many vehicles, and at least as much equipment, as required by the applicable standards and requirements.

(3) Each vehicle or piece of equipment:
   (a) must be capable of delivering extinguishing agent onto a fire at at least the rate required by the applicable standards and requirements; and
   (b) must have at least the performance (in other respects) required by those standards and requirements.

(4) The vehicles must carry ancillary equipment in accordance with the applicable standards and requirements.

(5) Each vehicle and piece of equipment must be in good working order.

(6) The vehicles must be of a colour permitted by the applicable standards and requirements.

(7) The provider must keep maintenance instructions for each vehicle and each piece of the equipment, including all the information necessary to permit an appropriately qualified and technically competent person to carry out maintenance, performance monitoring, defect reporting, fault reporting and record-keeping on or for the vehicle or equipment.
139.800 Other vehicles and equipment

(1) There must be, at the aerodrome, enough vehicles and equipment (other than vehicles and equipment for delivering extinguishing agent onto a fire) to provide the service, in accordance with the applicable standards and requirements.

(2) The performance of the vehicles and equipment must be in accordance with the applicable standards and requirements.

(3) The vehicles must carry ancillary equipment in accordance with the applicable standards and requirements.

(4) The provider must keep maintenance instructions for each piece of the provider’s equipment, including all the information necessary to permit a technically competent person to carry out maintenance, performance monitoring, defect reporting, fault reporting and record-keeping on or for the equipment.

139.805 Vehicles and equipment for firefighting and rescue in difficult environments

(1) If a significant proportion of aircraft movements at the aerodrome take place over water, swamp or another difficult environment, there must be appropriate vehicles, boats and equipment for firefighting and rescue in that environment within 1 000 metres of the threshold of each runway.

(2) The vehicles, boats and equipment must be in at least the numbers and quantity required by the applicable standards and requirements.

(3) The vehicles and boats must be of a colour required or permitted by the applicable standards and requirements.

139.810 Commissioning of certain equipment

An ARFFS provider must not begin to use a piece of operational equipment for the purpose of an ARFFS unless the equipment has been approved by CASA as conforming to specifications and any applicable standards, in accordance with the operator’s aerodrome manual, and any applicable standards or requirements in the Manual of Standards.
139.815 Protective clothing and equipment

At the aerodrome there must be, for the firefighters and rescue personnel:

(a) protective clothing that complies with:

(i) if there is a relevant Australian Standard (as in force immediately before this regulation commences) — that Standard; or

(ii) if there is no such Australian Standard — any relevant internationally recognised standard;

in at least the quantity required by the applicable standards and requirements; and

(b) other protective equipment in the quantity required by, and of a kind in accordance with, those standards and requirements.

139.820 Communications

(1) There must be, on the aerodrome, sufficient communications equipment available to provide communication during an ARFFS operation.

(2) The vehicles used for the service must carry suitable communications equipment.

(3) A person who is required to operate the equipment must hold a licence or certificate of a kind mentioned in paragraph 83 (1) (d) of CAR 1988 and appropriate to the equipment.

(4) The equipment must not interfere, when in use, with communications equipment used by the air traffic service at the aerodrome.

139.825 Test and maintenance equipment

(1) The provider must have the necessary equipment and tools, in accordance with the applicable standards and requirements, to test and maintain the equipment used to provide the service.

(2) If the applicable standards and requirements require particular test or maintenance equipment, particular kinds of test or maintenance equipment, or particular numbers or quantities of
a particular type of test or maintenance equipment, the provider must have that equipment or that number or quantity of that type of equipment.

139.830 Commissioning of new vehicles and equipment

The provider must not put a new vehicle, or a new item of equipment that affects the quality or rate of discharge of extinguishing agent, into service unless:

(a) the vehicle or equipment has been approved by CASA, for conformity to specification and the applicable standards and requirements, in accordance with the provider’s operations manual; and

(b) CASA has acknowledged that the vehicle or equipment meets the applicable standards and requirements; and

(c) any necessary personnel training has been completed.

139.835 Number of operating personnel

(1) During any period announced in ERSA as a period during which ARFFS is available at an aerodrome, there must be enough trained personnel available at the aerodrome to operate the equipment and vehicles required to provide the service at full capacity.

(2) Those personnel must be stationed at places that allow the ARFFS to respond to an emergency at least as quickly as required by the applicable standards and requirements.

139.840 Medical standard of firefighters

(1) The people employed as firefighters must meet the medical standard for firefighters set out in the Manual of Standards.

(2) There must be a system of continuing medical checks for the people employed as firefighters that ensures that the ARFFS provider knows whether or not those people continue to meet that standard.
139.845 Qualifications and training of firefighters

(1) The people employed as firefighters must already be trained to at least AFC Certificate 2 standard, or, if for a particular position the Manual of Standards specifies a higher standard, that higher standard.

(2) Before being used in any operational capacity, those people must also receive, or have received, appropriate training in dealing with hazards specific to aviation accidents and incidents, to the extent that such training is not part of the training required for an AFC Certificate 2.

(3) The people employed as firefighters must receive appropriate training to familiarise them with local conditions.

(4) There must be ongoing training for the people employed as firefighters to ensure that they continue to meet that standard.

(5) If a significant proportion of aircraft movements at the aerodrome take place over water, swamp or another difficult environment, the firefighters must be appropriately trained to carry out their functions in that environment.

139.850 Operations manual

(1) There must be an operations manual for the service that complies with the standards set out in the Manual of Standards.

(2) The operations manual must include a chart showing the organisations that provide services to the provider, setting out the roles and responsibilities of those organisations and how those roles and responsibilities affect the Aerodrome Emergency Procedures for the aerodrome concerned.

(3) The operations manual must be kept up to date.

(4) Each of the provider’s employees must have ready access to an up-to-date copy of the operations manual.

(5) The provider must give CASA a copy of the operations manual, and of any changes to it.

(6) There must be an up-to-date copy of the operations manual at each operational station.
(7) The provider must comply with the requirements of the operations manual.

139.855 Amendment of operations manual

(1) An ARFFS provider may amend its operations manual, but an amendment is of no effect until approved in writing by CASA.

(2) CASA may direct an ARFFS provider to amend its operations manual in a way specified in the direction.

(3) The provider must comply with the direction.

139.860 Voice data recording

There must be a system to record electronically, in accordance with the standards or requirements set out in the Manual of Standards, any voice communication by radio or telephone in the course of an ARFFS operation.

139.865 Record of accidents or incidents

There must be a system, in accordance with the standards or requirements set out in the Manual of Standards, to record the details of any aircraft accident or incident, or building fire, in relation to which the service is required to take any action.

139.870 Contingency plan

(1) There must be a plan, in accordance with the standards or requirements set out in the Manual of Standards, of the procedures to be used in the event of an emergency that results, or may result, in the service being interrupted.

(2) The plan must include at least the following:
   (a) actions to be taken by firefighters and rescue personnel;
   (b) possible alternative arrangements for providing the service (including arrangements for procuring any necessary replacement vehicles or spare parts, or supplies of extinguishing materials);
   (c) notification procedures;
   (d) procedures for re-establishing normal services.
139.875 **Records management**

(1) There must be a system, in accordance with the standards or requirements set out in the Manual of Standards, to collect, index, store and maintain the records relating to the service.

(2) The records must include:
   
   (a) voice records made under regulation 139.860; and
   
   (b) records of accidents or incidents made under regulation 139.865.

(3) A record must be kept for 5 years (or a shorter period specified for the particular kind of record in the Manual) after the date to which it relates.

139.880 **Organisation**

The provider must, at all times, maintain an appropriate organisation with a sound and effective management structure, having regard to the nature of the service it provides.

139.885 **System for rectification of service failures**

There must be a system, in accordance with the standards or requirements in the Manual of Standards, to rectify any failure that results or may result in an interruption in the service or a reduction in the standard of the service.

139.890 **Quality control**

There must be a system, in accordance with the standards or requirements set out in the Manual of Standards, to ensure that the service complies with the requirements of this Subpart.

139.895 **Change management**

There must be a system, in accordance with the Manual of Standards, to manage changes in:

(a) equipment and procedures; and

(b) what the service does; and
(c) the level or kinds of service provided; and
(d) the way the service is provided.

139.900 Safety management

There must be a safety management system for the service, in accordance with the standards or requirements in the Manual of Standards, including the policies, procedures and practices necessary to provide the service safely.

139.905 Applicant’s organisation

(1) The provider must tell CASA in writing:
   (a) who its managers are; and
   (b) its organisational structure; and
   (c) how many staff of each class it uses to provide the service.

(2) The provider must tell CASA in writing about any change in a matter mentioned in paragraph (1) (a), (b) or (c) within 14 days after the change.

139.910 Telling users and CASA about changes

(1) There must be a procedure, in accordance with the standards and requirements in the Manual of Standards, for an ARFFS provider to give, to aerodrome users, safety-related information about changes, faults or interruptions to the service.

(2) The procedure must comply with CASA’s requirements for reporting information to the Aeronautical Information and Data Service and the Australian NOTAM Office.

(3) If the provider fails, for a period of 24 hours or longer, to provide the service at the standard required by Division 2, the ARFFS provider for the aerodrome must tell CASA in writing as soon as practicable:
   (a) why the service is not being provided at that standard; and
   (b) how long it is likely to be before the service can be resumed; and
   (c) what action the service provider has taken and will take to resume the service at that standard.
Division 4 Conduct of ARFFS operations

139.915 Powers of officer in charge or firefighter

(1) In this regulation:

firefighter, in relation to an ARFFS operation at an aerodrome, means:
(a) somebody employed as a firefighter by the ARFFS provider for the aerodrome; or
(b) a member of a fire brigade, or of a rescue or fire fighting service, who is taking part in the operation in accordance with an arrangement made with such a brigade or service.

officer in charge, in relation to an ARFFS operation at an aerodrome, means:
(a) the person designated under regulation 139.745 as officer in charge of ARFFS operations at the aerodrome; or
(b) if, in accordance with an arrangement made with a fire brigade, or a rescue or fire fighting service, the person in control of the operation is a member of such a brigade or service — that person.

volunteer, in relation to an ARFFS operation, means somebody who has volunteered to help in the operation under the direction of the officer in charge.

(2) For an ARFFS operation at an aerodrome under this Subpart, the officer in charge may:
(a) give directions that he or she thinks proper to firefighters and volunteers under his or her control; and
(b) take measures that he or she thinks proper.

(3) Without limiting paragraph (2) (b), the officer in charge may do the following things for the purpose of the ARFFS operation:
(a) enter (by force, if necessary), take possession of and deal with in any appropriate way, premises, an aircraft or other property;
(b) close a road or other thoroughfare to traffic;
(c) use a convenient water supply (including shutting off water supply from a main or pipe to obtain greater pressure or supply);
(d) disconnect electricity supply to premises;
(e) remove flammable, explosive or other dangerous material from premises, an aircraft or other property;
(f) order a person to leave premises, an aircraft or other property;
(g) remove from the vicinity of the operation a person or thing the presence of whom or which is interfering, or is likely to interfere, significantly with the operation;
(h) take a fire engine or other fire appliance onto land or premises;
(i) shore up or destroy a wall or building that is insecure or may be dangerous to persons or property;
(j) direct or authorise a firefighter or a volunteer to do something that, under this regulation, the officer may do.

(4) For an ARFFS operation, a firefighter may do something mentioned in paragraph (3) (a), (b), (c), (d), (e), (f) or (h) without authorisation under paragraph (3) (j) if there are reasonable grounds for believing that, for the operation:
(a) it is necessary or desirable to do the thing; and
(b) it is not practicable for him or her to get authorisation to do so.

(5) A person is guilty of an offence punishable by a fine of 10 penalty units if he or she fails to comply with:
(a) a direction of the officer in charge under paragraph (3) (f); or
(b) a direction of the kind mentioned in that paragraph, given by a firefighter or volunteer, if:
   (i) the firefighter or volunteer has been authorised under paragraph (3) (j) by the officer in charge to give it; or
   (ii) the conditions in paragraphs (4) (a) and (b) are satisfied in relation to the direction.
Division 5  Administration

139.920 Definition for Division

In this Division:

*show cause notice* means a notice under regulation 139.1015.

139.925 How to apply for approval as ARFFS provider

(1) A person must apply for approval as an ARFFS provider in the way set out in this regulation.

(2) The application must be in writing.

(3) The application:

(a) must set out the applicant’s name and address; and

(b) if the applicant is a legal person that is not an individual — must set out the applicant’s registered address, ACN and the names and addresses of its officers; and

(c) must include any other information required by or under these Regulations; and

(d) must be accompanied by any other document required by or under these Regulations.

(4) In paragraph (3) (b):

*officers* of an applicant:

(a) if the applicant concerned is incorporated under the Corporations Law — has the meaning given by section 82A of that Law; and

(b) in the case of any other applicant — means the people responsible for its management and control, and includes anybody with whose directions or wishes the applicant ordinarily complies.

(5) The applicant must include with the application:

(a) a copy of the applicant’s operations manual, prepared as if the applicant were an approved provider; and

(b) information that will enable CASA to decide whether or not the applicant is of sound financial standing; and
(c) a statement of the intended location and category of the service to be provided.

139.930 Who to apply to
An application must be made to CASA.

139.935 Application for approval when approval cancelled previously
If a person who applies for an approval as an ARFFS provider has previously been approved as an ARFFS provider, and that approval was cancelled for a reason mentioned in regulation 139.1020, the applicant must include with the application any available evidence tending to show that the applicant could now properly exercise the powers or carry out the functions of an approved ARFFS provider.

139.940 Other things CASA can ask applicant to do — interview
(1) CASA may ask an applicant in writing to have a specified officer or officers of the applicant come to a specified CASA office at a specified reasonable time to be interviewed.

(2) If CASA asks an applicant to have an officer come for interview under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant’s officer or officers participates or participate in the interview.

(3) In subregulations (1) and (2), officer of an applicant has the same meaning as in regulation 139.925.

139.945 Other things CASA can ask applicant to do — provide more information
(1) If CASA reasonably needs more information or another document to allow it to consider an application, CASA may ask the applicant in writing to give it information, or a copy of a document, specified in the request.
(2) If CASA asks for more information, or a copy of a document, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the information or copy.

139.950 Statutory declarations to verify applications

(1) CASA may ask an applicant to verify, by statutory declaration, any statement in an application.

(2) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

139.955 Matters that CASA may or must take into account

(1) In making a decision on an application, CASA may take into account:
   (a) anything in the application or in any other document submitted by the applicant; and
   (b) anything in its records about the applicant; and
   (c) the contents of any statutory declaration made by the applicant or an officer of the applicant under regulation 139.950.

(2) However, before taking into account anything in its records about an applicant, CASA must:
   (a) tell the applicant in writing that it intends to do so, and the substance of what CASA intends to take into account; and
   (b) invite the applicant in writing to make a written submission about the matter within a specified reasonable time.

(3) If the applicant makes a written submission within the specified time, CASA must take the submission into account.

(4) CASA must take into account the applicant’s financial standing.
(5) When deciding whether to approve an applicant that was previously approved as an ARFFS provider, but whose approval was cancelled, CASA must take into account:
(a) the fact of the cancellation; and 
(b) the reasons for the cancellation; and 
(c) any evidence of the kind mentioned in regulation 139.935 that the person submits.

139.960 Statutory declarations to verify statements in submissions

(1) CASA may ask an applicant to verify any statement in a submission under subregulation 139.955 (3) by statutory declaration. 

(2) CASA must, in making a decision on the application concerned, take such a submission into account. 

(3) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

139.965 When CASA must grant approval

(1) If a person has applied for approval as an ARFFS provider in accordance with these Regulations, CASA must grant the approval if:
(a) the person satisfies the criteria (however described) for the grant of the approval; and 
(b) other requirements for the grant of the approval by or under these Regulations by or in relation to the person are satisfied; and 
(c) no provision of the Act, or another provision of these Regulations, forbids CASA to grant the approval, or makes the person ineligible for the grant of the approval; and 
(d) granting the approval would not be likely to have an adverse effect on the safety of air navigation.
(2) CASA may grant the approval in respect of only some of the matters sought in the application.

(3) CASA may approve an application only if CASA approves the applicant’s draft operations manual.

(4) CASA must not approve the draft operations manual unless the draft manual complies with the relevant requirements in the Manual of Standards.

(5) CASA may grant the approval subject to:
   (a) any conditions specified in these Regulations, or in Civil Aviation Orders, as applicable to the approval; and
   (b) any other condition necessary in the interests of the safety of air navigation.

139.970 When decision must be made

(1) If CASA does not make a decision about an application within 21 days after receiving it, CASA is taken to have refused the application.

(2) However, if CASA makes a request under regulation 139.940 or 139.945, the time between when CASA makes the request, and when the applicant’s officer or officers participates or participate in the interview, or gives CASA the information or copy requested, does not count towards the period.

(3) Also, if CASA asks an applicant to make a statutory declaration under regulation 139.950 or 139.960, the time between when CASA asks the applicant to do so and when the applicant gives CASA the statutory declaration does not count towards the period.

(4) Also, if CASA invites an applicant to comment under subregulation 139.955 (2), the time between when CASA gives the invitation and when the applicant comments does not count towards the period.
139.975 Notice of decision

After making a decision on an application, CASA must tell the applicant in writing, as soon as practicable:
(a) the decision; and
(b) if the decision was to refuse the application, or to grant the approval subject to a condition not sought by the applicant — the reasons for the decision.

139.980 When approval comes into effect

An approval comes into effect:
(a) on a day stated in the notice under regulation 139.975; or
(b) if no day is so stated — on the date of the notice.

139.985 Certificate about approval

(1) CASA must issue to an approved ARFFS provider a certificate setting out:
(a) the name and address of the provider; and
(b) if the approved provider is a corporation, its registered address and ACN; and
(c) the date of effect of the approval; and
(d) the location and category level for each aerodrome at which the provider is authorised to provide an ARFFS; and
(e) any conditions of the approval.

(2) CASA may issue a replacement certificate if anything set out on a certificate is no longer correct.

139.990 Return of certificate if approval cancelled

(1) If CASA cancels the approval of an approved ARFFS provider, the person who was the approved ARFFS provider must return the person’s certificate to CASA immediately.

Penalty: 1 penalty unit.

Note  A person is not guilty of an offence of failing to do something that he or she is not capable of doing: see section 4.2 of the Criminal Code.
(2) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) It is a defence to a charge of contravening subregulation (1) that the defendant returned the certificate to CASA as soon as practicable.

*Note* A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3).

139.995 Application for variation of approval

(1) An approved ARFFS provider may apply to vary its approval.

(2) Regulations 139.925 to 139.980 apply to the application except that the applicant need not give CASA information, or a document, that the applicant has already given to CASA.

139.1000 CASA’s power to vary condition of approval

(1) If necessary in the interests of the safety of air navigation, CASA may impose a condition on, or vary a condition of, the approval of an approved ARFFS provider.

(2) CASA must give the provider notice in writing of the imposition or variation, and must specify a reasonable period within which the provider may make a submission in relation to the imposition or variation.

(3) Unless CASA withdraws the condition or variation, the condition or variation has effect at:
   (a) the end of that period; or
   (b) a later time stated for the purpose in the notice.
139.1005 Suspension or continued suspension of approval by show cause notice

(1) CASA may state, in a show cause notice, that the approval as an approved ARFFS provider of the ARFFS provider concerned is suspended if CASA reasonably considers that not suspending the approval would be likely to have an adverse effect on the safety of air navigation.

Note Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.

(2) If a show cause notice states that the approval is suspended:
   (a) if the approval is already suspended when the show cause notice is given to the holder — the approval continues to be suspended until CASA revokes the suspension, or the suspension lapses under subregulation (4); or
   (b) the approval is suspended from when the notice is given to the approved ARFFS provider concerned.

(3) CASA may revoke the suspension at any time.

(4) If CASA has not cancelled the approval within 90 days after the day the show cause notice is given to the provider, the suspension lapses at the end of that period.

139.1010 Grounds for cancellation of approval

It is grounds for the cancellation of the approval of an approved ARFFS provider if the provider:
   (a) has breached a condition of the approval; or
   (b) has contravened the Act or these Regulations; or
   (c) has otherwise been guilty of conduct that renders the holder’s continued holding of the approval likely to have an adverse effect on the safety of air navigation.

Note Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.
139.1015 Notice to approved ARFFS provider to show cause

(1) CASA may give an approved ARFFS provider a show cause notice if there are reasonable grounds for believing that there are facts or circumstances that amount to grounds for the cancellation of the approval.

(2) A show cause notice must:
   (a) tell the provider of the facts and circumstances that justify the cancellation of the approval; and
   (b) invite the holder to show in writing, within a reasonable period stated in the notice, why the approval should not be cancelled.

(3) For paragraph (2) (b), the period must not be less than 7 days.

139.1020 Cancellation of approval after show cause notice

(1) CASA may cancel an approval only if:
   (a) there exist facts or circumstances that amount to grounds for the cancellation of the approval; and
   (b) CASA has given the holder a show cause notice in relation to the grounds for the proposed cancellation; and
   (c) CASA has taken into account any written representations made, within the period stated in the notice, by or on behalf of the holder; and
   (d) not cancelling the approval would be likely to have an adverse effect on the safety of air navigation.

(2) If CASA has given a show cause notice to an approved ARFFS provider, and it decides not to cancel the approval, it:
   (a) must tell the provider in writing of the decision; and
   (b) must, if the approval is suspended, revoke the suspension.

139.1025 Cancellation at request of approved ARFFS provider

(1) CASA must cancel the approval of an ARFFS provider if asked to do so in writing by the provider.
(2) The cancellation takes effect when the request is given to CASA, or if a later day is stated in the request, on the later day.

[3] Part 143

substitute

Part 143 Air Traffic Services Training Providers

Subpart A General

143.000 Make-up of this Part

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#### 143.005 Applicability of this Part

This Part:

(a) applies to a person that wants to become, or is, an ATS training provider; and

(b) sets out certain administrative rules applying to CASA in its administration of this Part.

#### 143.010 Definitions for this Part

In this Part:

**Australian National Training Authority** means the Australian National Training Authority established by the *Australian National Training Authority Act 1992*.


**Australian Recognition Framework** means the framework set out in a document called ‘Australian Recognition Framework Arrangements’ published by the Australian National Training Authority in January 1999.


**Manual of Standards – Part 143** means the document called ‘Manual of Standards (MOS) – Part 143’ published by CASA, as in force from time to time.
registered training provider means a training provider that is registered, in accordance with the Australian Recognition Framework, as a provider of particular vocational education and training by a training recognition authority of a State or Territory.

training provider means a person who, or entity that, provides vocational education and training.

training recognition authority, in relation to a State or Territory, means a body that has, under a law of the State or Territory, the responsibility for registering training providers in that State or Territory.

143.015 What is an ATS training provider

An ATS training provider is a person approved, under Subpart F, to provide the training relating to air traffic services that is covered by the approval.

Subpart B Approval as an ATS training provider

143.020 What an application must be accompanied by

An application for approval as an ATS training provider must be accompanied by:

(a) a written statement setting out details of the training relating to air traffic services that the applicant proposes to provide; and

(b) a written statement setting out details of the relevant qualifications and experience of the applicant and applicant’s personnel, including the number of suitably qualified personnel who will be involved in providing the training; and

(c) enough information to show that the applicant is a registered training provider whose registration:
   (i) is in force; and
   (ii) is for training delivery covering the training; and
(d) a written statement describing the arrangements the applicant has made to comply with the requirements of Subparts C and D.

143.025 When applicant is eligible for approval
For Subpart F, an applicant is eligible to become an ATS training provider for particular training relating to air traffic services if the applicant:
(a) is a registered training provider whose registration:
   (i) is in force; and
   (ii) is for training delivery covering that training; and
(b) is able to comply with the requirements of Subparts C and D or will be able to do so if the applicant is approved.

143.030 Approval subject to conditions
If an ATS training provider’s approval is subject to conditions, the provider must comply with the conditions.

143.035 Approval not transferable
An approval is not transferable.

143.040 Certificate under Subpart F
A certificate issued under Subpart F to an ATS training provider must, as well as including the information required by that Subpart:
(a) state the provider’s name and address of its principal place of business; and
(b) specify the training relating to air traffic services that is covered by the approval.

143.045 How long approval remains in force
(1) An ATS training provider’s approval:
   (a) comes into force on the date stated in the certificate issued to the provider under Subpart F; and
   (b) remains in force until it is cancelled.
(2) However, the approval is not in force during any period of suspension.

143.050 Variation of approvals

(1) If an ATS training provider wants to vary its approval, it must apply to CASA, under Subpart F, for that purpose.

(2) The application must contain, or have with it, a copy of the proposed variation.

(3) If CASA grants the application under Subpart F, the variation takes effect:
   (a) if a day is set out in the written notice given to the provider under Subpart F — on that day; or
   (b) if no day is set out — when the notice is given to the provider.

Subpart C Requirements to be complied with by ATS training providers

Division 1 Requirements for training

143.055 Standard for training

An ATS training provider must ensure that the training relating to air traffic services that it provides:
   (a) is of at least the standard required by the Manual of Standards – Part 65; and
   (b) complies with the Australian Qualifications Framework.

143.060 Training plan

An ATS training provider must have, and put into effect, a training plan for the training relating to air traffic services covered by its approval that is in accordance with the standards and requirements set out in the Manual of Standards – Part 65.
Division 2 Personnel

143.065 Personnel
An ATS training provider must have, at all times, enough suitably qualified personnel to enable it to provide, in accordance with both the Australian Recognition Framework and the standards and requirements set out in the Manual of Standards – Part 65, the training relating to air traffic services that is covered by its approval.

143.070 Qualifications for certain personnel
An ATS training provider must not give to a person responsibility as an instructor or assessor for any training relating to air traffic services that it provides unless the person:
(a) has suitable qualifications and experience in accordance with the Australian Recognition Framework; and
(b) satisfies the requirements of the Manual of Standards – Part 65 for persons having that responsibility.

Division 3 Reference materials, documents and records

143.075 Reference materials
(1) An ATS training provider must maintain a set of the reference materials mentioned in regulation 143.080 for use by members of its personnel who have responsibilities as instructors or assessors for any training relating to air traffic services that it provides.

(2) The provider must maintain another set of the reference materials for use by anyone undertaking training relating to air traffic services that it provides.

(3) The provider must keep the reference materials up to date and in a readily accessible form.

(4) The instructors and assessors and anyone undertaking training must have ready access to the reference materials.
143.080 Material to be included in reference materials

For regulation 143.075, the reference materials to be maintained by the provider must include the following:

(a) copies of the Act and these Regulations;
(b) copies of Annexes 1, 6, 11 and 12 to the Chicago Convention;
(c) a copy of the AIP;
(d) copies of the Manual of Standards – Part 65 and the Manual of Standards – Part 143;

143.085 Documents and records

(1) The provider must keep documents and records of the kinds specified in the Manual of Standards – Part 143.

(2) A document or record must be retained for as long as the Manual specifies for the particular kind of document or record.

(3) The provider must, at CASA’s request, make the documents and records, or copies of them or extracts from them, available for inspection by CASA.

143.090 Document and record control system

(1) The provider must establish, and put into effect, a system, in accordance with the standards set out in the Manual of Standards – Part 143, for controlling the documents and records required to be kept under regulation 143.085.

(2) The system must include the policies and procedures for making, amending and preserving those documents and records.
Subpart D  Telling CASA about changes

143.095 Advice on organisational changes

The provider must tell CASA, in writing, of a change of circumstances that materially affects its capacity to provide any training relating to air traffic services that is covered by its approval within 7 days after the change occurs.

143.100 Discontinuing training

(1) The provider must not discontinue any training relating to air traffic services that is covered by its approval, unless it has given CASA at least 28 days written notice that the training is to be discontinued.

(2) Subregulation (1) does not apply if, having regard to the provider’s circumstances:
    (a) it was not reasonably practicable for the provider to give to CASA at least 28 days notice; and
    (b) the provider gives the notice as soon as reasonably practicable before, on or after the day when the service is discontinued.

143.105 Status as a registered training provider

If an ATS training provider, for any reason at any time after its approval as an ATS training provider, loses its status as a registered training provider, it must, within 7 days, tell CASA in writing accordingly.

Subpart E  Miscellaneous

143.110 Unapproved training

An ATS training provider must not provide any training relating to air traffic services unless:
    (a) its approval:
        (i) is in force; and
        (ii) covers that training; and
(b) it is a registered training provider whose registration:
   (i) is in force; and
   (ii) is for training delivery covering that training.

Subpart F Administration

Note This Subpart is an interim measure while a separate Part dealing with administration rules is being developed.

Division 1 Preliminary

143.115 Applicability of this Subpart

This Subpart:
   (a) sets out certain administrative rules applying to CASA in its administration of this Part; and
   (b) includes certain generic provisions applying to anyone who wants to become, or is, an ATS training provider.

Division 2 Approvals

143.120 Joint applications not permitted

(1) An application purportedly made by 2 or more persons jointly is not a valid application for any purpose.

(2) An application purportedly made by a partnership is not a valid application for any purpose.

143.125 How to apply — application by individual applicant

(1) An individual must apply for approval as an ATS training provider in the way set out in this regulation.

(2) The application must be in writing.

(3) The application:
   (a) must include any information required by or under these Regulations; and
   (b) must be accompanied by any document required by or under these Regulations.
143.130 How to apply — application by corporation etc

(1) A legal person other than an individual must apply for approval as an ATS training provider in the way set out in this regulation.

(2) The application must be in writing.

(3) The application:
   (a) must set out the applicant’s registered address and ACN; and
   (b) must give the names and addresses of its officers; and
   (c) must include any other information required by or under these Regulations; and
   (d) must be accompanied by any document required by or under these Regulations.

(4) In paragraph (3) (b):
   *officers* of an applicant:
   (a) if the applicant concerned is incorporated under the Corporations Law — has the meaning given by section 82A of that Law; and
   (b) in the case of any other applicant — means the people responsible for its management and control, and includes anybody with whose directions or wishes the applicant ordinarily complies.

143.135 Who to apply to

An application must be made to CASA.

143.140 Application for approval cancelled previously

If an applicant for approval as an ATS training provider has previously been approved as an ATS training provider, and the approval was cancelled for a reason mentioned in regulation 143.225, the applicant must include with the application any available evidence tending to show that the applicant could now properly provide the training relating to air traffic services that it proposes to provide.
143.145 CASA may require demonstrations of procedures or equipment

(1) CASA may ask an applicant, in writing, to conduct demonstrations of its procedures or equipment to assess whether the applicant can properly provide the training relating to air traffic services that it proposes to provide.

(2) The request must describe the demonstrations that the applicant is required to conduct.

(3) The demonstrations must be conducted under the observations of an officer authorised by CASA in writing for that purpose.

(4) If CASA asks an applicant to conduct a demonstration under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant conducts the demonstration.

143.150 Other things CASA can ask individual applicant to do — interview

(1) CASA may ask an individual who is an applicant, in writing, to come to a specified reasonable place at a specified reasonable time to be interviewed.

(2) If CASA asks an applicant to come for interview, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant participates in the interview.

143.155 Other things CASA can ask applicant to do — provide more information

(1) If CASA reasonably needs more information or another document to allow it to consider an application, CASA may ask the applicant in writing to give it information, or a copy of a document, specified in the request.

(2) If CASA asks for more information, or a copy of a document, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the information or copy.
143.160 Statutory declarations to verify applications

(1) CASA may ask an applicant, in writing, to verify, by statutory declaration, any statement in an application.

(2) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

143.165 Matters that CASA may or must take into account

(1) In making a decision on an application, CASA may take into account:
   (a) anything in the application or in any other document submitted by the applicant; and
   (b) anything in its records about the applicant; and
   (c) the contents of any statutory declaration made by the applicant, or an officer of the applicant, under regulation 143.160; and
   (d) any demonstration of procedures or equipment conducted by the applicant under regulation 143.145.

(2) However, before taking into account anything in its records about an applicant, CASA must:
   (a) tell the applicant, in writing, that it intends to do so, and the substance of what CASA intends to take into account; and
   (b) invite the applicant, in writing, to make a written submission about the matter within a specified reasonable time.

(3) If the applicant makes a written submission within the specified time, CASA must take the submission into account.

(4) When deciding whether to approve an applicant previously approved as an ATS training provider and whose approval was cancelled under regulation 143.235, CASA must take into account:
   (a) the fact of the cancellation; and
   (b) the reasons for the cancellation; and
(c) any evidence of the kind mentioned in regulation 143.140 that the applicant submits.

143.170 Statutory declarations to verify statements in submissions

(1) CASA may ask an applicant, in writing, to verify any statement in a submission under subregulation 143.165 (3) by statutory declaration.

(2) CASA must, in making a decision on the application concerned, take such a submission into account.

(3) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

143.175 When CASA must approve an applicant

(1) Subject to section 30A of the Act, if an applicant has applied for approval as an ATS training provider in accordance with this Part, CASA must approve the applicant if:
   (a) the applicant is eligible to be approved; and
   (b) any other requirements for the approval by or under these Regulations by or in relation to the applicant are satisfied; and
   (c) no provision of these Regulations forbids CASA to approve the applicant, or makes the applicant ineligible for the approval; and
   (d) approving the applicant would not be likely to have an adverse effect on the safety of air navigation.

(2) CASA may approve the applicant subject to any condition necessary in the interests of the safety of air navigation.

143.180 When decision must be made

(1) If CASA does not make a decision about an application within the period mentioned in subregulation (2) after receiving it, CASA is taken to have refused the application.
(2) The period is 6 months.

(3) However, if CASA makes a request under regulation 143.145, 143.150 or 143.155, the time between when CASA makes the request, and when the applicant conducts the demonstration, comes in for interview, or gives CASA the information or copy requested, does not count towards the period.

(4) Also, if CASA asks an applicant to make a statutory declaration under regulation 143.160 or 143.170, the time between when CASA asks the applicant to do so and when the applicant gives CASA the statutory declaration does not count towards the period.

(5) Also, if CASA invites an applicant to comment under subregulation 143.165 (2), the time between when CASA gives the invitation and when the applicant comments does not count towards the period.

143.185 Notice of decision

After making a decision on an application, CASA must tell the applicant in writing, as soon as practicable:
(a) the decision; and
(b) if the decision was to refuse the application, or to approve the applicant subject to a condition not sought by the applicant — the reasons for the decision.

143.190 Certificate about approval

(1) If CASA approves an applicant as an ATS training provider, CASA must issue to the applicant a certificate setting out:
(a) what the approval is; and
(b) any conditions applicable to it; and
(c) when it came into effect, and when it will end (if not sooner cancelled); and
(d) any other information CASA thinks should be included.

(2) CASA may issue a replacement certificate if anything set out on a certificate is no longer correct.
143.195 Return of certificate if approval cancelled
(1) If CASA has issued a certificate about an approval, and the approval is cancelled, the person to whom the certificate was issued must return it to CASA immediately.
Penalty: 1 penalty unit.
Note A person is not guilty of an offence of failing to do something that he or she is not capable of doing: see section 4.2 of the Criminal Code.
(2) An offence against subregulation (1) is an offence of strict liability.
Note For strict liability, see section 6.1 of the Criminal Code.
(3) It is a defence to a charge of contravening subregulation (1) that the defendant returned the certificate to CASA as soon as practicable.
Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3).

Division 3 Variation of approvals

143.200 Applicability of this Division
This Division applies in relation to variation of an approval (including imposing, removing or varying a condition applicable to the approval).

143.205 Application for variation
(1) An ATS training provider may apply to CASA to vary its approval.
(2) Division 2 applies to the application except that the provider need not give CASA information, or a document, that the provider has already given to CASA.

143.210 CASA’s power to vary condition of approval
(1) If necessary in the interests of the safety of air navigation, CASA may impose a condition on, or vary a condition of, an ATS training provider’s approval.
(2) CASA must give the provider written notice of the imposition or variation, and must specify a reasonable period within which the provider may make a submission in relation to the imposition or variation.

(3) Unless CASA withdraws the condition or variation, the condition or variation has effect at:
   (a) the end of that period; or
   (b) a later time stated for the purpose in the notice.

### Division 4  
Suspension and cancellation of approvals

#### 143.215 Definition for this Division

In this Division:

*show cause notice* means a notice under regulation 143.230.

#### 143.220 Suspension of approval by show cause notice

(1) CASA may state, in a show cause notice, that an ATS training provider’s approval is suspended if CASA reasonably considers that not suspending the approval would be likely to have an adverse effect on the safety of air navigation.

   *Note* Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.

(2) If a show cause notice states that the approval is suspended, the approval is suspended from when the notice is given to the provider.

(3) CASA may revoke the suspension at any time.

(4) If CASA has not cancelled the approval under regulation 143.235, within 90 days after the day the show cause notice is given to the provider, the suspension lapses at the end of that period.
143.225 **Grounds for cancellation of approval**

It is grounds for the cancellation of an ATS training provider’s approval if the provider:

(a) has breached a condition of the approval; or

(b) has contravened the Act or these Regulations; or

(c) does not meet, or continue to meet, a requirement of this Part for getting the approval; or

(d) has otherwise been guilty of conduct that renders the provider’s continued holding of the approval likely to have an adverse effect on the safety of air navigation.

*Note* Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.

143.230 **Notice to show cause**

(1) CASA may give an ATS training provider a show cause notice if there are reasonable grounds for believing that there are facts or circumstances that amount to grounds for the cancellation of the provider’s approval.

(2) A show cause notice must:

(a) tell the provider of the facts and circumstances that justify the cancellation of the approval; and

(b) invite the provider to show in writing, within a reasonable period stated in the notice, why the approval should not be cancelled.

(3) For paragraph (2) (b), the period must not be less than 7 days.

143.235 **Cancellation of approval after show cause notice**

(1) CASA may cancel an ATS training provider’s approval only if:

(a) there exist facts or circumstances that amount to grounds for the cancellation of the approval; and

(b) CASA has given the provider a show cause notice in relation to the grounds for the proposed cancellation; and

(c) CASA has taken into account any written representations made, within the period stated in the notice, by or on behalf of the provider; and
(d) not cancelling the approval would be likely to have an adverse effect on the safety of air navigation.

(2) If CASA has given a show cause notice to an ATS training provider, and it decides not to cancel the provider’s approval, it:
   (a) must tell the provider, in writing, of the decision; and
   (b) must, if the approval is suspended, revoke the suspension.

143.240 Cancellation at request of ATS training provider

(1) Despite anything else in this Part, CASA must cancel an ATS training provider’s approval if asked to do so, in writing, by the provider.

(2) The cancellation takes effect when the request is given to CASA, or if a later day is stated in the request, on the later day.

[4] Part 171

Substitute

Part 171  Aeronautical
telecommunication service
and radionavigation service
providers

Subpart A  General

171.000 Make-up of this Part

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171.240 Cancellation at request of service provider
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171.250 Certificate
171.255 Return of certificate if approval ceases

171.005 Applicability of this Part

This Part sets out:
(a) the requirements for a person to be approved as a provider of a ground-based aeronautical telecommunication or radionavigation service; and
(b) the requirements for the operation and maintenance of those services; and
(c) certain administrative rules relating to CASA in its administration of this Part.

171.010 Interpretation

(1) In this Part:

**accuracy**, in relation to a radionavigation service or facility, means the degree to which the value measured or displayed by the service or facility conforms to the true value.

**aerodrome operator agreement** means an agreement:
(a) that is made between a service provider and an aerodrome operator; and
(b) under which the service provider provides a radionavigation service, a telecommunication service or both at or near the aerodrome.
**AIS** has the meaning given in Annex 15 to the Chicago Convention.

**AIS agreement** means an agreement:
(a) that is made between a service provider and AIS; and
(b) under which the service provider gives information to AIS.

**approval** means an approval, given by CASA, to provide a telecommunication or radionavigation service.

**ATS provider agreement** means an agreement to provide a telecommunication or radionavigation service that is essential to an ATS provider’s operation.

**availability**, for a telecommunication service, radionavigation service or support service, means the percentage of its operating hours that the service is not interrupted.

**configuration**, in relation to:
(a) a telecommunication or radionavigation service — means the configuration of each facility and any interconnection between facilities that make up the service; and
(b) a facility — means the configuration of equipment, hardware, software and data, and the interconnections between equipment.

**coverage**, in relation to a telecommunication or radionavigation service, means the volume of airspace in which, or the locations between which, the service is nominally provided.

**Examples**
1. The volume of airspace in which an aeronautical broadcasting service can be received and used.
2. The places served by an aeronautical fixed line telecommunication service.

**functional specification**, for a telecommunication service, a radionavigation service or a support service, is a general description of the service, its operating principles and its functions.

**Example**
The functional specification of an aeronautical radionavigation service may describe the kind of service, each standard to which it operates, the accuracy of its signal and the aircraft for which the service is provided.
**hazard** means a source of potential harm to aviation safety.

**integrity**, of a telecommunication service, a radionavigation service or a support service:
(a) means the likelihood that the information supplied by the service at a particular moment is correct; and
(b) includes the ability of the service to warn users promptly when the service should not be used.

**key personnel**, in relation to a service provider, means the person or persons who manage 1 or more of the following:
(a) operations;
(b) maintenance;
(c) safety.

**Manual of Standards** means the document called ‘Manual of Standards (MOS) – Part 172’ published by CASA, as in force from time to time.

**operating hours**, for a telecommunication or radionavigation service, means the times during which the service provider must, under its approval, operate the service.

**operations manual** means a manual of the kind described in Subpart D, prepared by a service provider or a person applying for approval.

**radionavigation service** means an aeronautical radio navigation service within the meaning given in Volume II of Annex 10 to the Chicago Convention.

**recovery time** means the period during which a service is interrupted.

**reliability**, of a telecommunication service, a radionavigation service or a support service, means the probability that the service will perform its function or functions without failure for a specified period.

**risk** means risk to aviation safety.

**safety** means aviation safety.

**service provider** means a person approved to operate and maintain a telecommunication or radionavigation service, and whose approval is not suspended or revoked.
support service means a service, provided to a service provider, that:
(a) is necessary for the functioning of a telecommunication or radionavigation service; and
(b) consists of information that is in electronic form and the carrier that carries that information.

support-service agreement means an agreement under which a support service is provided to a service provider.

technical specification, for a telecommunication service or facility, or a radionavigation service or facility, is a detailed description, that may use technical terms and concepts, of:
(a) the way in which the service or facility operates and performs its functions; and
(b) the technical standards to which the service or facility has been designed and manufactured.

Example
The technical specification of a particular kind of radionavigation service may include its frequency band, channel spacing, frequency tolerance, effective radiated transmitter power, antenna type and gain, effective radiated power and radial phase modulation.

technician means a person who is engaged by a service provider to do 1 or more of the following:
(a) operate a facility;
(b) maintain a facility;
(c) conduct measurements of the performance of, and calibration of, a facility during a flight inspection.

telecommunication service means:
(a) 1 or both of the following, within the meaning given for each in Volume II of Annex 10 to the Chicago Convention:
   (i) an aeronautical broadcasting service;
   (ii) an aeronautical fixed service; and
(b) an aeronautical mobile service, within the meaning given in Volume II of Annex 10 to the Chicago Convention, that is used to support an air traffic service of a kind mentioned in Annex 11 to the Chicago Convention; and
(c) any system that processes or displays air traffic control data.

(2) For this Part:
   (a) a telecommunication or radionavigation service is provided using 1 or more facilities at 1 or more locations, each facility consisting of:
      (i) 1 item of equipment; or
      (ii) items of interconnected equipment;
      at a particular location; and
   (b) a service is interrupted if, during its operating hours:
      (i) it is not operating because it has failed or has been suspended; or
      (ii) it is operating outside its technical specification.

171.015 Person not to provide service without approval

(1) A person that is not a service provider must not provide a telecommunication or radionavigation service.

Penalty: 50 penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note For strict liability, see section 6.1 of the Criminal Code.

Subpart B Approval of service providers

171.020 Application

(1) A person is eligible to apply for approval as a provider of 1 or both of the following:
   (a) a telecommunication service;
   (b) a radionavigation service.

(2) An application must be in writing, and must include:
   (a) the applicant’s name and address; and
   (b) a copy of the applicant’s operations manual, prepared as if the applicant were a service provider; and
(c) a statement, prepared by referring to the list of services in the Manual of Standards, showing each kind of telecommunication or radionavigation service for which the application is being made; and

(d) a statement of the intended location and coverage of each service.

(3) If an application is made to provide a telecommunication or radionavigation service that would not comply with 1 or more of the standards set out in:

(a) Annexes 10, 11 and 14 to the Chicago Convention; and

(b) the Manual of Standards;

the application must also describe the reasons for, and consequences of, the non-compliance.

171.025 If applicant is a corporation

(1) For regulation 171.020, if the applicant is a corporation, the application must include:

(a) the applicant’s registered address and ACN; and

(b) the names and addresses of its officers.

(2) In paragraph (1) (b), officers of an applicant:

(a) if the applicant concerned is incorporated under the Corporations Law — has the meaning given by section 82A of that Law; and

(b) in the case of any other applicant — means the people responsible for its management and control, and includes anybody with whose directions or wishes the applicant ordinarily complies.

Note See Subpart E for provisions about administration of applications.
Subpart C  Obligations and privileges of service provider

171.030 Service by provider

(1) A telecommunication or radionavigation service must be provided in accordance with:
   (a) the approval; and
   (b) the service provider’s operations manual.

(2) Subregulation (1) does not apply to:
   (a) a test transmission made in accordance with regulation 171.055; or
   (b) a telecommunication or radionavigation service provided in an emergency.

171.035 Changes by service provider to service

(1) This regulation applies if a service provider wants to make a change to its telecommunication or radionavigation service, the effect of which would be that the service would no longer be in accordance with the operations manual.

(2) Before making the change the service provider must:
   (a) prepare a draft amendment of the operations manual that reflects the proposed change; and
   (b) send a copy of the draft amendment to CASA.

(3) If CASA approves the draft amendment of the manual the provider may:
   (a) incorporate the amendment into the manual; and
   (b) make the change to the service.

171.040 Changes by service provider to operations manual

A provider may change its operations manual without changing its service if it sends CASA a copy of the amendment to the manual.
171.045 Agreements with other bodies

(1) An ATS provider agreement must be in writing.

(2) Any support-service agreement must be in writing and must include terms about:
   (a) the functional specification of the support service; and
   (b) each of the following that relates to the support service and is relevant to the service to be provided by the service provider:
      (i) availability;
      (ii) reliability;
      (iii) accuracy;
      (iv) integrity;
      (v) recovery time; and
   (c) the way in which the service provider is to be notified of any interruption to the support service.

(3) Any aerodrome operator agreement must be in writing.

(4) Any AIS agreement must be in writing and must set out the procedure by which the service provider will tell AIS about any changes to the provider’s service.

171.050 Technicians

(1) A service provider must ensure that each technician is competent and holds the qualifications specified in the Manual of Standards for a technician of that kind.

(2) In particular, the provider must ensure that each technician has been:
   (a) appropriately trained; and
   (b) assessed as competent by a person who is qualified in accordance with the standard set out in the Manual of Standards.

(3) A service provider must give each technician a certificate that:
   (a) names the technician; and
   (b) describes the operation and maintenance functions that the technician may perform; and
(c) describes the kinds of facility or facilities for which the technician is authorised to perform those functions; and
(d) states the period during which the certificate is effective.

171.055 Test transmissions

A service provider may make a test transmission if:
(a) the transmission is necessary to test a service, facility or equipment; and
(b) either:
   (i) a reasonable time before commencing the transmission, the provider has told AIS about the transmission; or
   (ii) the transmission contains information showing that it is a test transmission.

171.060 Post-accident performance inspection

(1) In this regulation:
   Director has the meaning given by section 19AG of the Air Navigation Act 1920.
   performance inspection means 1 or more tests that show the accuracy or integrity of a facility.

(2) This regulation applies if the Director tells a service provider that a telecommunication or radionavigation service of the service provider may have contributed to an aviation accident or incident.

(3) As soon as practicable, and before any action is taken that could change the facility’s performance, a performance inspection must be done.

(4) The performance inspection must be:
   (a) done by a technician in accordance with any instructions given by the Director; and
   (b) witnessed by a person who is 18 or older.

(5) A report of the performance inspection must be prepared by the technician and signed by the technician and the witness.
(6) If the performance inspection shows that the facility contributes to a hazard, the facility must not be used until it is operating within its technical specification.

(7) For paragraph (4) (a), technician includes a person who has the qualifications mentioned in subregulation 171.050 (1).

### 171.065 Interruption to service

(1) This regulation applies if a telecommunication or radionavigation service is interrupted or if the service provider knows that the service is to be interrupted.

(2) If the service is published in an AIP the service provider must tell AIS about the interruption.

(3) If it is practicable to do so the service provider must tell users of the service about the interruption.

### 171.070 Test equipment

A service provider’s facility or facilities must be tested and maintained using test equipment that is maintained and calibrated in accordance with the standards in the Manual of Standards.

### 171.075 Documents to be maintained

(1) The following documents must be maintained by a service provider:
   (a) the operations manual;
   (b) any technical manual used by the service provider at the facility;
   (c) any documents of a kind listed in the Manual of Standards that relate to the provider’s service.

(2) For subregulation (1), a document is maintained, if it:
   (a) includes all amendments (other than draft amendments prepared for regulation 171.035); and
(b) bears the date of:
   (i) the creation of the document; or
   (ii) for a revised document — the most recent revision of the document; and
(c) is available to the personnel who must refer to the document; and
(d) identifies the person who authorised the creation and any revision of the document.

(3) For paragraph (1) (b), a technical manual means a document, other than the operations manual, that contains technical information about the operation and maintenance of a facility.

Example
An equipment manufacturer’s instruction book.

(4) A service provider must ensure that:
   (a) a master copy of each document mentioned in this regulation is kept safely; and
   (b) copies of documents are kept in a form that enables amendments to be made; and
   (c) any document that has been replaced cannot be used by mistake.

171.080 Records

(1) A service provider must retain each document that:
   (a) is given to or is created by or for the service provider; and
   (b) could relate to aviation safety; and
   (c) helps provide a history of events that relate to the design, installation, testing, operation, maintenance, modification or repair of, or changes to, each facility.

(2) A document for subregulation (1) includes any record of a kind mentioned in the Manual of Standards that is given to, or created by or for, the provider.

Examples
Records of the operational performance of a service, changes to the configuration of a facility, records showing software upgrades, or records of commissioning procedures.
(3) A document retained for this regulation must be:
   (a) stored so it can be retrieved if needed for an aviation safety investigation; and
   (b) retained for at least 5 years.

171.085 Security program

   (1) A service provider must have, and put into effect, the security program set out in the operations manual.

   (2) The security program must be in accordance with the standards set out in the Manual of Standards.

Subpart D Contents of operations manual

171.090 Operations manual to contain or refer to information

   (1) An operations manual must contain the information mentioned in this Subpart that applies to each telecommunication or radionavigation service and kind of facility of the service provider.

   (2) A requirement under this Subpart to include particular information in an operations manual may be satisfied by referring, in the manual, to that information in another document held by the service provider.

   Example
   An equipment manufacturer’s technical manual.

171.095 Organisation and management of service provider

   An operations manual must include an organisation chart of the service provider that shows:
   (a) the names, relevant qualifications, relevant experience and positions of the key personnel; and
   (b) the number of technicians who will provide each service; and
   (c) whether the people mentioned in paragraphs (a) and (b) are employees.
171.100 **Way in which standards are met**

(1) An operations manual must:
   (a) contain each standard that relates to the design, installation, testing, operation or maintenance of the service provider’s services and facilities; and
   (b) explain how each standard is met.

(2) For subregulation (1):
   **standards** means any of the following standards that apply to the service or facility:
   (a) an ICAO standard;
   (b) a standard set out in Annex 10 to the Chicago Convention;
   (c) a standard in the Manual of Standards;
   (d) any other standard included in the operations manual.

171.105 **Functional specification and performance values of services**

(1) An operations manual must include:
   (a) the functional specification of each of the service provider’s telecommunication or radionavigation services; and
   (b) the values for each of the following that apply to the service:
      (i) availability;
      (ii) reliability;
      (iii) accuracy;
      (iv) integrity.

(2) The values mentioned in paragraph (1) (b) must be derived or measured from either or both of:
   (a) the configuration of each service; and
   (b) the known performance of each service.

(3) An operations manual must also describe the method used to calculate each of the values.
(4) For a radionavigation service, the integrity values must be given for each kind of navigation aid facility that forms part of the service.

171.110 Technical description
An operations manual must describe, for each telecommunication or radionavigation service provided:
(a) the kind and location of each facility; and
(b) the technical specification of each kind of facility; and
(c) how each facility interconnects with any other facility or service; and
(d) the way in which the service provider monitors each facility to ensure that it is operating in accordance with its technical specification.

171.115 Safe operation
(1) An operations manual must describe the following:
(a) the procedure that records the way in which each telecommunication or radionavigation service and each related facility is configured at any time;
(b) the procedure used to design each facility and each item of equipment so that it provides a safe service;
(c) the procedure that ensures that the design of, or changes to, a service or facility are authorised by a person who is qualified and competent to do so;
(d) the method to be used to specify any changes to a service or facility, and to design, test and implement those changes;
(e) the procedure to be used to commission a new service or facility;
(f) the system to be used to maintain a record of the operational performance of a service;
(g) the procedure to be used to monitor the performance of each service and facility, and to compare the results with the appropriate technical specification;
(h) the procedure to be used if a service fails or a facility fault occurs, including the way in which the failure or fault is to be reported and rectified;

(i) the procedure to be used to report and rectify any defects found during operation and maintenance of the facility;

(j) the procedure to be used to:
   (i) detect and correct any latent defects in equipment; and
   (ii) change software to adapt to any changes to the configuration of hardware; and
   (iii) change the design of equipment or facilities to adapt to any change to the functional or technical specification.

(2) For subparagraph (1) (j) (ii), software includes any form of data or instructions for an electronic device.

171.120 Facility operation and maintenance plan

(1) For this regulation:

   flight inspection means a test of the accuracy, coverage or any other aspect of the performance of a service or facility conducted by using test equipment on board an aircraft in flight.

(2) An operations manual must contain, for each kind of facility, an operation and maintenance plan that includes the following:

   (a) the procedures used for maintenance, including the procedures used for repair;
   (b) a description of the system used to schedule maintenance;
   (c) the interval between performance inspections and the method used to determine the interval;
   (d) a copy of the operating and maintenance instructions for the facility;
   (e) an analysis of the workload of technicians and key personnel that takes into account the numbers of these people and their qualifications;
(f) if 1 or more flight inspections are necessary:
   (i) the standards and procedures used for flight inspections; and
   (ii) the interval between flight inspections; and
   (iii) the identity of the person or persons who will conduct flight inspections.

171.125 Safety management system

(1) A service provider must have, and put into effect, a safety management system that includes the policies, procedures, and practices necessary to safely provide the telecommunication and radionavigation services permitted under its approval.

(2) The safety management system must be in accordance with the standards set out in the Manual of Standards.

(3) The service provider must keep its safety management system under review and take such corrective action as is necessary to ensure that it operates properly.

171.130 Agreements

(1) An operations manual must contain copies of:
   (a) any aerodrome operator agreement; and
   (b) any ATS provider agreement; and
   (c) any support-service agreement; and
   (d) the AIS agreement.

(2) For paragraph (1) (b), ATS provider agreement includes an agreement with a person that is applying to be an ATS provider.

171.135 Post-accident performance inspection procedure

An operations manual must describe the procedure to be taken if regulation 171.060 applies.
171.140 **Test equipment**

An operations manual must describe the procedures to maintain and calibrate test equipment.

171.145 ** Interruption to service**

(1) An operations manual must:

(a) describe the procedure to be used if a telecommunication or radionavigation service is interrupted; and

(b) specify an acceptable recovery time for each service; and

(c) describe the procedure to be used if the acceptable recovery time of a service is exceeded; and

(d) if there is a method to provide an alternative service if a service is interrupted — describe the method.

(2) Paragraph (1) (d) does not apply if, under an ATS agreement, an ATS provider is to arrange the alternative service.

171.150 **Document control**

An operations manual must describe the system by which documents mentioned in regulation 171.080 are stored and retrieved.

171.155 **Security program**

An operations manual must describe the security program mentioned in regulation 171.085.

171.160 **Changes to procedures**

An operations manual must describe the method by which changes are made to the operation and maintenance procedures.
Subpart E     Administration

Note   This Subpart is an interim measure while a separate Part dealing with administration rules is being developed.

171.165 Joint applications not permitted
(1) An application purportedly made by 2 or more persons jointly is not a valid application for any purpose.
(2) An application purportedly made by a partnership is not a valid application for any purpose.

171.170 CASA may ask for demonstration of service
(1) When considering an application for approval, CASA may ask the applicant in writing to demonstrate its telecommunication or radionavigation service.
(2) If CASA asks for a demonstration under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the service has been demonstrated.

171.175 CASA can ask applicant to provide more information
(1) If CASA reasonably needs more information or another document to allow it to consider an application, CASA may ask the applicant in writing to give it information, or a copy of a document, specified in the request.
(2) If CASA asks for more information, or a copy of a document, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the information or copy.

171.180 Matters that CASA may or must take into account
(1) In making a decision on an application, CASA may take into account:
   (a) anything in the application or in any other document submitted by the applicant; and
   (b) the results of any demonstration of a service; and
   (c) anything in its records about the applicant.
(2) However, before taking into account anything in its records about an applicant, CASA must:
   (a) tell the applicant in writing that it intends to do so, and the substance of what CASA intends to take into account; and
   (b) invite the applicant in writing to make a written submission about the matter within a specified reasonable time.

(3) If the applicant makes a written submission within the specified time, CASA must take the submission into account.

171.185 When CASA must grant an approval

Subject to section 30A of the Act, if a person has applied for the grant of an approval CASA must grant the approval if:
   (a) the person satisfies the requirements for the grant of the approval; and
   (b) any other requirements for the grant of the approval by or under these Regulations by or in relation to the person are satisfied; and
   (c) no provision of these Regulations forbids CASA to grant the approval, or makes the person ineligible for the grant of the approval; and
   (d) granting the approval would not be likely to have an adverse effect on the safety of air navigation.

171.190 When decision must be made

If CASA does not make a decision about an application within 90 days after receiving it, CASA is taken to have refused the application.

171.195 Decision-making period may be extended

(1) If CASA makes a request under regulation 171.175, the time between when CASA makes the request, and when the applicant gives CASA the information or copy requested, does not count towards the period mentioned in regulation 171.190.
(2) Also, if CASA invites an applicant to comment under paragraph 171.180 (2) (b), the time between when CASA gives the invitation and when the applicant comments does not count towards the period mentioned in regulation 171.190.

171.200 Notice of decision

After making a decision on an application for an approval, CASA must tell the applicant in writing, as soon as practicable:

(a) the decision; and

(b) if the decision was to refuse the application, or to grant the approval subject to a condition not sought by the applicant — the reasons for the decision.

171.205 Approvals

(1) CASA may approve an application only if CASA approves the applicant’s draft operations manual.

(2) CASA may approve an application subject to 1 or more conditions, including a condition that restricts:

(a) the kind of telecommunication or radionavigation service to be provided; or

(b) the way in which a service is provided; or

(c) the coverage of a service; or

(d) the time during which a service is provided.

171.210 When approval comes into effect

An approval comes into effect on the date of the notice of the decision.

171.215 CASA’s power to vary condition of approval

(1) If necessary in the interests of the safety of air navigation, CASA may impose a condition on, or vary a condition of, an approval.
(2) CASA must give the service provider written notice of the imposition or variation, and must specify a reasonable period within which the approval holder may make a submission in relation to the imposition or variation.

(3) Unless CASA withdraws the condition or variation, the condition or variation has effect at:
   (a) the end of that period; or
   (b) a later time stated for the purpose in the notice.

171.220 Suspension and cancellation of approvals

(1) CASA may state, in a show cause notice, that an approval is suspended if CASA reasonably considers that not suspending the approval would be likely to have an adverse effect on the safety of air navigation.

   Note Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.

(2) If a show cause notice states that the approval is suspended:
   (a) if the approval is already suspended when the show cause notice is given to the holder — the approval continues to be suspended until CASA revokes the suspension, or the suspension lapses under subregulation (4); or
   (b) the approval is suspended from when the notice is given to the holder.

(3) CASA may revoke the suspension at any time.

(4) If CASA has not cancelled the approval within 3 months after the day the show cause notice is given to the service provider, the suspension lapses at the end of that period.

171.225 Notice to approval holder to show cause

(1) CASA may give an approval holder a show cause notice if there are reasonable grounds for believing that there are facts or circumstances that amount to grounds for the cancellation of the approval.
(2) A show cause notice must:
   (a) tell the approval holder of the facts and circumstances that justify the cancellation of the approval; and
   (b) invite the holder to show in writing, within a reasonable period stated in the notice, why the approval should not be cancelled.

(3) For paragraph (2) (b), the period must not be less than 7 days.

171.230 Grounds for cancellation of approval

It is grounds for the cancellation of an approval if the holder:
   (a) has breached a condition of the approval; or
   (b) has contravened the Act or these Regulations; or
   (c) has otherwise been guilty of conduct that renders the holder’s continued holding of the approval likely to have an adverse effect on the safety of air navigation.

Note Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.

171.235 Cancellation of approval after show cause notice

(1) CASA may cancel an approval only if:
   (a) there exist facts or circumstances that amount to grounds for the cancellation of the approval; and
   (b) CASA has given the holder a show cause notice in relation to the grounds for the proposed cancellation; and
   (c) CASA has taken into account any written representations made, within the period stated in the notice, by or on behalf of the holder; and
   (d) not cancelling the approval would be likely to have an adverse effect on the safety of air navigation.

(2) Subregulation (1) does not apply in relation to an approval in circumstances in which CASA must cancel the approval.

(3) If CASA has given a show cause notice to an approval holder, and it decides not to cancel the approval, it:
   (a) must tell the holder in writing of the decision; and
   (b) must, if the approval is suspended, revoke the suspension.
171.240 Cancellation at request of service provider

(1) Despite anything else in this Part, CASA must cancel a service provider’s approval if asked to do so, in writing by the provider.

(2) The cancellation takes effect when the request is given to CASA, or if a later day is stated in the request, on the later day.

171.245 CASA’s power to direct variation of manual

(1) If necessary in the interests of the safety of air navigation, CASA may direct a service provider in writing to vary its operations manual, within a reasonable period specified in the direction, in a way specified in the direction.

(2) CASA may extend the period by written notice, before or after the end of the period mentioned in subregulation (1).

(3) If the service provider does not comply with the direction within the period (including any extension of it), the manual is taken to cease to be approved at the end of the period.

(4) After complying with the direction, the holder must give CASA a copy of the manual as so varied.

171.250 Certificate

(1) If CASA approves an applicant as a service provider, CASA must issue to the applicant a certificate setting out:

   (a) what the approval is; and
   (b) any conditions applicable to it; and
   (c) when it came into effect, and when it will end (if not sooner cancelled); and
   (d) any other information CASA thinks should be included.

(2) CASA may issue a replacement certificate if anything set out on a certificate is no longer correct.
171.255 Return of certificate if approval ceases

(1) If an approval ceases, the person that was the service provider must return the certificate to CASA immediately.

Penalty: 1 penalty unit.

Note A person is not guilty of an offence of failing to do something that he or she is not capable of doing: see section 4.2 of the Criminal Code.

(2) An offence against subregulation (1) is an offence of strict liability.

Note For strict liability, see section 6.1 of the Criminal Code.

(3) It is a defence to a charge of contravening subregulation (1) that the defendant returned the certificate to CASA as soon as practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3).

[5] Part 172 substitute

Part 172 Air Traffic Service Providers

Subpart A General

172.000 Make-up of this Part

This Part is made up as follows:

Subpart A General
172.000 Make-up of this Part
172.005 Applicability of this Part
172.010 Definitions for this Part
172.015 What is an ATS provider
172.020 Providing air traffic service without approval

Subpart B Approval as an ATS provider
172.025 What an application must be accompanied by
172.030 When applicant is eligible for approval
172.035 Approval subject to conditions
172.040 Approval not transferable
172.045 Certificate under Subpart F
172.050 How long approval remains in force
172.055 Variation of approvals

Subpart C  Requirements to be complied with by ATS providers

Division 1  Operations manual
172.060 Operations manual

Division 2  Air traffic service
172.065 Standards for air traffic service
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Division 4  Directions to amend provider’s operations manual
172.300  CASA may direct amendments to provider’s operations manual
Division 5 Suspension and cancellation of approvals

172.305 Definition for this Division
172.310 Suspension of approval by show cause notice
172.315 Grounds for cancellation of approval
172.320 Notice to show cause
172.325 Cancellation of approval after show cause notice
172.330 Cancellation at request of ATS provider

172.005 Applicability of this Part

This Part:
(a) applies to a person that wants to become, or is, an ATS provider; and
(b) sets out certain administrative rules applying to CASA in its administration of this Part.

172.010 Definitions for this Part

In this Part:
airspace authority means:
(a) the body having the responsibility for making determinations under regulation 2.04, declarations under regulation 2.07 and designations under regulation 2.09 of the Air Services Regulations; or
(b) if another body is given that responsibility under other regulations having the same or similar effect — that body.

air traffic service means an air traffic service of a kind mentioned in Annex 11.

Annex 10 means Annex 10 to the Chicago Convention.

Annex 11 means Annex 11 to the Chicago Convention.

172.015 What is an ATS provider

An ATS provider is a person approved, under Subpart F, to provide the air traffic services that are covered by the approval.

172.020 Providing air traffic service without approval

(1) A person that is not an ATS provider must not provide an air traffic service.

Penalty: 50 penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note For strict liability, see section 6.1 of the Criminal Code.

Subpart B Approval as an ATS provider

172.025 What an application must be accompanied by

An application, under Subpart F, for approval as an ATS provider must be accompanied by:

(a) a copy of the applicant’s operations manual; and

(b) a written statement setting out air traffic services that the applicant proposes to provide; and

(c) enough information to identify, for each air traffic service:

(i) the location from which the service is proposed to be provided; and

ICAO Doc. 7030 means Doc. 7030 (Regional Supplementary Procedures) approved and published by decision of the Council of the International Civil Aviation Organisation, as in force from time to time.


provider’s operations manual, in relation to an ATS provider, means the manual maintained by the provider under regulation 172.060.
(ii) if the service is to be provided within particular airspace allocated to the applicant by the airspace authority — the airspace; and

(iii) if the service is to be provided for an aerodrome allocated to the applicant by the airspace authority — the aerodrome; and

(d) a written statement setting out the hours during which each traffic service is proposed to be available; and

(e) a written statement describing the arrangements the applicant has made to comply with the requirements of Subpart C.

172.030 When applicant is eligible for approval

For Subpart F, an applicant is eligible to become an ATS provider if the applicant is able to comply with the requirements of Subparts C and D or will be able to do so if the applicant is approved.

172.035 Approval subject to conditions

If an ATS provider’s approval is subject to conditions, the provider must comply with the conditions.

172.040 Approval not transferable

An approval is not transferable.

172.045 Certificate under Subpart F

A certificate issued under Subpart F to an ATS provider must, as well as including the information required by that Subpart:

(a) state the provider’s name and address of its principal place of business; and

(b) list the air traffic services covered by the provider’s approval; and

(c) identify, for each air traffic service:

(i) the location from which the service will be provided; and
(ii) if the service is to be provided within particular airspace allocated to the provider by the airspace authority — the airspace; and

(iii) if the service is to be provided for an aerodrome allocated to the provider by the airspace authority — the aerodrome.

172.050 How long approval remains in force

(1) An ATS provider’s approval:

(a) comes into force on the date stated in the certificate issued to the provider under Subpart F; and

(b) remains in force until it is cancelled.

(2) However, the approval is not in force during any period of suspension.

172.055 Variation of approvals

(1) If an ATS provider wants to vary its approval, it must apply to CASA, under Subpart F, for that purpose.

(2) The application must contain, or have with it, a copy of the proposed variation.

(3) If CASA approves the application under Subpart F, the variation takes effect:

(a) if a day is set out in the written notice given to the applicant under Subpart F — on that day; or

(b) if no day is set out — when the notice is given to the provider.
Subpart C  Requirements to be complied with by ATS providers

Division 1  Operations manual

172.060  Operations manual

(1) An ATS provider must, at all times, maintain an operations manual that complies with the standards set out in the Manual of Standards.

(2) The provider:
   (a) must keep the manual in a readily accessible form; and
   (b) must ensure that each member of its personnel who performs functions in connection with any air traffic service that it provides has ready access to the manual.

(3) The provider must amend the manual whenever it is necessary to do so to keep it in an up to date form.

(4) If the provider is given a direction, under regulation 172.300, to amend the manual, the provider must comply with the direction.

(5) The provider must ensure:
   (a) that all the amendments are incorporated in all copies of the manual kept by the operator; and
   (b) that copies of the amendments are given to CASA.

Division 2  Air traffic service

172.065  Standards for air traffic service

(1) An ATS provider must ensure that any air traffic service that it provides is provided in accordance with:
   (a) the standards set out in the Manual of Standards; and
   (b) the standards set out or referred to in Annex 11, as varied by Gen 1.7 of Part 1 of the AIP.
(2) However, the provider may deviate from the standards if an emergency, or other circumstance, arises that makes the deviation necessary in the interests of aviation safety.

(3) As soon as practicable, the provider must tell CASA of the deviation and how long it is likely to last.

172.070 Aeronautical telecommunications procedures

An ATS provider must ensure that any air traffic service that it provides is provided in accordance with:

(a) the radiotelephony procedures set out in Parts 1 and 2 of the AIP; and

(b) the procedures for aeronautical telecommunications set out in Volume II of Annex 10, as varied by Gen 1.7 of Part 1 of the AIP.

172.075 ICAO Doc. 4444 and ICAO Doc. 7030

(1) An ATS provider must ensure that any air traffic service that it provides is provided in accordance with the procedures and rules set out in ICAO Doc. 4444, as varied by Gen 1.7 of Part 1 of the AIP.

(2) If a regional supplementary procedure set out in ICAO Doc. 7030 relates to an air traffic service that the provider provides, the provider must also ensure that the service is provided in accordance with that procedure.

(3) However, the provider may deviate from a procedure or rule mentioned subregulation (1), or a regional supplementary procedure mentioned in subregulation (2), if an emergency, or other circumstance, arises that makes the deviation necessary in the interests of aviation safety.

(4) As soon as practicable, the provider must tell CASA of the deviation and how long it is likely to last.
172.080 Compliance with provider’s operations manual

An ATS provider must ensure that any air traffic service that it provides is provided in accordance with its provider’s operations manual.

172.085 Priority of standards

If, apart from this regulation, an ATS provider would be required by this Division to ensure that any air traffic service that it provides is provided in accordance with a standard in the Manual of Standards and a standard in Annex 11, as varied by Gen 1.7 of Part 1 of the AIP, and it is not possible to comply with both standards, the provider is only required to ensure that the service is provided in accordance with the standard in the Manual.

172.090 Priority of inconsistent procedures

(1) In this regulation:

procedure includes rules.

(2) If, apart from this regulation, an ATS provider would be required by this Division to ensure that any air traffic service that it provides is provided in accordance with 2 or more procedures that are inconsistent, the provider is only required to ensure that the service is provided in accordance with whichever of the procedures has the highest priority.

(3) For this regulation, 2 or more procedures are inconsistent if:

(a) it is not possible to comply with both or all of the procedures; or

(b) they require the same, or substantially similar, action to be taken at different times or in a different way.

(4) The order of priority of a procedure is as follows (starting with those of highest priority):

(a) procedures in Parts 1 and 2 of the AIP;

(b) procedures for aeronautical telecommunications in Volume II of Annex 10, as varied by Gen 1.7 of Part 1 of the AIP;
(c) procedures in ICAO Doc. 7030;
(d) procedures in ICAO Doc. 4444, as varied by Gen 1.7 of Part 1 of the AIP;
(e) any procedures in the provider’s operations manual.

Division 3 Standards for facilities and equipment

172.095 Facilities and equipment

(1) An ATS provider must, at all times, make available for use by its personnel the equipment and facilities necessary for providing, in accordance with the standards set out in the Manual of Standards, the air traffic services covered by its approval.

(2) The equipment must include equipment of the kinds specified in the Manual of Standards.

(3) Any equipment and facilities mentioned in chapter 6 of Annex 11 that the provider uses in providing an air traffic service must comply with the standards of that chapter.

(4) If the provider uses a control tower in providing an air traffic service, the provider must ensure the control tower is designed, sited, constructed, equipped and maintained in accordance with the standards set out in the Manual of Standards.

Division 4 Organisation and personnel

172.100 Definition for this Division

In this Division:

trained, in relation to a member of an ATS provider’s personnel, means trained in accordance with any relevant requirements set out in the provider’s training and checking program mentioned in regulation 172.140.
172.105 **Organisation**

An ATS provider must, at all times, maintain an appropriate organisation with a sound and effective management structure to enable it to provide, in accordance with the standards set out in the Manual of Standards and the standards set out or referred to in Annex 11, the air traffic services covered by its approval.

172.110 **Personnel**

An ATS provider must have, at all times, enough suitably qualified and trained personnel to enable it to provide, in accordance with the standards set out in the Manual of Standards and the standards set out or referred to in Annex 11, the air traffic services covered by its approval.

172.115 **Supervisory personnel**

An ATS provider must have, at all times, enough suitably qualified and trained personnel who are able to supervise the provision of any air traffic service that it provides.

172.120 **Qualifications for certain personnel**

(1) An ATS provider must not give to a person responsibility for an air traffic control function to be performed in connection with any air traffic service that it provides unless:

(a) CASA has authorised the person to perform the function under regulation 65.035; or

(b) the person holds an ATC licence with a rating for the function and an endorsement for the controlled aerodrome for which, or the airspace in relation to which, the person performs the function; or

(c) the person performs the function under the supervision of another person who holds an ATC licence with a rating for the function and an endorsement for the controlled aerodrome for which, or the airspace in relation to which, the person performs the function.
(2) The provider must not give to a person responsibility for a flight service function to be performed in connection with any air traffic service that it provides unless:

(a) CASA has authorised the person to perform the function under regulation 65.050; or

(b) the person holds a flight service licence with a rating for the function and an endorsement for the aerodrome for which, or the airspace in relation to which, the person performs the function; or

(c) the person performs the function under the supervision of another person who holds a flight service licence with a rating for the function and an endorsement for the aerodrome for which, or the airspace in relation to which, the person performs the function.

(3) The provider must not give to a person responsibility for an air traffic control function to be performed in connection with any air traffic service that it provides if the person is subject to a direction under regulation 65.255.

(4) The provider must not give to a person responsibility for a flight service function to be performed in connection with any air traffic service that it provides if the person is subject to a direction under regulation 65.255.

Division 5 Arrangements to maintain service

172.125 Agreements with service providers

(1) In this regulation:

\textit{service provider} means a person:

(a) that is approved, under Part 171, to provide a telecommunication service, radionavigation service, or both; and

(b) whose approval is in force.

(2) An ATS provider (other than an ATS provider that is also a service provider) must have an agreement with a service provider for any telecommunication service or radionavigation service that the service provider provides to the ATS provider.
(3) An agreement, under subregulation (2), must be in accordance with the standards set out in the Manual of Standards.

172.130 Agreements with aerodrome operators
(1) In this regulation:

vehicle includes boat.

(2) If an ATS provider (other than an ATS provider that is also an aerodrome operator) provides an air traffic service for a controlled aerodrome, the provider must have an agreement with the aerodrome operator covering the arrangements for controlling aircraft, vehicles and people on the manoeuvring area of the aerodrome.

(3) An agreement, under subregulation (2), must be in accordance with the standards set out in the Manual of Standards.

172.135 Arrangements for transfer of information
(1) An ATS provider must have, at all times, adequate arrangements to ensure that it gets, and will continue to get, the services and information necessary to provide the air traffic services covered by its approval.

(2) The provider must have, at all times, adequate arrangements to ensure that it is able, and will continue to be able, to provide information in connection with any of those air traffic services to another person whose duties or functions reasonably require that information.

Division 6 Management

172.140 Training and checking program
An ATS provider must, at all times, provide a training and checking program, in accordance with the Manual of Standards, to ensure that each member of its personnel who performs functions in connection with any air traffic service that it provides is competent to perform those functions.
172.145 Safety management system

(1) An ATS provider must have, and put into effect, a safety management system that includes the policies, procedures, and practices necessary to provide the air traffic services covered by its approval safely.

(2) The safety management system must be in accordance with the standards set out in the Manual of Standards.

(3) The provider must keep under review its safety management system and take such corrective action as is necessary to ensure that it operates properly.

172.150 Contingency plan

(1) An ATS provider must have a contingency plan, in accordance with the standards set out in the Manual of Standards, of the procedures to be followed if, for any reason, an air traffic service being provided by it is interrupted.

(2) The plan must include:
   (a) the actions to be taken by the members of the provider’s personnel responsible for providing the service; and
   (b) possible alternative arrangements for providing the service; and
   (c) the arrangements for resuming normal operations for the service.

172.155 Security program

(1) An ATS provider must have, and put into effect, a security program that sets out the procedures designed to protect its personnel, and any facility and equipment that it uses, in providing any of its air traffic services.

(2) The security program must be in accordance with the standards set out in the Manual of Standards.
Division 7 Reference materials, documents, records and log books

172.160 Reference materials

(1) An ATS provider must maintain the following reference materials:
   (a) copies of the Act and these Regulations;
   (b) copies of Annex 11 and Volume II of Annex 10;
   (c) a copy of ICAO Doc. 4444;
   (d) if a regional supplementary procedure set out in ICAO Doc. 7030 relates to an air traffic service that the provider provides — a copy of ICAO Doc. 7030;
   (e) a copy of the parts of the AIP that are relevant to any air traffic services that it provides;
   (f) the Manual of Standards;
   (g) all manuals and documents specified in the Manual of Standards;
   (h) a copy of any instruction issued by it to its personnel in relation to the provision of its air traffic services.

(2) The provider must keep the reference materials up to date and in a readily accessible form.

(3) The provider’s personnel who perform functions in connection with any air traffic service that the provider provides must have ready access to the reference materials.

172.165 Documents and records

(1) An ATS provider must keep documents and records of the kinds specified in the Manual of Standards.

(2) A document or record must be retained for as long as the Manual specifies for the particular kind of document or record.

(3) The provider must, at CASA’s request, make the documents and records, or copies of them or extracts from them, available for inspection by CASA.
172.170 Document and record control system

(1) An ATS provider must establish, and put into effect, a system for controlling documents and records relating to the air traffic services that it provides, including the policies and procedures for making, amending, preserving and disposing those documents and records.

(2) The system must be in accordance with the standards set out in the Manual of Standards.

(3) The documents and records must include the documents and records required to be kept under regulation 172.165.

172.175 Logbooks

(1) An ATS provider must keep, for each air traffic service that it provides from a particular location, a logbook in accordance with the standards set out in the Manual of Standards.

(2) The provider must ensure that information of the kinds mentioned in the Manual is recorded in each logbook.

(3) The provider must, at CASA’s request, make each logbook, or a copy of it or an extract from it, available for inspection by CASA.

Division 8 Notice of air traffic service

172.180 Availability of air traffic service

(1) An ATS provider must give to the Aeronautical Information Service details of each air traffic service that it provides in particular airspace, or for a particular aerodrome, including the hours during which the service is available.

(2) An ATS provider must tell the Aeronautical Information Service about changes, interruptions or the unavailability of any of its air traffic services, if it is practicable to do so.
Subpart D Telling CASA about changes

172.185 Advice on organisational changes

An ATS provider must tell CASA, in writing, of a change of circumstances that materially affects its capacity to provide any of its air traffic services within 7 days after the change occurs.

172.190 Discontinuing air traffic service

(1) An ATS provider must not discontinue an air traffic service that it provides, unless it has given CASA at least 7 days written notice that the service is to be discontinued.

(2) Subregulation (1) does not apply if, having regard to the provider’s circumstances:
   (a) it was not reasonably practicable for the provider to give to CASA at least 7 days notice; and
   (b) the provider gives the notice as soon as reasonably practicable before, on or after the day when the service is discontinued.

Subpart E Miscellaneous

172.195 ATS provider must not provide unauthorised air traffic service

An ATS provider must not provide an air traffic service unless its approval:
   (a) is in force; and
   (b) covers that service.
Subpart F Administration

Note This Subpart is an interim measure while a separate Part dealing with administration rules is being developed.

Division 1 Preliminary

172.200 Applicability of this Subpart

This Subpart:
(a) sets out certain administrative rules applying to CASA in its administration of this Part; and
(b) includes certain generic provisions applying to anyone who wants to become, or is, an ATS provider.

Division 2 Approvals

172.205 Joint applications not permitted

(1) An application purportedly made by 2 or more persons jointly is not a valid application for any purpose.

(2) An application purportedly made by a partnership is not a valid application for any purpose.

172.210 How to apply — application by individual applicant

(1) An individual must apply for approval as an ATS provider in the way set out in this regulation.

(2) The application must be in writing.

(3) The application:
   (a) must include any information required by or under these Regulations; and
   (b) must be accompanied by any document required by or under these Regulations.
172.215 How to apply — application by corporation etc

(1) A legal person other than an individual must apply for approval as an ATS provider in the way set out in this regulation.

(2) The application must be in writing.

(3) The application:
   (a) must set out the applicant’s registered address and ACN; and
   (b) must give the names and addresses of its officers; and
   (c) must include any other information required by or under these Regulations; and
   (d) must be accompanied by any document required by or under these Regulations.

(4) In paragraph (3) (b):

   **officers** of an applicant:

   (a) if the applicant concerned is incorporated under the Corporations Law — has the meaning given by section 82A of that Law; and

   (b) in the case of any other applicant — means the people responsible for its management and control, and includes anybody with whose directions or wishes the applicant ordinarily complies.

172.220 Who to apply to

An application must be made to CASA.

172.225 Application for approval cancelled previously

If an applicant for approval as an ATS provider has previously been approved as an ATS provider, and the approval was cancelled for a reason mentioned in regulation 172.315, the applicant must include with the application any available evidence tending to show that the applicant could now properly provide the air traffic services that it proposes to provide.
172.230 CASA may require demonstrations of procedures or equipment

(1) CASA may ask an applicant, in writing, to conduct demonstrations of its procedures or equipment to assess whether the applicant can properly provide the air traffic services that it proposes to provide.

(2) The request must describe the demonstrations that the applicant is required to conduct.

(3) The demonstrations must be conducted under the observations of an officer authorised by CASA in writing for that purpose.

(4) If CASA asks an applicant to conduct a demonstration under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant conducts the demonstration.

172.235 Other things CASA can ask individual applicant to do — interview

(1) CASA may ask an individual who is an applicant, in writing, to come to a specified reasonable place at a specified reasonable time to be interviewed.

(2) If CASA asks an applicant to come for interview, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant participates in the interview.

172.240 Other things CASA can ask applicant to do — provide more information

(1) If CASA reasonably needs more information or another document to allow it to consider an application, CASA may ask the applicant in writing to give it information, or a copy of a document, specified in the request.

(2) If CASA asks for more information, or a copy of a document, under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the information or copy.
172.245 Statutory declarations to verify applications

(1) CASA may ask an applicant, in writing, to verify, by statutory declaration, any statement in an application.

(2) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

172.250 Matters that CASA may or must take into account

(1) In making a decision on an application, CASA may take into account:
   (a) anything in the application or in any other document submitted by the applicant; and
   (b) anything in its records about the applicant; and
   (c) the contents of any statutory declaration made by the applicant, or an officer of the applicant, under regulation 172.245; and
   (d) any demonstration of procedures or equipment conducted by the applicant under regulation 172.230.

(2) However, before taking into account anything in its records about an applicant, CASA must:
   (a) tell the applicant, in writing, that it intends to do so, and the substance of what CASA intends to take into account; and
   (b) invite the applicant, in writing, to make a written submission about the matter within a specified reasonable time.

(3) If the applicant makes a written submission within the specified time, CASA must take the submission into account.

(4) When deciding whether to approve an applicant previously approved as an ATS provider and whose approval was cancelled under regulation 172.325, CASA must take into account:
   (a) the fact of the cancellation; and
   (b) the reasons for the cancellation; and
(c) any evidence of the kind mentioned in regulation 172.225 that the applicant submits.

172.255 Statutory declarations to verify statements in submissions

(1) CASA may ask an applicant, in writing, to verify any statement in a submission under subregulation 172.250 (3) by statutory declaration.

(2) CASA must, in making a decision on the application concerned, take such a submission into account.

(3) If CASA asks an applicant to verify a statement under subregulation (1), CASA need not begin to consider, or may stop considering, the application until the applicant gives it the statutory declaration.

172.260 When CASA must approve an applicant

(1) Subject to section 30A of the Act, if an applicant has applied for approval as an ATS provider in accordance with this Part, CASA must approve the applicant if:

(a) the applicant is eligible to be approved; and

(b) any other requirements for the approval by or under these Regulations by or in relation to the applicant are satisfied; and

(c) no provision of these Regulations forbids CASA to approve the applicant, or makes the applicant ineligible for the approval; and

(d) approving the applicant would not be likely to have an adverse effect on the safety of air navigation.

(2) CASA may approve the applicant for only some of the air traffic services sought in the application.

(3) However, CASA must refuse an application for an approval for an air traffic service to be provided in particular airspace, or for a particular aerodrome, if anyone else who is an ATS provider already provides that service in that airspace or for that aerodrome.
(4) CASA may approve the applicant subject to any condition necessary in the interests of the safety of air navigation.

172.265 When decision must be made

(1) If CASA does not make a decision about an application within the period mentioned in subregulation (2) after receiving it, CASA is taken to have refused the application.

(2) The period is 6 months.

(3) However, if CASA makes a request under regulation 172.230, 172.235 or 172.240, the time between when CASA makes the request, and when the applicant conducts the demonstration, comes in for interview, or gives CASA the information or copy requested, does not count towards the period.

(4) Also, if CASA asks an applicant to make a statutory declaration under regulation 172.245 or 172.255, the time between when CASA asks the applicant to do so and when the applicant gives CASA the statutory declaration does not count towards the period.

(5) Also, if CASA invites an applicant to comment under subregulation 172.250 (2), the time between when CASA gives the invitation and when the applicant comments does not count towards the period.

172.270 Notice of decision

After making a decision on an application, CASA must tell the applicant in writing, as soon as practicable:

(a) the decision; and

(b) if the decision was to refuse the application, or to approve the applicant subject to a condition not sought by the applicant — the reasons for the decision.

172.275 Certificate about approval

(1) If CASA approves an applicant as an ATS provider, CASA must issue to the applicant a certificate setting out:

(a) what the approval is; and
(b) any conditions applicable to it; and
(c) when it came into effect, and when it will end (if not sooner cancelled); and
(d) any other information CASA thinks should be included.

(2) CASA may issue a replacement certificate if anything set out on a certificate is no longer correct.

172.280 Return of certificate if approval cancelled

(1) If CASA has issued a certificate about an approval, and the approval is cancelled, the person to whom the certificate was issued must return it to CASA immediately.

Penalty: 1 penalty unit.

Note A person is not guilty of an offence of failing to do something that he or she is not capable of doing: see section 4.2 of the Criminal Code.

(2) An offence against subregulation (1) is an offence of strict liability.

Note For strict liability, see section 6.1 of the Criminal Code.

(3) It is a defence to a charge of contravening subregulation (1) that the defendant returned the certificate to CASA as soon as practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3).

Division 3 Variation of approvals

172.285 Applicability of this Division

This Division applies in relation to variation of an approval (including imposing, removing or varying a condition applicable to the approval).

172.290 Application for variation

(1) An ATS provider may apply to CASA to vary its approval.
(2) Division 2 applies to the application except that the provider need not give CASA information, or a document, that the provider has already given to CASA.

172.295 CASA’s power to vary condition of approval

(1) If necessary in the interests of the safety of air navigation, CASA may impose a condition on, or vary a condition of, an ATS provider’s approval.

(2) CASA must give the provider written notice of the imposition or variation, and must specify a reasonable period within which the provider may make a submission in relation to the imposition or variation.

(3) Unless CASA withdraws the condition or variation, the condition or variation has effect at:
   (a) the end of that period; or
   (b) a later time stated for the purpose in the notice.

Division 4 Directions to amend provider’s operations manual

172.300 CASA may direct amendments to provider’s operations manual

(1) If necessary in the interests of the safety of air navigation, CASA may direct an ATS provider, in writing, within a reasonable period specified in the direction, to amend its provider’s operations manual in a way specified in the direction.

(2) CASA may extend the period by written notice, before or after the end of the period referred to in subregulation (1).
Division 5  Suspension and cancellation of approvals

172.305 Definition for this Division

In this Division:

*show cause notice* means a notice under regulation 172.320.

172.310 Suspension of approval by show cause notice

(1) CASA may state, in a show cause notice, that an ATS provider’s approval is suspended if CASA reasonably considers that not suspending the approval would be likely to have an adverse effect on the safety of air navigation.

*Note* Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.

(2) If a show cause notice states that the approval is suspended, the approval is suspended from when the notice is given to the provider.

(3) CASA may revoke the suspension at any time.

(4) If CASA has not cancelled the approval under regulation 172.325, within 90 days after the day the show cause notice is given to the provider, the suspension lapses at the end of that period.

172.315 Grounds for cancellation of approval

It is grounds for the cancellation of an ATS provider’s approval if the provider:

(a) has breached a condition of the approval; or

(b) has contravened the Act or these Regulations; or

(c) does not meet, or continue to meet, a requirement of this Part for getting the approval; or

(d) has otherwise been guilty of conduct that renders the provider’s continued holding of the approval likely to have an adverse effect on the safety of air navigation.

*Note* Regulation 201.4 provides for review of certain decisions by the Administrative Appeals Tribunal.
172.320 Notice to show cause

(1) CASA may give an ATS provider a show cause notice if there are reasonable grounds for believing that there are facts or circumstances that amount to grounds for the cancellation of the provider’s approval.

(2) A show cause notice must:
   (a) tell the provider of the facts and circumstances that justify the cancellation of the approval; and
   (b) invite the provider to show in writing, within a reasonable period stated in the notice, why the approval should not be cancelled.

(3) For paragraph (2) (b), the period must not be less than 7 days.

172.325 Cancellation of approval after show cause notice

(1) CASA may cancel an ATS provider’s approval only if:
   (a) there exist facts or circumstances that amount to grounds for the cancellation of the approval; and
   (b) CASA has given the provider a show cause notice in relation to the grounds for the proposed cancellation; and
   (c) CASA has taken into account any written representations made, within the period stated in the notice, by or on behalf of the provider; and
   (d) not cancelling the approval would be likely to have an adverse effect on the safety of air navigation.

(2) If CASA has given a show cause notice to an ATS provider, and it decides not to cancel the provider’s approval, it:
   (a) must tell the provider, in writing, of the decision; and
   (b) must, if the approval is suspended, revoke the suspension.

172.330 Cancellation at request of ATS provider

(1) Despite anything else in this Part, CASA must cancel an ATS provider’s approval if asked to do so, in writing, by the provider.
(2) The cancellation takes effect when the request is given to CASA, or if a later day is stated in the request, on the later day.


*insert the following definitions in the appropriate alphabetical position (determined on a letter-by-letter basis)*

**air traffic control function** means a function described in a paragraph of subregulation 65.075 (2).

**ATC licence** means an air traffic controller licence granted under Part 65.

**ATS provider** has the meaning given by regulation 172.015.

**ATS training provider** has the meaning given by regulation 143.015.

**flight service function** means the function described in subregulation 65.130 (2).

**flight service licence** means a licence by that name granted under Part 65.
Schedule 2 Amendments of Civil Aviation Regulations 1988
(regulation 4)

[1] After paragraph 89C (2) (a)
insert
(aa) if the aerodrome is required, under Subpart H of Part 139 of CAR 1998, to provide an ARFFS — that it provides such a service, and the service provided complies with the requirements of, or under, that Part; and
(ab) if the aerodrome is not required, under that Subpart, to provide an ARFFS, but provides such a service — that the service provided complies with the requirements of, or under, that Subpart; and

[2] After paragraph 89C (2) (c)
insert
(ca) if the aerodrome is required to provide, or provides, an ARFFS — that an ARFFS operations manual for the service that complies with the requirements of, or under, Subpart H of Part 139 of CAR 1998 has been prepared; and

[3] After subregulation 89C (2)
insert
(2A) In paragraphs (2) (aa), (ab) and (ca):
ARFFS has the same meaning as in Subpart H of Part 139 of CAR 1998.

[4] Regulations 102 to 104
omit
Schedule 2 Amendments of Civil Aviation Regulations 1988

[5] Regulations 106 to 108 and 112 to 114

omit

[6] Regulations 116 to 118

omit

[7] Subregulation 263 (1), definition of licence, paragraphs (d) and (e)

substitute

(d) a licence under Part 9.

[8] Schedule 11, Part 2, after clause 3

insert

4. If the aerodrome is required under Subpart H of Part 139 of CAR 1998 to provide an ARFFS, or provides such a service, check that the service and the service provider comply with the requirements of or under that Subpart (including the Manual of Standards, within the meaning of that Subpart, and the provider’s operations manual).

Notes

1. These Regulations amend (in Schedule 1) Statutory Rules 1998 No. 237, as amended by 1999 Nos. 166 (as amended by 1999 No. 262) and 262; 2000 Nos. 7, 204 (Item [7] of Schedule 2 was disallowed by the Senate on 8 November 2000) and 227; 2001 Nos. 34, 242 and 349 (as amended by 2002 No. 79).

67, 111, 139 and 220; 1998 Nos. 31, 32, 219, 234 (disallowed by the Senate on 8 March 1999), 235, 236 and 288; 1999 Nos. 166 (as amended by 1999 No. 262), 167, 210, 229, 262, 353 and 354; 2000 Nos. 8, 204 (items [1], [4] and [5] of Schedule 3 were disallowed by the Senate on 8 November 2000), 205, 227, 261, 294, 295, 296 and 362; Act No. 137, 2000; Statutory Rules 2001 Nos. 348 and 349 (as amended by 2002 No. 79).