

OFFICIAL

Deed of Agreement

Agreement for the emission of dark smoke

Airservices Australia
ABN 59 698 720 886

(Airservices)

The Commonwealth of Australia represented by the
Department of Infrastructure, Transport, Regional
Development, Communications and the Arts
ABN 86 267 354 017

(Department)

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Recitals

- A The *Airports (Environment Protection) Regulations 1997* (Cth) (**Regulations**) promote the improvement of environmental management practices at Airports regulated by the *Airports Act 1996* (Cth). The Regulations do this by imposing environmental duties on people who undertake activities (**operators of undertakings**) which generate, or have the potential to generate, pollution or offensive noise. The Regulations set standards for air, water and soil quality, and on-ground noise emissions.
- B Regulation 4.02(2) of the Regulations states that the provider of a Rescue and Fire Fighting Service for an Airport is not required to comply with certain thresholds for the emission of Dark Smoke in Schedule 1 of the Regulations if it is complying with an agreement with the Secretary of the Department that satisfies the provisions in regulation 4.02(2) of the Regulations.
- C Airservices is a provider of Rescue and Fire Fighting Services at Airports, including those regulated by the *Airports Act 1996* (Cth), set out in Schedule 1 to this Deed.
- D Airservices is required to undertake training of its employees employed as firefighters at those Airports and, in order to provide suitable training, must undertake activities that emit Dark Smoke.
- E For the purposes of regulation 4.02(2) of the Regulations, this Deed sets out the terms in relation to the emission of Dark Smoke which Airservices must comply with at all Airports where it provides Rescue and Fire Fighting Services.

Terms and conditions

1. Definitions and interpretation

1.1 Definitions

The following terms have these meanings in this Deed and the Recitals unless the contrary intention appears:

Airport means an airport that is subject to the *Airports Act 1996* (Cth);

Airport Environment Officer means a person appointed under regulation 10.01 of the Regulations;

Airport Lessee Company means a company that holds an airport lease;

Airservices means Airservices Australia ABN 59 698 720 886;

Airservices' Contact Person means that person specified in Item 6 of Schedule 2, or any substitute notified to the Department from time to time;

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in the place where Airservices' Contact Person is located;

Dark Smoke has the same meaning as the words 'dark smoke' in regulation 4.02 and Schedule 1 to the Regulations, and may include smoke approaching black in colour which is emitted as a result of a Fire Training Activity or Event that involves the use of fuel;

Deed means this deed and includes all schedules and annexures;

Department means the Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts;

Department's Contact Person means that person specified in Item 3 of Schedule 2, or any substitute notified to Airservices from time to time;

Effective Date means 20 May 2024;

Environmental Incident means an incident at an Airport caused by a Fire Training Activity or Event which causes 'pollution' within the meaning of the Regulations, including air pollution, water pollution and soil pollution;

Fire Training Activity or Event means an activity or event that is designed to practice and enhance the skills and knowledge of a fire fighter and that is required by legislation including the Air Services Regulations 2019 (Cth), the Civil Aviation Safety Regulations 1988 (Cth) and the Civil Aviation Safety Authority's 'Manual of Standards Part 139H - Standards Applicable to the Provision of Aerodrome Rescue and Fire Fighting Services';

Fuel means aviation gasoline, unleaded petrol and kerosene;

Night Fire Training means a Fire Training Activity that occurs wholly between sunset on one day and sunrise on the following day (by reference to the Airport at which the fire training activity occurs);

Regulations means the *Airports (Environment Protection) Regulations 1997* (Cth); and

Rescue and Fire Fighting Service has the meaning given to it in the Regulations.

1.2 Interpretation

Unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) headings are inserted for convenience and do not affect interpretation;

- (c) a reference to a person includes a reference to a natural person, a partnership, a firm, a body corporate, a joint venture, an unincorporated association, or an authority as well as a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns; and
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

2. Term

This Deed will commence on the Effective Date and will terminate three years from that date.

3. Requirements that must be complied with in order to emit Dark Smoke under the Regulations

3.1 Education of the public, the Airport Lessee Company and Airport tenants about Fire Training Activities (regulation 4.02(2)(a))

- (a) Airservices must make information available to the public, the Airport Lessee Companies, and Airport tenants that briefly and in plain English:
 - (i) describes Airservices' role in providing Rescue and Fire Fighting Services;
 - (ii) explains the Fire Training Activities or Events undertaken at Airports by Airservices;
 - (iii) explains the need to conduct those Fire Training Activities or Events; and
 - (iv) explains that during those Fire Training Activities or Events, Dark Smoke may be emitted into the atmosphere.
- (b) Airservices must make this information available at no cost to the public, Airport Lessee Companies and Airport tenants.

3.2 Notifying the Airport Lessee Company and the Airport Environment Officer before a Fire Training Event (regulation 4.02(2)(b))

- (a) Airservices must provide notification to the relevant Airport Lessee company and Airport Environment Officer of a Fire Training Activity or Event that will or is likely to result in the emission of Dark Smoke.
- (b) This notification must be provided before the conduct of that Fire Training Activity or Event, and should be provided at least 24 hours before the conduct of that Fire Training Activity or Event.
- (c) This notification must contain the following information:
 - (i) the location on the Airport where the Fire Training Activity or Event will be conducted;
 - (ii) the type and quantity of Fuel proposed to be used during the Fire Training Activity or Event;
 - (iii) the type and quantity of any flame-extinguishing or fire retarding liquid, foam or gas being used during the Fire Training Activity or Event;
 - (iv) the day and time at which the Fire Training Activity or Event is expected to commence; and
 - (v) the expected duration of the Fire Training Activity or Event.
- (d) This notification is required to be in writing.

- (e) Airservices may, through each of its Rescue and Fire Fighting facilities, establish individual arrangements with the relevant Airport Lessee Company and Airport Environment Officer for notification of a Fire Training Activity or Event that will, or is likely to result, in the emission of Dark Smoke pursuant to this clause 3.2. Any such arrangement must not be inconsistent with this Deed or the Regulations and, in the event of any inconsistency the provisions of the Regulations and then the terms of this Deed will prevail, in that order of precedence.

3.3 Limiting Fire Training Activity in unsuitable weather conditions (regulation 4.02(2)(c))

- (a) Airservices will not conduct a Fire Training Activity or Event at an Airport on a day for which a total fire ban (however described) as determined by the relevant State or Territory fire authority is in force for the area in which the Airport is located.
- (b) Airservices will not conduct a Fire Training Activity or Event at an Airport that will, or is likely to, result in the emission of Dark Smoke on a day for which the air quality category is "poor", "very poor" or "extremely poor" as reported by the:
 - (i) relevant State or Territory environmental protection authority; or
 - (ii) relevant State or Territory health authority,unless it has:
 - (iii) received the consent of the Airport Lessee Company; and
 - (iv) notified an Airport Environment Officer about the Airport Lessee Company's consent,prior to conducting the Fire Training Activity or Event.

3.4 Notifying the Airport Environment Officer of any Environmental Incident caused by Fire Training Activities (regulation 4.02(2)(d))

- (a) As soon as practicable, but no longer than 48 hours after becoming aware of an Environmental Incident, Airservices must notify the Airport Environment Officer and the relevant Airport Lessee Company for the Airport of the Environmental Incident.
- (b) Notification under clauses 3.4(a) must contain the following information:
 - (i) the nature and extent of the Environmental Incident; and
 - (ii) actions undertaken by Airservices to manage any adverse impacts arising from the Environmental Incident.
- (c) The notification under clauses 3.4(a) must be in writing.
- (d) For the avoidance of doubt, nothing in this clause affects the rights, duties and obligations of Airservices, the Airport Lessee Company or the Airport Environment Officer under Part 6 of the Regulations.

3.5 Promoting Night Fire Training Events (regulation 4.02(2)(e))

- (a) At Airports where Airservices proposes to undertake Fire Training Activities or Events that will or are likely to result in the emission of Dark Smoke, it will endeavour, where practicable, to undertake those activities as Night Fire Training.
- (b) The obligation in clause 3.5 is subject to:
 - (i) the realistic fire training needs of Airservices employees employed in the Rescue and Fire Fighting Services;
 - (ii) considerations pertaining to the safety and security of any person or property; and
 - (iii) Airservices having access to sites that are suitable for the conduct of Night Fire Training.

3.6 Reporting

- (a) Airservices must prepare a written report summarising:
 - (i) the results from any air quality monitoring undertaken during Fire Training Activities or Events during the term of this Deed;
 - (ii) any actions taken by Airservices during the term of this Deed to implement the recommendations from the 2022 Air Quality Monitoring Report prepared by Ramboll; and
 - (iii) any other actions taken by Airservices during the term of this Deed to minimise the impacts of Dark Smoke on human health or the environment.
- (b) The report must be provided to:
 - (i) the Department;
 - (ii) relevant Airport Lessee Companies; and
 - (iii) relevant Airport Environment Officersby 19 December 2026.

4. Relationship of this Deed with statutory obligations

4.1 For the avoidance of doubt, Airservices acknowledges that this Deed operates only to permit the emission of Dark Smoke during Fire Training Activities or Events conducted by Airservices at Airports. Nothing in this Deed otherwise entitles Airservices to undertake Fire Training Activities that would place Airservices in breach of any provision of:

- (a) Division 3 of Part 6 of the *Airports Act 1996* (Cth); or
- (b) the Regulations.

4.2 Without limiting clause 4.1, Airservices must, in conducting a Fire Training Activity or an Event:

- (a) comply with the general duty to avoid polluting as set out in regulation 4.01 of the Regulations, including in respect of any pollutant other than Dark Smoke; and
- (b) comply with the duty set out in regulation 4.03 of the Regulations in respect of pollution control equipment.

5. Governing Law

This Deed will be governed by and construed in accordance with the laws in the Australian Capital Territory.

6. Dispute resolution

6.1 Agreed procedure

- (a) The parties agree that any dispute arising during the course of the Deed will be dealt with as follows:
 - (i) firstly, the party claiming that there is a dispute will send to the other party a notice setting out the nature of the dispute;
 - (ii) secondly, the parties will try to resolve the dispute by direct negotiation; and
 - (iii) thirdly, if direct negotiation does not resolve the dispute, the dispute may be resolved by referring the dispute to an arbitrator agreed to by the parties.

- (b) If a dispute is referred to an arbitrator under sub-paragraph (iii) above, the parties agree that the decision of the arbitrator is final and binding on both parties.

6.2 Confidentiality and costs

- (a) Any information or documents disclosed by a party under this clause 6:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the dispute.
- (b) Each party must pay its own costs of complying with this clause 6.

7. Termination

7.1 Notice of Termination

Either party may terminate the Deed by providing 28 days' notice in writing to the other party.

7.2 Withdrawal of Termination

The party who has given a notice of termination may withdraw the notice at any time prior to the effective date of termination.

8. Miscellaneous

8.1 Power

Each party warrants to the other that:

- (a) it has the power, authority, capacity and contractual arrangements in place to execute this Deed and to lawfully perform and comply with it fully; and
- (b) all actions necessary for the authorisation, execution and performance of this Deed have been duly taken.

8.2 Entire agreement

These terms and conditions and the schedules constitute the entire agreement of the parties about their subject matter. Any prior agreement, undertakings and negotiations on that subject matter cease to have any effect.

8.3 Relationship

A party is not, and must not represent itself as, an employee, agent, partner or joint venture of the other party.

8.4 Notices

- (a) Where a party is required to give a notice or other communication in connection with this Deed in writing, the notice or communication must be marked for the attention of the Department's Contact Person or Airservices' Contact Person (as appropriate) and sent by hand delivery, post or email to the address specified in Schedule 2 as appropriate (as updated from time to time by notice from the recipient to the sender).
- (b) A communication in accordance with clause 8.4(a) takes effect when it is received (or at a later time specified in it) and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if posted, on the third day after posting (or, if posted to or from a place outside Australia, on the seventh day after posting); or
 - (iii) if emailed, when the sender receives confirmation that the email has been properly delivered to a system from which the addressee can receive it (or, if the sender does not receive such confirmation within two hours after sending the email and has not received a message that the email has not been received, two hours after sending the email).

- (c) If a communication is received after 5.00 pm in the place of receipt or on a day that is not a Business Day, it is taken as having been received at 9.00 am on the following Business Day.

8.5 Varying this Deed

This Deed may only be varied by the parties executing a written variation.

8.6 Counterparts

This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument.

8.7 Review of Deed

The parties will meet annually to review and discuss any issues relating to the Deed on or about the anniversary of the Effective Date, or at such other time as agreed by the parties in writing.

8.8 Severability of provisions

Any reading down or any severance of a particular provision of this Deed does not affect the other provisions of this Deed.

Signing page

Executed as a deed.

SIGNED SEALED AND DELIVERED for and on behalf of **Airservices Australia** ABN 59 698 720 886 by a duly authorised representative

Rodney Evans

Signature of authorised representative (print)

EVANS_RJ Digitally signed by EVANS_RJ
Date: 2024.05.17 10:03:05 +10'00'

Signature of authorised representative

17/05/2024

Date

Sam Woodman

Name of witness (print)

Samuel Woodman Digitally signed by Samuel Woodman
Date: 2024.05.17 09:50:54 +09'30'

Signature of witness

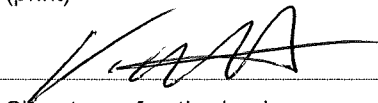
17/05/2024

Date

SIGNED SEALED AND DELIVERED for and on behalf of **the Commonwealth of Australia represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts** ABN 86 267 354 017 by a duly authorised representative

VICTORIA WRIGHT

Signature of authorised representative (print)



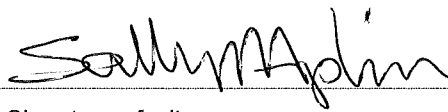
Signature of authorised representative

17/5/2024

Date

SALLY APZIN

Name of witness (print)



Signature of witness

17/5/2024

Date

Schedule 1: Rescue and Fire Fighting Services

1. Applicable Airports

For the purposes of this Deed, Airservices provides Aviation Rescue Fire Fighting Services at the following airports regulated by the *Airports Act 1996* (Cth):

- a) Adelaide Airport;
- b) Alice Springs Airport;
- c) Brisbane Airport;
- d) Canberra Airport;
- e) Darwin Airport;
- f) Gold Coast Airport;
- g) Hobart Airport;
- h) Melbourne Airport;
- i) Perth Airport;
- j) Sydney (Kingsford-Smith) Airport; and
- k) Sydney West Airport

Schedule 2: Parties

Item No.	Department details	
1	Department	<p>Name: Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts</p> <p>ABN: 86 267 354 017</p>
2	Address	<p>Physical address: 111 Alinga Street, Canberra ACT 2601</p> <p>Postal address: GPO Box 594, Canberra ACT 2601</p>
3	Contact Person	<p>Name: Victoria Wright</p> <p>Position: Assistant Secretary</p> <p>Phone: 02 6136 8702</p> <p>Email: Victoria.Wright@infrastructure.gov.au</p>
Airservices details		
4	Department	<p>Legal entity name: Airservices Australia</p> <p>ABN: 59 698 720 886</p>
5	Address	<p>Physical address: Alan Woods Building, 25 Constitution Avenue, Canberra ACT 2600</p> <p>Postal address: PO Box 367, Canberra ACT 2601</p>
6	Contact Person	<p>Name: Jonathon Syron</p> <p>Position: Environmental Operations Team Lead</p> <p>Phone: 02 6268 4111</p> <p>Email: Jonathon.Syron@airservicesaustralia.com.au</p>