



Aviation Legislation Amendment Act (No. 1) 1997

No. 30, 1997

**An Act to amend various Acts relating to aviation,
and for related purposes**

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An Act to amend various Acts relating to aviation, and for related purposes

[Assented to 17 April 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aviation Legislation Amendment Act (No. 1) 1997*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Air Navigation Act 1920

1 Subsection 3(1) (definition of *non-scheduled flight*)

Repeal the definition, substitute:

non-scheduled flight, in relation to an aircraft, means a flight by the aircraft into or from Australian territory where the flight is not made under the authority of an international airline licence issued by the Secretary under the regulations.

2 Sections 13A, 14 and 15

Repeal the sections, substitute:

14 Non-scheduled flights by aircraft possessing nationality of a Contracting State

An aircraft that possesses the nationality of a Contracting State may, subject to observance of the terms of the Chicago Convention and the provisions of this Act, the regulations, the *Civil Aviation Act 1988* and the regulations made under that Act, fly in transit non-stop across Australian territory, or land in Australian territory for non-traffic purposes, in the course of a non-scheduled flight without the necessity of obtaining prior permission.

15 Definitions

In sections 15A to 15F:

charterer, in relation to a proposed non-scheduled flight of an aircraft, or a proposed program of non-scheduled flights of one or more aircraft, means the person who makes the arrangements for the carriage of passengers, cargo or mail on the aircraft or any of the aircraft.

charter operator, in relation to a proposed non-scheduled flight of an aircraft, or a proposed program of non-scheduled flights of one or more aircraft, means:

- (a) the owner of the aircraft or each of the aircraft; or

(b) the operator of the aircraft or each of the aircraft.

permission means a permission under section 15D.

suspend, in relation to a permission, means suspend the operation of the permission, either for a stated period or without limitation as to time.

vary, in relation to a permission, includes alter or remove a condition to which the permission is subject or make the permission subject to a new condition.

15A Aircraft on non-scheduled flights not to take on or discharge passengers, cargo or mail without permission

- (1) An aircraft must not, in Australian territory, before beginning a non-scheduled flight or at an intermediate stopping place in the course of such a flight, take on passengers, cargo or mail for carriage for reward unless a permission for the carriage of the passengers, cargo or mail is in force and the carriage is in accordance with the permission.
- (2) An aircraft must not, in Australian territory, at an intermediate stopping place in the course of a non-scheduled flight or at the end of such a flight, discharge passengers, cargo or mail carried for reward unless a permission for the carriage of the passengers, cargo or mail was in force and the carriage was in accordance with the permission.
- (3) The Secretary may, by writing, determine that a permission is not required in relation to a category of commercial non-scheduled flights.
- (4) In deciding whether to make a determination under subsection (3), the Secretary is to have regard to the following matters (except to the extent, if any, to which the matters concerned relate to the safety of air navigation):
 - (a) the public interest, including but not limited to:
 - (i) the need of people to travel on, or to send cargo and mail by, aircraft; and
 - (ii) the promotion of trade and tourism to and from Australia; and

- (iii) if the application relates to a program of flights to or from Australia—whether there is to be a wide range of places in Australia that will be served under the program; and
 - (iv) if foreign interests hold substantial ownership and effective control of a charterer or a charter operator—employment and investment in, and general development of, the Australian Aviation industry; and
 - (v) aviation security; and
 - (vi) Australia’s international relations;
- (b) the availability of capacity (within the meaning of the *International Air Services Commission Act 1992*) on scheduled international air services, and any relevant determination made by the International Air Services Commission in respect of the allocation of capacity on those services;
- (c) any relevant advice on matters referred to in paragraph (a) that is provided to the Minister by that Commission under paragraph 6(2)(c) of that Act; and
- (d) any other matter that the Secretary thinks relevant.
- (5) A permission is not required for the taking on or discharging of passengers, cargo or mail in relation to a flight of an aircraft if the flight is included in a category of flights in relation to which a determination under subsection (3) is in force.
- (6) If subsection (1) or (2) is intentionally or recklessly contravened in respect of an aircraft, the operator of the aircraft and the pilot in command of the aircraft, unless the operator or pilot, as the case may be, has a reasonable excuse for the contravention, are each guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.
- Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.
- (7) If:
- (a) any passengers are, or any cargo or mail is:

- (i) taken on to an aircraft in Australian territory before beginning a non-scheduled flight or at an intermediate stopping place in the course of such a flight; or
 - (ii) discharged from an aircraft in Australian territory at an intermediate stopping place in the course of a non-scheduled flight or at the end of such a flight; and
- (b) a permission was not required for the taking on or discharging of the passengers, cargo or mail because of the operation of subsection (5);

the operator of the aircraft must, within 14 days after the end of the flight, give a written notice to the Secretary setting out the prescribed particulars in relation to the flight and the passengers, cargo or mail.

Penalty: 30 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

- (8) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

15B Applications for permission to operate non-scheduled flights

- (1) A charter operator may apply to the Secretary for permission for passengers, cargo or mail to be carried on one or more aircraft on a non-scheduled flight or on a program of non-scheduled flights.
- (2) The application must:
- (a) be in writing; and
 - (b) if the Secretary directs, be in a form approved by the Secretary; and
 - (c) contain the information referred to in section 15C; and
 - (d) be lodged with the Secretary:
 - (i) not less than 21 days before the day on which the flight, or the first of the flights, is to begin; or
 - (ii) within any lesser period allowed by the Secretary.

15C Information to be contained in application

- (1) The information to be contained in an application includes the following:
- (a) the name and address of the charterer of the aircraft, and the nationality of the interests holding substantial ownership and effective control of the charterer;
 - (b) the name and address of the charter operator, and the nationality of the interests holding substantial ownership and effective control of the charter operator;
 - (c) in respect of the aircraft, or each aircraft, that is to engage in the flight or any of the flights—the type of aircraft, its capacity and whether it is leased or owned by its operator;
 - (d) whether the aircraft, or each aircraft, that is to engage in the flight or any of the flights is to carry passengers, cargo or mail;
 - (e) if the aircraft or any of the aircraft are to carry cargo—the type of cargo;
 - (f) if the application relates to a program of flights:
 - (i) the duration of the program and the frequency of the proposed flights; and
 - (ii) if the aircraft are to carry passengers—whether the program is of a seasonal nature, consists of flights related to special events or is to find out whether there would be a market for scheduled international air services;
 - (g) the following particulars of the flight or flights:
 - (i) the place or places where the flight or flights are to begin;
 - (ii) the place or places where the flight or flights are to end;
 - (iii) any intermediate stopping places, including which of those stopping places are places at which passengers, cargo or mail may be taken on or discharged;
 - (iv) the proposed dates of departure from, and arrival at, the places mentioned in the preceding subparagraphs;
 - (h) the proposed tariff structure for the flight or flights.
- (2) If the aircraft or any of the aircraft are to carry passengers, the application must, if the Secretary so requests, contain evidence,
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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.
- (3) If further information is necessary to enable the Secretary to determine an application:
- (a) the Secretary may, by written notice to the applicant, require the applicant to provide the information; and
 - (b) the Secretary is not bound to consider the application further, or to determine it, until he or she receives the information.

15D Determination of application for permission

- (1) The Secretary may grant or refuse permission for passengers, cargo or mail to be carried on the flight or flights to which the application relates and must, as soon as practicable, give written notice of his or her decision to the applicant.
- (2) If the Secretary grants permission, the permission:
 - (a) is to be in writing; and
 - (b) has effect for the period stated in the permission; and
 - (c) may be subject to any conditions stated in the permission that the Secretary thinks appropriate.
- (3) In determining an application or deciding whether a permission is to be subject to conditions, the Secretary is to have regard to the following matters (except to the extent, if any, to which the matters concerned relate to the safety of air navigation):
 - (a) the public interest, including but not limited to:
 - (i) the need of people to travel on, or to send cargo and mail by, aircraft; and
 - (ii) the promotion of trade and tourism to and from Australia; and
 - (iii) if the application relates to a program of flights to or from Australia—whether there is to be a wide range of places in Australia that will be served under the program; and

- (iv) if foreign interests hold substantial ownership and effective control of the charterer or the charter operator—employment and investment in, and general development of, the Australian Aviation industry; and
- (v) aviation security; and
- (vi) Australia's international relations;
- (b) the availability of capacity (within the meaning of the *International Air Services Commission Act 1992*) on scheduled international air services, and any relevant determination made by the International Air Services Commission in respect of the allocation of capacity on those services;
- (c) any relevant advice on matters referred to in paragraph (a) that is provided to the Minister by that Commission under paragraph 6(2)(c) of that Act;
- (d) any other matter that the Secretary thinks relevant.

15E Variation of permission on application by charter operator

- (1) If the Secretary has granted a permission, a charter operator in relation to the flight or flights covered by the permission may apply to the Secretary for variation of the permission.
- (2) The application must:
 - (a) be in writing; and
 - (b) if the Secretary directs, be in a form approved by the Secretary.
- (3) If further information is necessary to enable the Secretary to determine an application:
 - (a) the Secretary may, by written notice to the applicant, require the applicant to provide the information; and
 - (b) the Secretary is not bound to consider the application further, or to determine it, until he or she receives the information.
- (4) The Secretary may grant or refuse the application and must, as soon as practicable, give written notice of his or her decision to the applicant.

- (5) In determining the application, the Secretary is to have regard to the matters referred to in subsection 15D(3).

15F Variation, suspension or cancellation of permission on Secretary's initiative

- (1) The Secretary may vary, suspend or cancel a permission if:
- (a) a condition to which the permission is subject has not been complied with by a charter operator; or
 - (b) there has been substantial change in any of the matters to which the Secretary had regard in granting the permission; or
 - (c) the Secretary is satisfied that it is in the public interest (including any of the matters referred to in paragraph 15D(3)(a)) to do so.
- (2) If the Secretary varies, suspends or cancels a permission, the Secretary must, as soon as practicable, give written notice of the variation, suspension or cancellation to the person who applied for the permission.

3 Subsection 17(1)

Omit "subsection 14(1) or in accordance with an international airline licence or an approval under section 15", substitute "section 14 or in accordance with an international airline licence or a permission under section 15D".

4 Section 18

Omit "13A(3), 14(3A), 15(2C)", substitute "15A(3)".

5 Section 22ZW

Repeal the section.

6 At the beginning of Part 4

Insert:

23A Review of decisions by Administrative Appeals Tribunal

- (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Secretary:
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- (a) to refuse a permission under subsection 15D(1); or
 - (b) to grant a permission subject to a condition under paragraph 15D(2)(c); or
 - (c) to refuse an application under subsection 15E(4); or
 - (d) to vary, suspend or cancel a permission under subsection 15F(1); or
 - (e) to refuse a permission under subsection 17(1); or
 - (f) to approve a place to be designated as a sterile area under subsection 21(5) subject to a condition; or
 - (g) to refuse an application for a place to be designated as a sterile area under subsection 21(5); or
 - (h) to refuse to approve a proposed aviation security program under section 22R or 22U; or
 - (i) to direct an aircraft operator to vary a proposed program or an approved program under subsection 22U(1); or
 - (j) to direct an airport operator to vary a proposed program or an approved program under subsection 22ZG(1); or
 - (k) to refuse to approve a proposed airport security program under section 22ZD or 22ZG; or
 - (l) to cancel the approval of an aviation security program under section 22T or 22U; or
 - (m) to cancel the approval of an airport security program under section 22ZF or 22ZG; or
 - (n) to refuse to approve a proposal to vary an aviation security program under section 22V; or
 - (o) to refuse to approve the adoption of an approved aviation security program under paragraph 22X(2)(b); or
 - (p) to refuse to approve a proposal to vary an airport security program under section 22ZH; or
 - (q) to categorise an airport under section 22ZK; or
 - (r) to give a direction under subsection 22ZQ(1); or
 - (s) to approve plans subject to a variation under section 22ZS; or
 - (t) to reject plans under section 22ZS; or
 - (u) to give a direction under subsection 22ZV(2).
- (2) Notice of a decision by the Secretary to which subsection (1) applies must include a statement to the effect that:
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- (a) subject to the *Administrative Appeals Tribunal Act 1975*, a person affected by the decision may make an application to the Administrative Appeals Tribunal for review of the decision; and
 - (b) a person whose interests are affected by the decision may request a statement under section 28 of that Act.
- (3) A failure to comply with subsection (2) does not affect the validity of the decision.

7 Paragraphs 27(2)(d) and (f)

Omit “13A, 14, 15”, substitute “15A”.

8 Paragraphs 27(3)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (c) an aircraft is taken to be subject to section 15A if the aircraft is, or apart from subsection 15A(5) would be, prohibited from taking on in Australian territory passengers, cargo or mail for carriage for reward, or discharging in Australian territory passengers, cargo or mail carried for reward, unless a permission for the carriage is or was in force under section 15D and the carriage is or was in accordance with the permission; and

9 After section 27

Insert:

27A Registration of security interests in relation to aircraft and components of aircraft

- (1) This section applies to an aircraft:
 - (a) that engages in trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory; or
 - (iv) between a State and a Territory; or
 - (v) between 2 Territories; or
 - (b) that is owned by a body corporate that:
 - (i) is a foreign corporation; or
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- (ii) is incorporated in a Territory; or
 - (iii) is a trading corporation formed within the limits of the Commonwealth (other than a trading corporation incorporated in a Territory); or
 - (iv) is a financial corporation formed within the limits of the Commonwealth (other than a financial corporation incorporated in a Territory).
- (2) Without prejudice to the operation that subsection (1) has apart from this subsection, that subsection also has the effect that it would have if:
- (a) the reference to an aircraft that is owned by a body corporate that is a trading corporation formed within the limits of the Commonwealth were a reference only to such an aircraft that is used by the body corporate for the purposes of its trading activities; and
 - (b) the reference to an aircraft that is owned by a body corporate that is a financial corporation formed within the limits of the Commonwealth were a reference only to such an aircraft that is used by the body corporate for the purposes of its financial activities.
- (3) In this section:

hire-purchase agreement, in relation to an aircraft or a component of an aircraft, means an agreement for the bailment of the aircraft or component under which:

- (a) the bailee may buy the aircraft or component; or
- (b) the property in the aircraft or component will or may pass to the bailee.

instalment purchase agreement, in relation to an aircraft or a component of an aircraft, means an agreement for the purchase of the aircraft or component by instalments (whether the instalments are described as instalments of the purchase price, as rent, as hiring charges or otherwise) other than such an agreement:

- (a) under which the property in the aircraft or component passes to the purchaser when the agreement is made; or
- (b) in respect of which the purchaser is a person who is engaged in the business of selling aircraft or components of aircraft.

security interest, in relation to an aircraft or a component of an aircraft:

- (a) means:
 - (i) a mortgage, charge or other encumbrance over the aircraft or component; or
 - (ii) any other interest in, or any power over or in relation to, the aircraft or component (however the interest or power is created) for the purpose of securing repayment of a debt (including payment of interest on a debt) or the performance of any other obligation; and
 - (iii) any other interest in the aircraft or component that is of a kind declared by the regulations to be a security interest; and
 - (b) includes:
 - (i) if the aircraft or component is the subject of a hire-purchase agreement—the interest of the bailee under the agreement; and
 - (ii) if the aircraft or component is the subject of an instalment purchase agreement—the interest of the purchaser under the agreement.
- (4) The regulations may make provision for or in relation to the following:
- (a) the establishment or keeping of a register containing particulars of security interests in relation to aircraft and components of aircraft;
 - (b) the appointment of a person (the *registrar*) to keep the register;
 - (c) requiring the owner of an aircraft or of a component of an aircraft to notify the registrar of particulars of any security interest, a change in any particulars entered in the register in relation to a security interest, or the termination of a security interest, in relation to the aircraft or component;
 - (d) the period within which, and the manner and form in which, a notification is to be given, including any documents to be lodged with, and any information to be given to, the registrar in connection with a notification;

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- (e) the manner in which any such document or information is to be verified (which may include verification by means of a statutory declaration);
 - (f) the registration of particulars of a security interest duly notified, the amendment of registered particulars of a security interest and the cancellation of the registration of particulars of a security interest;
 - (g) the publishing by the registrar of information about the registration of particulars of a security interest, the amendment of registered particulars of a security interest or the cancellation of the registration of particulars of a security interest;
 - (h) the giving by the registrar of a certificate in relation to the registration of particulars of a security interest and the amendment or cancellation of such a certificate;
 - (i) the return by the registrar of documents to the person by whom they were lodged;
 - (j) the return of certificates to the registrar for amendment or cancellation;
 - (k) the giving by the registrar of copies of, or extracts from, entries on the register;
 - (l) the prescribing of fees for:
 - (i) the registration of particulars of a security interest, the amendment of registered particulars of a security interest or the cancellation of the registration of particulars of a security interest; or
 - (ii) the giving by the registrar of certificates in relation to the registration of particulars of a security interest or the amendment or cancellation of such a certificate; or
 - (iii) the giving by the registrar of copies of, or extracts from, entries on the register or documents lodged with the registrar;
 - (m) providing that a notification to the registrar is taken not to be duly given unless and until:
 - (i) the notification is given in the manner and form, and is accompanied by the documents and information, required by the regulations; and
 - (ii) any relevant prescribed fees are paid;
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- (n) the prescribing of penalties (not exceeding a fine of 50 penalty units) for offences against regulations made for the purposes of any of the above paragraphs.
- (5) The fees that may be prescribed under paragraph (4)(l) may not exceed amounts or rates that are reasonably related to the expenses incurred by the Commonwealth in relation to the matters in respect of which the fees are prescribed.
- (6) A person is not taken to have notice of any matter relating to a security interest in relation to an aircraft or a component of an aircraft merely because of anything entered in the register in relation to the aircraft or component.

Airports Act 1996

10 Section 4 (11th dot point)

Omit “fit for occupancy or use”, substitute “complying with the regulations”.

11 Section 5

Insert:

lender, in relation to a loan security, means the person who is entitled to enforce the security.

12 After section 7

Insert:

7A Transfers and acquisitions by way of the enforcement of a loan security

- (1) A reference in this Act to a transfer by way of the enforcement of a loan security is a reference to a transfer to the lender by way of the enforcement of the loan security.
- (2) A reference in this Act to an acquisition by way of the enforcement of a loan security is a reference to the acquisition by the lender by way of the enforcement of the loan security.

(3) This section is enacted for the avoidance of doubt.

13 Section 11 (5th dot point)

After “acquires a lease”, insert “, or enters into possession of an airport site,”.

14 Section 11 (6th dot point)

Omit “statutory authority”, substitute “a statutory obligation”.

15 At the end of section 11

Add:

- The regulations may deal with the terms of subleases and licences relating to airport sites.
- The regulations may provide that the beneficial and legal interests in subleases and licences relating to airport sites cannot be separated except in the case of the enforcement of a loan security.

16 At the end of section 28

Add:

(2) If:

- (a) an airport lease is subject to a loan security; and
- (b) the lender enters into possession of the land to which the lease relates; and
- (c) the entry into possession is by way of the enforcement of the loan security;

the lender must, within 7 days after entering into possession, give the Minister written notice of the entry into possession.

Penalty: 100 penalty units.

Note: The heading to section 28 of the *Airports Act 1996* is altered by inserting “**or of entry into possession**” after “**lease**”.

17 After subsection 29(1)

Insert:

Entry into possession

(1A) If:

- (a) an airport lease is subject to a loan security; and
- (b) the lender enters into possession of the land to which the lease relates; and
- (c) the entry into possession is by way of the enforcement of the loan security;

the lender must cause the lease to be transferred to a qualified company:

- (d) within 90 days after the lender entered into possession; or
- (e) if a longer period is specified in a written notice given to the lender by the Minister—within that longer period.

18 Subsections 29(2) and (3)

Omit “(1)”, substitute “(1) or (1A)”.

19 Paragraph 29(4)(b)

After “(1)(d)”, insert “or (1A)(e)”.

20 Division 5 of Part 2 (heading)

Repeal the heading, substitute:

Division 5—Obligation to use airport site as an airport

21 Subsection 31(1)

Repeal the subsection, substitute:

- (1) This section has effect for the purposes of determining whether:
 - (a) an airport-operator company for an airport; or
 - (b) a person acting on behalf of an airport-operator company for an airport;has a defence to, or an immunity from:
 - (c) an action or proceeding in court (whether civil or criminal); or
 - (d) an administrative proceeding; or
 - (e) a proceeding in a tribunal.

22 Subsections 31(2) and (3)

Omit “authority”, substitute “an obligation”.

Note: The heading to section 31 of the *Airports Act 1996* is altered by omitting “**Authority**” and substituting “**Obligation**”.

23 Before section 32

Insert:

Subdivision A—Airport-operator company must not carry on non-airport business

24 Before section 33

Insert:

Subdivision B—Airport-management agreements

25 After subsection 33(4)

Insert:

Approval of agreement

- (4A) The airport-lessee company for an airport must not enter into an airport-management agreement in relation to the airport unless the agreement is approved in writing by the Minister.

Note: *Airport-management agreement* is defined by subsection (7).

Contravention

- (4B) If a purported agreement contravenes subsection (4A), it is of no effect.

Criteria for approval

- (4C) In making a decision under subsection (4A), the Minister must have regard to:
- (a) the matters specified in the regulations; and
 - (b) such other matters (if any) as the Minister considers relevant.

Approval of variation

- (4D) An airport-management agreement in relation to the airport must not be varied unless the variation is approved in writing by the Minister.

Note: *Airport-management agreement* is defined by subsection (7).

Contravention

- (4E) If a purported variation contravenes subsection (4D), it is of no effect.

Criteria for approval

- (4F) In making a decision under subsection (4D), the Minister must have regard to:
- (a) the matters specified in the regulations; and
 - (b) such other matters (if any) as the Minister considers relevant.

Note: The following heading to subsection 33(1) of the *Airports Act 1996* is inserted “*Approval of airport-management company*”.

26 Before section 34

Insert:

Subdivision C—Subleases and licences

27 Subsections 34(2) and (3)

Repeal the subsections, substitute:

- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.

28 At the end of section 34

Add:

- (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the sublease:

- (a) the prohibition does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
- (b) if, at the end of that 90-day period, the sublease contravenes the prohibition—the sublease is terminated immediately after the end of that period.

29 After section 34

Insert:

34A Regulations may prohibit terms from being included in sublease of airport lease

- (1) The regulations may prohibit specified kinds of terms from being included in subleases of an airport lease.
- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the sublease:
 - (a) the prohibition does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
 - (b) if, at the end of that 90-day period, the sublease contravenes the prohibition—the sublease is terminated immediately after the end of that period.
- (5) In this section:
terms includes conditions.

34B Regulations may require terms to be included in sublease of airport lease

- (1) The regulations may require that specified kinds of terms must be included in subleases of an airport lease.

- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a requirement in relation to the sublease:
 - (a) the requirement does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
 - (b) if, at the end of that 90-day period, the sublease contravenes the requirement—the sublease is terminated immediately after the end of that period.
- (5) In this section:

terms includes conditions.

34C Regulations may prohibit declaration of trust in respect of sublease of airport lease

- (1) The regulations may provide that the sublessee of an airport lease must not dispose of the sublease by way of declaration of trust.
- (2) If a purported disposal contravenes those regulations, it is of no effect.

34D Regulations may provide that a beneficial interest in a sublease of airport lease must not be transferred independently of the legal interest

- (1) The regulations may provide that a beneficial interest in a sublease of an airport lease must not be transferred independently of the legal interest in the sublease.
- (2) If a purported transfer contravenes those regulations, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

30 Subsections 35(2) and (3)

Repeal the subsections, substitute:

- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.

31 At the end of section 35

Add:

- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the licence:
 - (a) the prohibition does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
 - (b) if, at the end of that 90-day period, the licence contravenes the prohibition—the licence is terminated immediately after the end of that period.

32 After section 35

Insert:

35A Regulations may prohibit terms from being included in licence relating to airport lease

- (1) The regulations may prohibit specified kinds of terms from being included in licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the licence:

- (a) the prohibition does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
 - (b) if, at the end of that 90-day period, the licence contravenes the prohibition—the licence is terminated immediately after the end of that period.
- (5) In this section:
- terms* includes conditions.

35B Regulations may require terms to be included in licence relating to airport lease

- (1) The regulations may require that specified kinds of terms must be included in licences relating to an airport lease.
 - (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
 - (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
 - (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a requirement in relation to the licence:
 - (a) the requirement does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
 - (b) if, at the end of that 90-day period, the licence contravenes the requirement—the licence is terminated immediately after the end of that period.
 - (5) In this section:
- terms* includes conditions.

35C Regulations may prohibit declaration of trust in respect of licence relating to airport lease

- (1) The regulations may provide that the holder of a licence relating to an airport lease must not dispose of the licence by way of declaration of trust.
- (2) If a purported disposal contravenes those regulations, it is of no effect.

35D Regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest

- (1) The regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest in the licence.
- (2) If a purported transfer contravenes those regulations, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

35E Termination of sublease or licence otherwise than under this Subdivision

This Subdivision does not, by implication, prevent a sublease or licence from being terminated otherwise than under this Subdivision.

35F Compensation—constitutional safety-net

- (1) If:
 - (a) apart from this section, the operation of this Subdivision would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

33 Subsection 60(6)

Omit “*ownership/control matter*”, substitute “*ownership matter*”.

34 Section 67 (4th dot point)

Omit “fit for occupancy or use”, substitute “complying with the regulations”.

35 Paragraph 71(2)(h)

Omit “environmental”, substitute “environment”.

36 Paragraph 71(3)(h)

Omit “environmental”, substitute “environment”.

37 After section 84

Insert:

84A Public comment—minor variation

- (1) Before giving the Minister a draft variation of a final master plan for an airport under subsection 84(1), the airport-lessee company for the airport must:
 - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
 - (i) stating that the company has prepared a preliminary version of the draft variation; and
 - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the

- public during normal office hours throughout the period of 30 days after the publication of the notice; and
- (iii) specifying the place or places where the copies will be available for inspection and purchase; and
 - (iv) inviting members of the public to give written comments about the preliminary version to the company within 30 days after the publication of the notice; and
- (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the preliminary version in accordance with the notice, the draft variation submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
- (a) listing the names of those members of the public; and
 - (b) summarising those comments; and
 - (c) stating that the company has had due regard to those comments in preparing the draft variation; and
 - (d) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

38 Paragraph 89(1)(n)

Omit “environmental” (wherever occurring), substitute “environment”.

39 Paragraph 91(1)(k)

Omit “environmental”, substitute “environment”.

40 After section 95

Insert:

95A Public comment—minor variation

- (1) Before giving the Minister a draft variation of a major development plan for an airport under subsection 95(1), the airport-lessee company for the airport must:

- (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
 - (i) stating that the company has prepared a preliminary version of the draft variation; and
 - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 30 days after the publication of the notice; and
 - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
 - (iv) inviting members of the public to give written comments about the preliminary version to the company within 30 days after the publication of the notice; and
 - (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the preliminary version in accordance with the notice, the draft variation submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
- (a) listing the names of those members of the public; and
 - (b) summarising those comments; and
 - (c) stating that the company has had due regard to those comments in preparing the draft variation; and
 - (d) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

41 Section 97 (2nd dot point)

Omit “fit for occupancy or use”, substitute “complying with the regulations”.

42 At the end of paragraph 100(2)(d)

Add “or”.

43 After paragraph 100(2)(d)

Insert:

- (e) a standard made by, or by an authority of, the United States of America; or
- (f) a standard made by, or by an authority of, a member state of the European Union;

44 Subdivision D of Division 5 of Part 5 (heading)

Repeal the heading, substitute:

Subdivision D—Certificates of compliance

45 Section 104

Repeal the section, substitute:

104 Certificates of compliance

In this Subdivision:

certificate of compliance has the meaning given by section 107.

46 Paragraph 106(1)(c)

Omit “fitness”, substitute “compliance”.

Note: The heading to section 106 of the *Airports Act 1996* is altered by omitting “**fitness**” and substituting “**compliance**”.

47 Paragraph 106(1)(d)

After “fitness”, insert “for occupancy or use”.

48 Paragraph 106(4)(c)

Omit “fitness”, substitute “compliance”.

49 Paragraph 106(4)(d)

After “fitness”, insert “for occupancy or use”.

50 Paragraph 107(1)(a)

Repeal the paragraph, substitute:

- (a) the issue of certificates (to be known as *certificates of compliance*) stating that a building, structure, earthworks, engineering works, electrical works, hydraulic works or

eligible alteration is to be treated as complying with the regulations;

Note: The heading to section 107 of the *Airports Act 1996* is altered by omitting “fitness” and substituting “compliance”.

51 Paragraphs 107(1)(b), (c), (d) and (e)

Omit “fitness”, substitute “compliance”.

52 At the end of paragraph 107(2)(d)

Add “or”.

53 After paragraph 107(2)(d)

Insert:

- (e) a standard made by, or by an authority of, the United States of America; or
- (f) a standard made by, or by an authority of, a member state of the European Union;

54 Subsection 107(5)

Omit “fitness”, substitute “compliance”.

55 Section 108

Omit “fitness”, substitute “compliance”.

56 Subparagraph 109(1)(c)(i)

Omit “fitness”, substitute “compliance”.

57 Section 113 (after the 3rd dot point)

Insert:

- It is an offence to cause environmental harm at an airport site.

58 After subsection 130(1)

Insert:

- (1A) If a final environment strategy is in force for an airport, a person (other than the airport-lessee company for the airport) who carries

on activities at the airport must take all reasonable steps to ensure that the strategy is complied with.

59 Subsections 130(2) and (3)

After “(1)” (wherever occurring), insert “or (1A)”.

60 At the end of section 130

Add:

- (4) In addition to its effect apart from this subsection, subsection (1A) also has the effect it would have if its application were, by express provision, confined to constitutional corporations.

61 Before section 132

Insert:

131A Airports to which Division applies

This Division applies to:

- (a) a core regulated airport; or
 - (b) an airport specified in the regulations;
- if there is an airport lease for the airport.

131B Offence of causing serious environmental harm

- (1) A person must not, by act or omission, directly or indirectly cause environmental pollution that affects an area that consists of, or is included in, an airport site if the pollution harms, or has the potential to harm, the environment and:
 - (a) both:
 - (i) a final environment strategy is in force for the airport concerned; and
 - (ii) the area is identified in the strategy as environmentally significant; or
 - (b) the effect of the pollution is, or has the potential to be:
 - (i) of high impact; and
 - (ii) irreversible; or
 - (c) the pollution results, or has the potential to result, in substantial harm to public health or to public safety; or

- (d) the pollution results, or has the potential to result, in substantial damage to property.
- (2) If a person intentionally or recklessly contravenes subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to *environmental pollution* includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

131C Offence of causing material environmental harm

- (1) A person must not, by act or omission, directly or indirectly cause environmental pollution that affects an area that consists of, or is included in, an airport site if the pollution harms, or has the potential to harm, the environment and:
 - (a) the effect of the pollution is, or has the potential to be, of significant impact; or
 - (b) the pollution results, or has the potential to result, in harm to public health or to public safety; or
 - (c) the pollution results, or has the potential to result, in damage to property (other than minor damage).
- (2) If a person intentionally or recklessly contravenes subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.
- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to *environmental pollution* includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

131D Offence of causing environmental nuisance

- (1) A person must not, by act or omission, directly or indirectly cause environmental pollution that affects an area that consists of, or is included in, an airport site if the act or omission is not authorised by or under this Act or another law of the Commonwealth and:
 - (a) the pollution takes the form of smoke, dust or odour; or
 - (b) the effect of the pollution is:
 - (i) of low impact; and
 - (ii) transient; or
 - (c) the effect of the pollution interferes unreasonably, or has the potential to interfere unreasonably, with the enjoyment of the area by a person occupying, or lawfully using, the area.
- (2) If a person intentionally or recklessly contravenes subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.
- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to *environmental pollution* includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

131E Alternative verdicts—offence against section 131B or 131C

- (1) If a court acquits a person of an offence against section 131B but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of an offence against section 131C or 131D, the court may convict the person of the offence against section 131C or 131D.
- (2) If a court acquits a person of an offence against section 131C but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of an offence against section 131D, the court may convict the person of the offence against section 131D.

62 Subsection 132(2)

Before “provision”, insert “particular”.

63 Section 132(2)

Omit “250 penalty units”, substitute “the number of penalty units (not exceeding 250 penalty units) that is declared by those regulations to be the maximum number of penalty units for a contravention of that provision”.

64 After subsection 132(3)

Insert:

- (3A) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a standard proposed or approved by the Standards Association of Australia, being a standard as in force or existing from time to time.

65 After paragraph 133(1)(a)

Insert:

- (aa) monitoring, mitigating, remedying or rectifying contraventions of section 131B, 131C or 131D; or

66 After subsection 133(3)

Insert:

- (3A) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a standard proposed or approved by the Standards Association of Australia, being a standard as in force or existing from time to time.
- (3B) To avoid doubt, regulations made for the purposes of paragraph (1)(a) may make provision for and in relation to the monitoring, cleaning up, remedying or rectifying, after the regulations take effect, of environmental pollution, even if the environmental pollution was generated:
- (a) before the commencement of this subsection; or
 - (b) before the regulations took effect.

67 Paragraph 134(1)(a)

Repeal the paragraph, substitute:

- (a) a person has contravened:
 - (i) section 131B, 131C or 131D; or
 - (ii) regulations made for the purposes of section 132 or 133;
- and

68 Paragraph 135(1)(a)

Repeal the paragraph, substitute:

- (a) a person has contravened:
 - (i) section 131B, 131C or 131D; or
 - (ii) regulations made for the purposes of section 132 or 133;
- and

69 Subsection 136(2)

After “referred to in”, insert “section 131B, 131C or 131D or”.

70 Subsection 136(2)

After “133(1)(a),”, insert “(aa),”.

71 Subsection 137(1)

Repeal the subsection, substitute:

- (1) This section applies to the following provisions:
 - (a) section 131B, 131C or 131D;
 - (b) regulations made for the purposes of section 132 or 133.

72 Subsection 137(2)

Omit “regulations”, substitute “provisions”.

73 After section 143

Insert:

143A Publication of accounts and statements

- (1) The ACCC may publish accounts and statements given to the ACCC under section 143.

- (2) The ACCC may charge fees for the supply of accounts and statements published under subsection (1).

74 After section 145

Insert:

145A Publication of airport reports

- (1) The ACCC may publish reports given to the ACCC in accordance with a requirement covered by subsection 145(1).
- (2) The ACCC may charge fees for the supply of reports published under subsection (1).

75 Subsection 147(1)

Omit “to a document”, substitute “if a document is”.

76 At the end of section 147

Add:

- (3) Section 43 of the *Prices Surveillance Act 1983* has effect as if the functions conferred on the ACCC by section 143A and 145A of this Act were conferred instead by a provision of that Act.

Note: This allows the ACCC to publish accounts and statements given to the ACCC under section 143 and to publish reports given to the ACCC in accordance with a requirement covered by subsection 145(1).

77 Subsection 200(1)

Repeal the subsection, substitute:

- (1) Before making a declaration under section 198 about an airport, the Minister must cause to be published in the *Gazette* a notice:
 - (a) stating that the Minister is considering making a declaration under section 198 about the airport; and
 - (b) inviting persons covered by any of the following subparagraphs to give the Minister a submission about the proposed declaration within 30 days after the publication of the notice:
 - (i) an airport-operator company for the airport;

- (ii) a person specified in the regulations for the purposes of the application of this subparagraph to the airport, being a person who represents the interests of all of the aircraft operators who use the airport to operate scheduled air services;
- (iii) Airservices Australia;
- (iv) the Civil Aviation Safety Authority.

78 Subsection 200(2)

Omit “company”, substitute “person”.

79 Subsection 202(1)

Repeal the subsection, substitute:

- (1) Before making an instrument under section 201 relating to an airport, the Minister must cause to be published in the *Gazette* a notice:
 - (a) stating that the Minister is considering making an instrument under section 201 relating to the airport; and
 - (b) inviting persons covered by any of the following subparagraphs to give the Minister a submission about the proposed instrument within 30 days after the publication of the notice:
 - (i) an airport-operator company for the airport;
 - (ii) a person specified in the regulations for the purposes of the application of this subparagraph to the airport, being a person who represents the interests of all of the aircraft operators who use the airport to operate scheduled air services;
 - (iii) Airservices Australia;
 - (iv) the Civil Aviation Safety Authority.

80 Subsection 202(2)

Omit “company”, substitute “person”.

81 Paragraph 242(2)(c)

After “company”, insert “, an agreement or a variation,”.

82 After paragraph 242(2)(g)

Insert:

- (ga) a decision under section 233 (which deals with authorised officers for the purposes of exercising monitoring powers);

83 Subsection 242(5)

Insert:

this Act does not include the regulations.

84 At the end of section 242

Add:

Regulations may provide for review of decisions by Administrative Appeals Tribunal

- (6) This section does not, by implication, prevent the regulations from providing that applications may be made to the Administrative Appeals Tribunal for review of decisions made in the exercise of powers conferred by the regulations.

85 Paragraph 243(1)(c)

After “company”, insert “, an agreement or a variation,”.

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86 Subsection 30(3)

Omit “20 or 21”, substitute “21 or 22”.

[*Minister’s second reading speech made in—
House of Representatives on 26 February 1997
Senate on 19 March 1997*]

(19/97)
