

International charter guidelines

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 approvals by the International Aviation Branch of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) under sections 15 to 15F of the *Air Navigation Act 1920* (the Act).

An application 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 environmental protection. These additional requirements and the relevant contact details are set out below.

These guidelines are for information 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, take account of other legislative requirements or clarify various matters in the light of enquiries or submissions received.

Applicants should enquire with the Department at the time of their application about whether any changes to the Act 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 to or from Australia.

Under the Act, a 'non-scheduled flight' is a flight to or from Australian territory that is not made under the authority of an International Airline Licence (IAL) issued by the Secretary under the [Air Navigation Regulation 2016](#)¹. If you are proposing to operate a flight to or from Australia other than under the authority of an IAL, 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 flight(s) are scheduled or non-scheduled, please contact the Department in advance.

Australian Government policy objectives and strategy

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

opportunities for Australians and international visitors to take advantage of the benefits offered by international aviation.

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 and the promotion of trade and tourism;
- 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, or a delegate of the Secretary, with two main exemptions.

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:

- a single charter flight which does not form part of a program (including medical evacuation flights);
- programs of passenger charter flights with aircraft having a maximum seating capacity of 10;
- programs of five or less passenger charter flights with aircraft having a maximum seating capacity of 40;
- programs of two or less passenger charter flights with aircraft having a maximum seating capacity of 80;
- own-use charter flights, whether or not forming part of a program, where there is a single charterer;
- a charter flight for the carriage of homogenous cargo, whether or not forming part of a program, where there is a single charterer. The cargo must not consist of or include a consignment consolidated by a freight forwarder. Examples of homogenous cargo include:
 - cargo consisting of electronics and computer equipment;
 - cargo consisting of meat of any number of kinds;
 - cargo consisting of animals (including livestock) of any number of species.

Despite these exemptions, operators of exempt flights should still notify the Department of details (as outlined below) relating to the flights operated, within 14 days after the end of the first flight.

If your proposed non-scheduled flight does not fall within any of the above categories, you are required to lodge an application with the Department 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’.

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?

To obtain permission to operate international air charter services to or from Australia, an application must be made to the Department. This may be done by email to Bronwyn Calver at bronwyn.calver@infrastructure.gov.au, cc to internationalaviation@infrastructure.gov.au.

Details of exempted flights should also be submitted to the Department in this way within 14 days after the end of the first flight.

Charter flight operators are also encouraged to notify the Australian Border Force of their international charter service through the Air and Sea Portal. A link to the Portal is available at www.abf.gov.au/entering-and-leaving-australia/aircraft-requirements.

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 as the person offering the charter services (this person is referred to as the ‘charterer’)².

The application must be in writing and lodged with the Department at least seven days prior to the commencement of the proposed flights³. The application must contain the following information:

- 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;
- 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
 - complete the program (if the application relates to a program of flights).

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 standards⁵.

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

Applications should be sent to:

International Aviation Branch

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

GPO Box 594

CANBERRA ACT 2601

AUSTRALIA

Email: bronwyn.calver@infrastructure.gov.au (cc internationalaviation@infrastructure.gov.au)

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 important that the charter operator provides 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 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 or delegate is to have regard to the public interest. In the Act, public interest in relation to charter services includes the following⁶:

- **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 or cargo to a special event. In doing so, the Secretary will favourably consider those charter services that respond to consumer needs.

- **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 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**

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.

Australia's international relations

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

The Department's approval may be required for certain flights involving specific countries, such as those that may be subject to United Nations Security Council or other sanctions.

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, including those relating to

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

You may be required to provide 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 below.

Operators must seek the Department's approval for any charter flight to operate to/from any airport not listed as a [designated international airport](#) of Australia, such as Essendon Airport.

Additional Requirements for Charter Operators

All applicants will operate a Transport Security Program (TSP) approved by the Aviation and Maritime Security Division within the Department of Home Affairs. This TSP must cover proposed operations to/from all ports in Australia included in any planned operations.

For more information, please contact:

Aviation Security Branch

Aviation and Maritime Security Division

Department of Home Affairs

Phone: 1300 791 581 (Guidance Centre) or +61-2-5127 8991

Email: guidancecentre@homeaffairs.gov.au

Guidance material on the production of TSPs is available at <https://www.homeaffairs.gov.au/about-us/our-portfolios/transport-security/air-cargo-and-aviation/aviation/aircraft-operators>.

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:

CASA Operations

Civil Aviation Safety Authority

Phone: +61-7 3144 7400

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 (Carriers' 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:

Carriers' Liability Insurance Unit

Civil Aviation Safety Authority

Phone: +61-2-6217 1151

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 will 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:

The Chair

National Passenger Processing Committee
Passenger Operations Branch
Department of Home Affairs
PO Box 25
Belconnen ACT 2616

Email: nppc@abf.gov.au

All applicants must comply with Australia's aircraft noise requirements under the *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

Email: 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:

Airports Branch

Department of Infrastructure, Transport, Regional Development, Communications

and the Arts

Phone: +61-2-6274 6798

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

Email: aca@coordaus.com.au

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