

# **GUIDELINES FOR APPLICANTS FOR PERMISSION TO OPERATE INTERNATIONAL CHARTER FLIGHTS**

## **Introduction**

These guidelines are designed to assist persons applying for permission to operate international non-scheduled flights to or from Australia. They apply only to the issue of permissions by the Aviation Markets area of the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) under sections 15 to 15F of the *Air Navigation Act 1920* (the Act). An applicant for permission to operate international non-scheduled flights is also required to satisfy a number of other regulatory requirements, relating to safety, security, border control, and protection of the environment. These additional requirements are mentioned briefly under “Other necessary approvals” below, and additional information regarding whom to contact is set out in Appendix B.

These guidelines are for information and assistance only. They are not and do not purport to be legal advice on an applicant’s duties, rights and responsibilities. These guidelines and the accompanying legislation may be changed from time to time to reflect changes in policy, to take account of other legislative requirements or to clarify various matters in the light of inquiries or submissions received. Applicants should inquire from the Department at the time of their application whether any changes in prospect to the legislation or these guidelines are likely to affect consideration of their application.

## **Who should read these guidelines?**

You should read these guidelines if you are proposing to operate a non-scheduled international flight.

Under the Act, a “non-scheduled flight” is a flight into or from Australian territory that is not made under the authority of an international airline licence issued by the Secretary under the *Air Navigation Regulations 1947*<sup>1</sup>. Therefore, if you are proposing to operate a flight into or from Australia other than under the authority of an international airline licence, you should read these guidelines to determine whether you need permission to do so, and if so, how to obtain that permission.

If you are unsure whether your proposed flights are scheduled or non-scheduled, please contact the Department in advance.

## **The Government’s policy objectives and strategy**

The Government’s policy in relation to charter services is to use their unique characteristics, such as seasonality and low-cost structure, to increase opportunities

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<sup>1</sup> The term “non-scheduled flight” is defined in section 3 of the Act.

for Australian consumers and visitors to take advantage of the benefits offered by international aviation, particularly in regional Australia.

The Government will pursue three strategies to meet this objective:

- Link favourable consideration of a charter approval to broad public interest criteria, which focus on consumer needs, the promotion of trade and tourism, and benefits to regional Australia;
- Maintain the current wide range of charter flight categories that receive automatic approval; and
- Ensure that charter operators protect consumers from financial loss in the event that the charter operator fails to fulfil its obligations to them.

### **Do I need to apply for permission to operate an international charter?**

Section 15A of the Act generally prohibits non-scheduled flights to or from Australia without permission from the Secretary of the Department. However, this is subject to two provisos.

Firstly, permission is not required unless passengers, cargo or mail are being carried for reward. That is, private flights are not subject to the prohibition in section 15A, and therefore do not need the Secretary's permission.

Secondly, the Secretary has issued an instrument under subsection 15A(3) of the Act which exempts certain other categories of non-scheduled flights from the requirement to obtain permission.

At present, permission is not required for:

- non-scheduled flights where passengers, cargo or mail are not carried for reward;
- programs of passenger charter flights using aircraft with capacity of 10 or fewer seats;
- five or fewer passenger charter flights using aircraft with capacity from 11 to 40 seats;
- two or fewer passenger charter flights using aircraft with capacity from 41 to 80 seats;
- single charter flights – a one-off charter flight which is not part of a program of flights;
- single-entity freight charter flights – where the whole aircraft is chartered by a single organisation and the consignment is homogeneous and does not include consignments consolidated by freight forwarders; and
- own-use charter flights – where the entire capacity of the aircraft is chartered by a single organisation or individual to carry:

- its own staff;
- passengers who are an affinity group (i.e. members of an organisation established mainly for purposes other than travel); or
- cargo it owns for its own use.

These categories are also listed in the Aeronautical Information Publication, General section (AIP-GEN 1.5.1).

Despite the exemption, operators of exempt flights should notify the Department of details (as outlined below) relating to the flights operated, within fourteen days after the end of the flight.

If your proposed non-scheduled flight does not fall within any of the above categories, then you are required to lodge an application with the Secretary for permission to operate the flight. Non-scheduled flights that require permission are operating for reward and, as a result, these guidelines will refer to such flights as “charters” or “charter services”.

Those operators who are unsure whether their proposed flight falls into one of the above categories should contact the Department in advance of the flight.

## **How do I apply for permission to operate an international charter?**

If you are required to obtain permission to operate international air charter services to or from Australia, an application for permission must be made to the Department.

The charter operator, that is, the person who actually owns or operates the aircraft that will be used for the charter services, must make the application. The charter operator is often not the same person who is offering the charter services (this person is referred to as the “charterer”)<sup>2</sup>.

The application must be in writing and must be lodged with the Department at least 21 days prior to the commencement of the proposed flights<sup>3</sup>. The application must contain the following information<sup>4</sup>:

- the name and address of the charter operator;
- the name and address of the charterer;
- the nationality of the interests which have substantial ownership and effective control of the charter operator;
- the nationality of the interests which have substantial ownership and effective control of the charterer;
- the type and capacity of the aircraft being used for the flights, and whether it is leased or owned by the charter operator;

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<sup>2</sup> The term “charterer” and “charter operator” are defined in section 15 of the Act.

<sup>3</sup> See section 15B of the Act.

<sup>4</sup> See section 15C of the Act.

- whether the flights will carry passengers, cargo or mail, and if the services are carrying cargo, the type of cargo;
- if the application relates to a program of flights:
  - the duration of the program and frequency of the proposed flights; and
  - if the aircraft are to carry passengers – whether the program:
    - is of a seasonal nature; or
    - relates to special events; or
    - is to find out whether there would be a market for scheduled international air services;
- the place where the flights begin and end, and any intermediate stopping places;
- any intermediate stopping places where passengers, cargo or mail may be uplifted or discharged;
- the proposed tariff (fare) structure for the flights;
- if the aircraft is to carry passengers, satisfactory evidence (see the section on Consumer Protection) that holders of tickets for the flight or any of the flights will be indemnified for any financial loss that may be caused by the failure of the charter operator to:
  - fulfil its obligations; or
  - if the application relates to a program of flights – to complete the program.

In addition to the required information on the charter service itself, applicants should also provide details on the type of aircraft to be used, the state of registry of the aircraft and whether the aircraft meets Chapter 3 noise standards<sup>5</sup>.

The Department may seek additional information that it needs to consider the application.

Applications to operate international non-scheduled flights should be sent, using the coversheet at Appendix A, to the following address:

General Manager  
Aviation Markets  
Aviation & Airports

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<sup>5</sup> Standards in respect of aircraft noise set out in Chapter 3 of Volume I of Annex 16 to the Chicago Convention.

Department of Infrastructure, Transport, Regional Development and Local Government  
 GPO Box 594  
 CANBERRA ACT 2601  
 AUSTRALIA  
 Fax: +61-2-6274 6749

Information regarding the preparation of a charter application can be obtained by contacting the Department on Ph: +61-2-6274 7403

## Consumer protection

Subsection 15C(2) of the Act states that:

“If the aircraft or any of the aircraft are to carry passengers, the application must, if the Secretary so requests, contain evidence satisfactory to the Secretary, that holders of tickets for the flight or any of the flights will be indemnified for any financial loss that may be caused by the failure of the charter operator:

- (a) to fulfil its obligations; or
- (b) if the application relates to a program of flights – to complete the program.”

In other words, a charter operator must put in place arrangements for consumer protection so that passengers on their services will receive appropriate compensation if they suffer financial loss in the event arising from a failure by the operator to complete the charter services.

It is very important that the charter operator provide evidence of these arrangements as part of the application for permission.

The Department does not specify how the charter operator should fulfil its consumer protection obligations, as it is a matter for the charter operator’s commercial judgement. By way of guidance, the Department has approved applications in the past where the charter operator has put in place one of the following types of arrangements:

- A **surety bond** arrangement, where a bond is posted through an independent insurance company and administered on a trust basis on behalf of passengers to ensure they will be indemnified from financial loss arising from a failure by the charter operator to complete the charter services.
- An **insurance policy** through an independent insurance company, which allows any ticket holders to claim for financial loss arising from a failure by the charter operator to complete the charter services.
- A **guarantee with a third party airline**, where the third party airline undertakes to provide alternative air transport for its passengers arising from a failure by the charter operator to complete the charter services.
- A **trust account**, administered on behalf of passengers, into which all monies obtained from the sale of tickets on each flight are deposited and which will be

used to compensate passengers for any financial loss arising from a failure by the charter operator to complete the charter services. The charter operator may not withdraw this money until the completion of the relevant flight.

This list is only indicative of previous arrangements that have been accepted by the Department as 'indemnifying passengers against any financial loss'. The arrangements for consumer protection are assessed against the requirements of the Act on a case-by-case basis.

The charter operator may propose other measures to ensure that passengers are appropriately protected.

## **Consideration of an application to operate an international charter**

Applications to operate international charter services are considered by the Secretary to the Department, or a delegate of the Secretary. The Secretary may grant, grant with conditions or refuse permission for passengers, cargo or mail to be carried on the services.

Applications, that do not contain the required information outlined above, will not be considered until the information is provided.

When determining an application, the Secretary is to have regard to the public interest. In the Act, public interest in relation to charter services includes the following<sup>6</sup>:

- **The need for passengers, cargo or mail to be transported by aircraft**

The Secretary will take into consideration the market that the flights are to serve, including whether the services are seasonal or are taking place to transport passengers of cargo to a special event.

In doing so, the Secretary will favourably consider those charter services that respond to a consumer need.

- **The promotion of trade and tourism to Australia**

The Secretary will favourably consider charter services that promote Australia's trade and inbound tourism – for example, those that serve new or developing markets that might not be large enough to sustain scheduled services.

- **If the application relates to a program of flights – whether a wide range of places in Australia will be served under the program**

The Secretary will favourably consider charter services programs that serve a wide range of Australian centres.

- **If either the charterer or charter operator is owned or controlled by foreign interests – whether the Australian aviation industry will benefit from the services**

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<sup>6</sup> See section 15D of the Act.

The Secretary will consider what benefits the Australian aviation industry will receive from these services. Examples of such benefits may include the reciprocal ability for Australian airlines to operate charters to the country of the charter operator, aeronautical fees paid to airport operators, and the charter operator's use of Australian ground-handling, catering and other aviation-related services.

### **Aviation security**

The applicant must have a security program that has been approved by the Office of Transport Security within the Department.

### **Australia's international relations**

Flights between Australia and other countries are seen in the light of Australia's international relations. Circumstances may dictate that a particular approach needs to be taken by the Government of Australia when dealing with matters of international trade and tourism.

Approval under the *Air Navigation Regulations* is always required for certain flights involving particular countries, such as those that may be subject to United Nations Security Council sanctions. At present, prior approval from the Secretary is required for all flights between Australia and Afghanistan.

### **Other necessary approvals**

Subsection 16(1) of the Act provides that it is a condition of any approval to operate a charter service that the owner, operator, hirer and pilots of the aircraft comply with all other applicable Australian laws.

You should be aware of the existence of other requirements that apply to the operation of all air services to and from Australia. These requirements relate to:

- aviation security;
- safety of operations;
- insurance;
- border control (customs, immigration and quarantine);
- protection of the environment; and
- airport slots.

You may be required to give some evidence that you are able to meet these requirements (although you may not yet have the necessary licences or approvals) before your application to operate non-scheduled services is approved. Details on how to obtain the necessary licences and approvals are provided in Appendix B.

Furthermore, flights between Australia and Afghanistan are subject to an additional approval process under the *Air Navigation Regulations*. If you are proposing to undertake such flights, contact the Aviation Markets area of the Department to discuss the matter.



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Local Government**

**APPLICATION TO OPERATE NON-SCHEDULED FLIGHTS  
COVERSHEET**

**CHARTERER**

**Name:** .....

**Address:** .....

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**Nationality:** .....

**CHARTER OPERATOR**

**Name:** .....

**Address:** .....

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**Nationality:** .....

**AIRCRAFT**

**Aircraft Type:** .....

**Capacity:** .....

**Leased/Owned:** .....

**DETAILS OF FLIGHT**

**Purpose of flight:** .....

.....

**The flight(s) will carry:**           • Passengers           • Cargo           • Mail

**Type of Cargo: (if applicable)** .....

**DOCUMENTATION ATTACHED TO APPLICATION**

- Proposed Flight Schedule
- Proposed Tariff Structure
- Proposed Consumer Protection Measures (if applicable)

## ADDITIONAL REQUIREMENTS FOR CHARTER OPERATORS

- All applicants will operate a Transport Security Program (TSP) approved by the Office of Transport Security within the Department. This TSP must cover proposed operations to/from all ports in Australia included in planned operations. For more information, please contact:

Aviation Security Operations Branch  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
Phone: 1300 307 288 ( Operations Centre) or +61-2-6274 6981  
Fax: +61-2-6274 7994

Guidance material on the production TSPs is available at:  
<http://www.infrastructure.gov.au/transport/security/aviation/index.aspx>

- All applicants must comply with Australia's aviation safety requirements. Where an aircraft makes a commercial non-scheduled flight into or out of Australian territory, it must have prior permission from the Civil Aviation Safety Authority.

For further information, you should contact:

Airline Operations  
Civil Aviation Safety Authority  
Phone: +61-2-6217-1181  
Fax: +61-2-6217 1500  
Email: international\_ops@casa.gov.au

- Applicants who are intending to carry passengers will also need to comply with the requirements of the *Civil Aviation (Carrier's Liability) Act 1959*, which requires carriers to hold insurance that will ensure compensation will be paid in respect of death or personal injury suffered by passengers on aircraft.

For further information, please contact:

Carrier's Liability Insurance Unit  
Civil Aviation Safety Authority  
Phone: +61-2-6217 1151  
Fax: +61-2-6217 1110  
Email: carriers.liability@casa.gov.au

- If you plan to operate a charter service to an airport other than Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth or Sydney, you may need approval from Customs, Immigration, Health and Quarantine authorities. Please note that, in most instances, you will need to provide four (4) weeks written notice.

For further information, please contact:

National Passenger Processing Committee  
Phone: +61-2-6275 6248  
Fax: +61-2-6275 6271

- All applicants must comply with Australia's aircraft noise requirements [*Air Navigation (Aircraft Noise) Regulations 1984*]. The Regulations were amended in 1991 to implement the program agreed by the International Civil Aviation Organisation for the phasing out of subsonic jet aircraft that do not meet the noise standards contained in Chapter 3, Volume 1 of Annex 16 of the Chicago Convention. Under the Regulations Chapter 2 jet aircraft are no longer permitted to operate in Australian airspace. Special noise restrictions also apply to the operation of supersonic aircraft.

Airservices Australia has responsibility for ensuring compliance with aircraft noise regulations and provides this service to aircraft manufacturers, owners and operators.

For further information, you should contact:

Manager Environment Monitoring  
Corporate Affairs  
Airservices Australia  
Phone: +61-2-6268 4530  
Fax: +61-2-6268 4201  
Email: [environment@airservices.gov.au](mailto:environment@airservices.gov.au)

The Regulations also provide for exceptional circumstances where dispensations to enable limited operation of non-compliant aircraft may be applied for. Dispensations will include conditions that are intended to mitigate the impact of aircraft noise on the community.

For the issue of noise permits, you should contact:

Aviation Services  
Aviation Environment  
Aviation & Airports  
Department of Infrastructure, Transport, Regional  
Development and Local Government  
Phone: +61-2-6274 7291  
Fax: +61-2-6274 7994

- Applicants are responsible for obtaining access permission from airport operators and for time slot clearances. This is particularly important for operations into Sydney (Kingsford Smith) Airport, at which a legislated slot scheme is in place. Time slot clearances can be obtained from Airport Coordination Australia.

Phone: +61-2-9313 5469  
Fax: +61-2-9313 4210  
Email: [aca@coordaus.com.au](mailto:aca@coordaus.com.au)