



Airports Amendment Act 2015

No. 108, 2015

An Act to amend the *Airports Act 1996*, and for other purposes

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No. 108, 2015

An Act to amend the *Airports Act 1996*, and for other purposes

[Assented to 30 June 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Airports Amendment Act 2015*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedules

- (1) Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1—Amendments

Part 1—Amendments

Airports Act 1996

1 Section 4

Omit “Sydney” (wherever occurring), substitute “Sydney (Kingsford-Smith)”.

2 Subsection 5(1)

Insert:

airport plan for Sydney West Airport means a plan under Division 4A of Part 5.

ancillary development has the meaning given by section 96L.

associated site for Sydney West Airport has the meaning given by section 96L.

Environment Minister means the Minister who administers the *Environment Protection and Biodiversity Conservation Act 1999*.

Infrastructure Minister means the Minister who administers this Act.

Sydney West Airport completion day has the meaning given by section 112B.

3 Section 11

Omit:

- | |
|--|
| <ul style="list-style-type: none">• The airport-lessee companies for Sydney (Kingsford-Smith) Airport and Sydney West Airport must be wholly-owned subsidiaries of the same holding company. |
|--|

substitute:

- The airport-lessee companies for Sydney (Kingsford-Smith) Airport and Sydney West Airport may be wholly-owned subsidiaries of the same company.

4 Section 18 (heading)

Repeal the heading, substitute:

18 Sydney (Kingsford-Smith) Airport and Sydney West Airport may be under common ownership

5 Subsections 18(1) to (6)

Repeal the subsections, substitute:

- (1) The airport-lessee company for Sydney (Kingsford-Smith) Airport and the airport-lessee company for Sydney West Airport may be subsidiaries of the same company.

6 Paragraph 24(3)(d)

Repeal the paragraph.

7 Section 38

Omit “Sydney” (wherever occurring), substitute “Sydney (Kingsford-Smith)”.

8 Section 48

Omit “Sydney” (wherever occurring), substitute “Sydney (Kingsford-Smith)”.

9 Section 49 (table items that, to any extent, deal with Sydney West Airport)

Repeal the items.

10 Section 67

After:

- Major development plans will be required for significant developments at airports.

insert:

- An airport plan may be determined for Sydney West Airport.
- Major development plans will not be required for a development at Sydney West Airport if the development is covered by an airport plan for the airport.

11 Subsection 68(1)

After “Part”, insert “(other than Division 4A and the associated provisions)”.

12 After subsection 68(1)

Insert:

(1A) Division 4A and the associated provisions apply to Sydney West Airport, whether or not there is an airport lease for the airport.

13 Subsection 68(2)

Omit “subsection (1)”, substitute “subsections (1) and (1A)”.

14 At the end of section 68

Add:

(3) In this section:

associated provisions means the provisions of Division 6, to the extent that they relate to Division 4A.

15 At the end of paragraph 75(1)(b)

Add “and”.

16 After paragraph 75(1)(b)

Insert:

(ba) in the case of a grant—subsection (1A) does not apply to the grant;

17 After subsection 75(1)

Insert:

- (1A) If:
- (a) a company is granted an airport lease for Sydney West Airport; and
 - (b) the lease is the first airport lease granted for the airport; the company must give the Minister, in writing, a draft master plan for the airport:
 - (c) within 5 years after the grant; or
 - (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

18 Paragraph 75(2)(a)

After “(1)”, insert “or (1A)”.

19 After section 81

Insert:

81A Approval of final master plan—Sydney West Airport

- (1) If:
- (a) an airport-lessee company gives the Minister, in writing, a draft master plan for Sydney West Airport; and
 - (b) an airport plan for the airport is in force;
- the Minister may refuse to approve the draft master plan if the Minister is satisfied that the draft master plan is inconsistent with the airport plan.
- (2) If:
- (a) before the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft master plan for Sydney West Airport; and
 - (b) an airport plan for the airport is in force; and
 - (c) the draft master plan is accompanied by an application to vary the airport plan; and
 - (d) the Minister is satisfied that, if:
 - (i) the airport plan were to be so varied; and
 - (ii) the draft master plan were to be approved;the draft master plan as so approved would be consistent with the airport plan;

the Minister may approve the draft master plan even if it is inconsistent with the airport plan.

- (3) If:
- (a) on or after the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft master plan for Sydney West Airport; and
 - (b) an airport plan for the airport is in force;
- the Minister may approve the draft master plan even if it is inconsistent with Part 3 of the airport plan.
- (4) For the purposes of subsection (1), if a draft master plan is not expressed to replace a final master plan, then, in determining whether the draft master plan is inconsistent with the airport plan, disregard section 96E.
- (5) This section does not, by implication, limit the powers conferred on the Minister by section 81.

20 After section 84

Insert:

84AA Minor variation of final master plan—Sydney West Airport

- (1) If:
- (a) a final master plan for Sydney West Airport is in force; and
 - (b) the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the final master plan; and
 - (c) an airport plan for the airport is in force;
- the Minister may refuse to approve the draft variation if the Minister is satisfied that, if the variation were to be made, the varied final master plan would be inconsistent with the airport plan.
- (2) If:
- (a) a final master plan for Sydney West Airport is in force; and
 - (b) before the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the final master plan; and
 - (c) an airport plan for the airport is in force; and

- (d) the draft variation of the final master plan is accompanied by an application to vary the airport plan; and
 - (e) the Minister is satisfied that, if:
 - (i) the airport plan were to be so varied; and
 - (ii) the draft variation of the final master plan were to be approved;the varied final master plan would be consistent with the airport plan;
- the Minister may approve the draft variation of the final master plan even if the Minister is satisfied that, if the draft variation of the final master plan were to be approved, the varied final master plan would be inconsistent with the airport plan.
- (3) If:
 - (a) a final master plan for Sydney West Airport is in force; and
 - (b) on or after the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the final master plan; and
 - (c) an airport plan for the airport is in force;the Minister may approve the draft variation even if the Minister is satisfied that, if the draft variation were to be approved, the varied final master plan would be inconsistent with the airport plan.
 - (4) This section does not, by implication, limit the powers conferred on the Minister by section 84.

21 Section 90 (heading)

Repeal the heading, substitute:

90 Major airport development must not be carried out except in accordance with an approved major development plan etc.

22 Paragraph 90(1)(c)

Before “the carrying out”, insert “in any case—”.

23 After paragraph 90(1)(c)

Insert:

- (ca) if:

- (i) the airport is Sydney West Airport; and
 - (ii) the development is covered by Part 3 of an airport plan for the airport;
- the carrying out of the development is in accordance with Part 3 of the airport plan; or

24 Paragraph 90(1)(d)

Before “the development”, insert “in any case—”.

25 Paragraph 90(4)(c)

Before “the carrying out”, insert “in any case—”.

26 After paragraph 90(4)(c)

Insert:

(ca) if:

- (i) the airport is Sydney West Airport; and
 - (ii) the development is covered by Part 3 of an airport plan for the airport;
- the carrying out of the development is in accordance with Part 3 of the airport plan; or

27 Paragraph 90(4)(d)

Before “the development”, insert “in any case—”.

28 After section 94

Insert:

94AA Approval of major development plan—Sydney West Airport

(1) If:

- (a) an airport-lessee company gives the Minister, in writing, a draft major development plan for Sydney West Airport; and
 - (b) an airport plan for the airport is in force;
- the Minister may refuse to approve the draft major development plan if the Minister is satisfied that the draft major development plan is inconsistent with the airport plan.

(2) If:

- (a) before the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft major development plan for the airport; and
 - (b) an airport plan for the airport is in force; and
 - (c) the draft major development plan is accompanied by an application to vary the airport plan; and
 - (d) the Minister is satisfied that, if:
 - (i) the airport plan were to be so varied; and
 - (ii) the draft major development plan were to be approved; the draft major development plan as so approved would be consistent with the airport plan;the Minister may approve the draft major development plan even if it is inconsistent with the airport plan.
- (3) If:
- (a) on or after the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft major development plan for the airport; and
 - (b) an airport plan for the airport is in force;
- the Minister may approve the draft major development plan even if it is inconsistent with the airport plan.
- (4) This section does not, by implication, limit the powers conferred on the Minister by section 94.

29 After section 95

Insert:

95AA Minor variation of major development plan—Sydney West Airport

- (1) If:
- (a) a major development plan for Sydney West Airport has been approved by the Minister; and
 - (b) the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the major development plan; and
 - (c) an airport plan for the airport is in force;
-

the Minister may refuse to approve the draft variation if the Minister is satisfied that, if the variation were to be made, the varied major development plan would be inconsistent with the airport plan.

(2) If:

- (a) a major development plan for Sydney West Airport has been approved by the Minister; and
- (b) before the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the major development plan; and
- (c) an airport plan for the airport is in force; and
- (d) the draft variation of the major development plan is accompanied by an application to vary the airport plan; and
- (e) the Minister is satisfied that, if:
 - (i) the airport plan were to be so varied; and
 - (ii) the draft variation of the major development plan were to be approved;the varied major development plan would be consistent with the airport plan;

the Minister may approve the draft variation of the major development plan even if the Minister is satisfied that, if the draft variation of the major development plan were to be approved, the varied major development plan would be inconsistent with the airport plan.

(3) If:

- (a) a major development plan for Sydney West Airport has been approved by the Minister; and
- (b) on or after the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the major development plan; and
- (c) an airport plan for the airport is in force;

the Minister may approve the draft variation even if the Minister is satisfied that, if the draft variation were to be approved, the varied major development plan would be inconsistent with the airport plan.

(4) This section does not, by implication, limit the powers conferred on the Minister by section 95.

30 After Division 4 of Part 5

Insert:

Division 4A—Airport plan for Sydney West Airport

96A Simplified outline of this Division

- The Infrastructure Minister may determine an airport plan for Sydney West Airport.
- The airport plan is to have the following Parts:
 - (a) Part 1—Title;
 - (b) Part 2—Concept design;
 - (c) Part 3—Specific developments.
- Part 2 of the airport plan ceases to have effect when a final master plan for the airport comes into force.
- Part 3 of the airport plan authorises the carrying out of a specific development.
- The Infrastructure Minister may vary an airport plan for Sydney West Airport.
- Part 3 of the airport plan must not be varied after the Sydney West Airport completion day so as to specify an additional development.

Note: The Infrastructure Minister may declare under section 112B that a specified day is the Sydney West Airport completion day.

96B Determination of airport plan for Sydney West Airport

- (1) The Infrastructure Minister may, by writing, determine an airport plan for Sydney West Airport.

Environment Minister to consider draft airport plan etc.

- (2) Before determining an airport plan for Sydney West Airport, the Infrastructure Minister must give a draft of the airport plan to the Environment Minister.

- (3) If the Infrastructure Minister gives the Environment Minister a draft airport plan for Sydney West Airport, the Environment Minister must:
- (a) give the Infrastructure Minister:
 - (i) a notice stating that the Environment Minister considers that the airport plan should not be determined; or
 - (ii) a notice stating that the Environment Minister considers that one or more specified conditions or provisions should be included in the airport plan for the purpose of protecting the environment; or
 - (iii) a notice stating that the Environment Minister is satisfied with the airport plan; and
 - (b) do so within 30 business days after receiving the draft airport plan.
- (4) A condition or provision must not be specified in a notice under subparagraph (3)(a)(ii) unless the condition or provision relates to a development covered by Part 3 of the draft airport plan.
- (5) In exercising the power conferred by subsection (3), the Environment Minister must have regard to:
- (a) the Sydney West Airport environmental impact statement finalised under section 104 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) such other matters (if any) relating to the environment as the Environment Minister considers relevant.
- (6) For the purposes of subsections (3) and (5), **environment** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.
- (7) An airport plan for Sydney West Airport must not be determined before:
- (a) the Sydney West Airport environmental impact statement is finalised under section 104 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) the Environment Minister has given the Infrastructure Minister a notice under subsection (3) in response to a draft of the airport plan.
- (8) If:

- (a) the Infrastructure Minister has given the Environment Minister a draft airport plan for Sydney West Airport; and
- (b) the Environment Minister has given the Infrastructure Minister a notice under subparagraph (3)(a)(i) in response to the draft airport plan;

the Infrastructure Minister must not determine an airport plan for Sydney West Airport, unless:

- (c) the Infrastructure Minister gives the Environment Minister another draft airport plan for Sydney West Airport; and
- (d) the Environment Minister gives the Infrastructure Minister a notice under subparagraph (3)(a)(ii) or (iii) in response to the other draft airport plan.

The other draft airport plan may be in the same or different terms as the draft airport plan mentioned in paragraph (a) of this subsection.

(9) If:

- (a) the Infrastructure Minister has given the Environment Minister a draft airport plan for Sydney West Airport; and
- (b) the Environment Minister has given the Infrastructure Minister a notice under subparagraph (3)(a)(ii) in response to the draft airport plan;

the Infrastructure Minister must not determine an airport plan for Sydney West Airport, unless:

- (c) the conditions or provisions specified in the notice are included in the plan; or
- (d) all of the following conditions are satisfied:
 - (i) the Infrastructure Minister gives the Environment Minister another draft airport plan for Sydney West Airport;
 - (ii) the Environment Minister gives the Infrastructure Minister a notice under subparagraph (3)(a)(ii) (the ***subsequent notice***) in response to the other draft airport plan;
 - (iii) the conditions or provisions specified in the subsequent notice are included in the plan; or
- (e) both of the following conditions are satisfied:

- (i) the Infrastructure Minister gives the Environment Minister another draft airport plan for Sydney West Airport;
- (ii) the Environment Minister gives the Infrastructure Minister a notice under subparagraph (3)(a)(iii) in response to the other draft airport plan.

The other draft airport plan mentioned in paragraph (d) or (e) of this subsection may be in the same or different terms as the draft airport plan mentioned in paragraph (a) of this subsection.

Criteria

- (10) In determining an airport plan for Sydney West Airport, the Infrastructure Minister may have regard to such matters as the Infrastructure Minister considers relevant.

Plan is not a legislative instrument

- (11) An airport plan for Sydney West Airport is not a legislative instrument.

Sydney West Airport environmental impact statement

- (12) For the purposes of this section, if:
 - (a) in December 2014, proposed action consisted of the construction and operation of a Western Sydney Airport at Badgerys Creek, New South Wales; and
 - (b) the proposed action was referred to the Environment Minister; and
 - (c) the Environment Minister decided under section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* that the relevant impacts of the action must be assessed by an environmental impact statement under Division 6 of Part 8 of that Act;

the environmental impact statement is the ***Sydney West Airport environmental impact statement***.

- (13) For the purposes of paragraph (12)(b), it is immaterial whether the referral occurred before, at or after the commencement of this section.

- (14) For the purposes of paragraph (12)(c), it is immaterial whether the decision was made before, at or after the commencement of this section.

96C Contents of airport plan

- (1) An airport plan for Sydney West Airport must be divided into the following Parts:
- (a) Part 1—Title;
 - (b) Part 2—Concept design;
 - (c) Part 3—Specific developments.

Note: The plan may contain material outside those Parts (see subsection (9)).

Part 2 of the plan—concept design

- (2) Part 2 of an airport plan for Sydney West Airport may specify:
- (a) development objectives for the airport; and
 - (b) proposals for land use and related development of the airport site; and
 - (c) a map showing contours of projected aircraft noise for the areas surrounding the airport; and
 - (d) indicative flight paths at the airport; and
 - (e) such other matters (if any) as are specified in the regulations.

Note: Part 2 may contain other material (see subsection (9)).

Part 3 of the plan—specific developments

- (3) Part 3 of an airport plan for Sydney West Airport:
- (a) may set out the details of one or more developments that:
 - (i) may be carried out on the airport site for Sydney West Airport; and
 - (ii) are consistent with Part 2 of the airport plan; and
 - (b) subject to this Act, authorises the carrying out of those developments.

Note: Part 3 may contain other material (see subsection (9)).

- (4) Part 3 of an airport plan for Sydney West Airport:
- (a) may set out the details of one or more ancillary developments that may be carried out on an associated site for Sydney West Airport; and

- (b) subject to this Act, authorises the carrying out of those developments.
- (5) Part 3 of an airport plan for Sydney West Airport may set out conditions to be complied with in relation to a development covered by that Part.
- (6) Without limiting subsection (5), the following conditions may be set out under that subsection:
 - (a) a condition relating to the ongoing operation of a development covered by Part 3 of the airport plan;
 - (b) a condition requiring:
 - (i) the preparation; and
 - (ii) the submission for approval by a specified person; and
 - (iii) the implementation;of a plan for managing the impact, on Sydney West Airport and an area surrounding Sydney West Airport, of a development covered by Part 3 of the airport plan;
 - (c) a condition relating to the manner in which a development is carried out.
- (7) A condition may be expressed to apply to the airport-lessee company for Sydney West Airport even if, at the time the condition is set out, there is no airport lease for Sydney West Airport.
- (8) If an airport plan for Sydney West Airport includes a condition or provision required by subsection 96B(9), any other condition or provision of the airport plan is of no effect to the extent that the other condition or provision is inconsistent with the required condition or provision. However, this rule does not apply if the inconsistency is the result of a variation agreed to by the Environment Minister under subsection 96D(3).

Other content of the plan

- (9) An airport plan for Sydney West Airport may set out any other matters or contain any other material (whether in Part 1, 2 or 3 or otherwise).

Future sites

- (10) If an area of land:
-

- (a) is not part of the airport site for Sydney West Airport; and
 - (b) is intended to become part of the airport site for Sydney West Airport; and
 - (c) is not an associated site for Sydney West Airport;
- this section has effect as if the area were part of the airport site for Sydney West Airport.

(11) If:

- (a) an area of land is neither:
 - (i) part of the airport site for Sydney West Airport; nor
 - (ii) an associated site for Sydney West Airport; and
 - (b) the area is intended to become either:
 - (i) part of the airport site for Sydney West Airport; or
 - (ii) an associated site for Sydney West Airport; and
 - (c) subsection (10) does not apply in relation to the area;
- this section has effect as if the area were both:
- (d) part of the airport site for Sydney West Airport; and
 - (e) an associated site for Sydney West Airport.

(12) An airport plan for Sydney West Airport does not authorise the carrying out of a development on an area mentioned in subsection (10) or (11) until the area becomes:

- (a) part of the airport site for Sydney West Airport; or
- (b) an associated site for Sydney West Airport.

96D Variation of airport plan

- (1) If an airport plan for Sydney West Airport is in force, the Infrastructure Minister may, by writing, vary the plan.
- (2) A power conferred by subsection (1) may be exercised:
 - (a) if there is no airport lease for Sydney West Airport—on the Infrastructure Minister’s own initiative; or
 - (b) if there is an airport lease for Sydney West Airport—on the application of the airport-lessee company for the airport.
- (3) If an airport plan for Sydney West Airport includes a condition or provision required by subsection 96B(9), the Infrastructure Minister must not make a variation under subsection (1) of this

section that is inconsistent with the required condition or provision, unless the Environment Minister agrees to the variation.

Variation is not a legislative instrument

- (4) A variation under subsection (1) is not a legislative instrument.

Agreement about applications for variations

- (5) The Commonwealth and the airport-lessee company for Sydney West Airport may enter into an agreement that:
- (a) restricts or limits the circumstances in which the company may make an application under subsection (2); or
 - (b) requires the company to make an application under subsection (2).
- (6) A restriction or limitation may require the airport-lessee company to obtain the approval of the Infrastructure Minister before making an application under subsection (2).

Effect of the Environment Protection and Biodiversity Conservation Act 1999

- (7) The *Environment Protection and Biodiversity Conservation Act 1999* has effect as if a variation of an airport plan for Sydney West Airport were an authorisation of an action described in subsection 160(2) of that Act.

Termination of power to vary airport plan to include additional developments

- (8) If an airport plan for Sydney West Airport is in force, Part 3 of the airport plan must not be varied under subsection (1) after the Sydney West Airport completion day so as to:
- (a) set out the details of an additional development to be carried out on the airport site for the airport; or
 - (b) set out the details of an additional ancillary development to be carried out on an associated site for the airport.

96E Automatic variation of airport plan etc.

Omission of Part 2

- (1) If:
- (a) an airport plan for Sydney West Airport is in force; and
 - (b) a final master plan for the airport comes into force;
- then:
- (c) the airport plan is varied by omitting Part 2; and
 - (d) this Act has effect, in relation to the airport plan, as if the following provisions had not been enacted:
 - (i) paragraph 96C(1)(b);
 - (ii) subsection 96C(2);
 - (iii) subparagraph 96C(3)(a)(ii).

Notice of variation

- (2) If an airport plan for Sydney West Airport is varied under subsection (1), the airport-lessee company for Sydney West Airport must cause a notice of the variation to be published on the company's website.

96F Publication of airport plan etc.

- (1) If:
- (a) either:
 - (i) the Infrastructure Minister has determined an airport plan for Sydney West Airport; or
 - (ii) an airport plan for Sydney West Airport has been varied under section 96D; and
 - (b) there is no airport-lessee company for Sydney West Airport; the Infrastructure Minister must cause a copy of the plan or variation to be published on the Department's website.
- (2) If:
- (a) an airport plan for Sydney West Airport has been varied on one or more occasions; and
 - (b) there is no airport-lessee company for Sydney West Airport; the Infrastructure Minister must cause an up-to-date copy of the airport plan to be published on the Department's website.

- (3) If:
- (a) either:
 - (i) the Infrastructure Minister has determined an airport plan for Sydney West Airport; or
 - (ii) an airport plan for Sydney West Airport has been varied under section 96D; and
 - (b) there is an airport-lessee company for Sydney West Airport; the company must cause a copy of the plan or variation to be published on the company's website.
- (4) If:
- (a) an airport plan for Sydney West Airport has been varied on one or more occasions; and
 - (b) there is an airport-lessee company for Sydney West Airport; the company must cause an up-to-date copy of the airport plan to be published on the company's website.

96G Exemption from Parts 3 and 9 of the *Environment Protection and Biodiversity Conservation Act 1999*

Parts 3 and 9 of the *Environment Protection and Biodiversity Conservation Act 1999* do not apply to the determination, variation or implementation of an airport plan for Sydney West Airport.

96H Major development plan

This Division does not, by implication, prevent the approval of a draft major development plan that relates to a major airport development that is not covered by Part 3 of an airport plan for Sydney West Airport.

96J Compliance with condition set out in airport plan

- (1) If:
- (a) an airport plan for Sydney West Airport is in force; and
 - (b) Part 3 of the airport plan sets out a condition to be complied with in relation to a development covered by that Part; and
 - (c) the condition applies to the airport-lessee company for the airport;
- the company must comply with the condition.

- (2) A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1);
and
 - (b) the company engages in conduct; and
 - (c) the company's conduct contravenes the requirement.

Penalty: 2,000 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

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

- (4) If:

- (a) an airport plan for Sydney West Airport is in force; and
- (b) Part 3 of the airport plan sets out a condition to be complied with in relation to a development covered by that Part; and
- (c) the condition applies to a person (other than the airport-lessee company for the airport);

the person must comply with the condition.

- (5) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (4);
and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

- (6) Strict liability applies to paragraph (5)(a).

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

96K Implementation of airport plan

To avoid doubt, the Commonwealth may:

- (a) take steps to implement an airport plan for Sydney West Airport; or
 - (b) authorise another person to take steps to implement an airport plan for Sydney West Airport;
- even if there is no airport lease for Sydney West Airport.

96L Ancillary developments on associated sites

If:

- (a) an area of land is outside the airport site for Sydney West Airport; and
- (b) the Commonwealth has:
 - (i) the right to carry out; or
 - (ii) the right to allow another person to carry out;on the area of land, a development that may reasonably be regarded as ancillary or incidental to Sydney West Airport; and
- (c) the right:
 - (i) is a result of the Commonwealth holding an estate or interest in the area of land; or
 - (ii) arises under a contract;

then:

- (d) for the purposes of this Act, the area of land is an *associated site for Sydney West Airport*; and
- (e) for the purposes of the application of this Act to the associated site, the development is an *ancillary development*.

96M Meaning of *development*

For the purposes of this Division, *development* includes (but is not limited to) the following:

- (a) a major airport development;
- (b) a building activity;
- (c) an activity of a kind prescribed in the regulations.

31 At the end of subsection 98(1)

Add:

- ; (g) an activity of a kind prescribed in the regulations.

32 Paragraph 99(1)(d)

Before “all of”, insert “in the case of a building activity on the airport site for an airport other than Sydney West Airport—”.

33 At the end of subsection 99(1)

Add:

- ; or (e) in the case of a building activity on the airport site for Sydney West Airport—all of the following conditions are satisfied:
- (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
 - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
 - (iii) in a case where Part 2 of an airport plan for the airport is in force—the activity is consistent with Part 2 of the airport plan;
 - (iv) in a case where the building activity is an element of a major airport development—the activity is consistent with a designated SWA instrument that covers the development;
 - (v) in a case where the building activity wholly or partly occurs before the Sydney West Airport completion day, and the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport—the activity is consistent with Part 3 of the airport plan.

Note: For *designated SWA instrument*, see section 103A.

34 Paragraph 99(3)(d)

Before “all of”, insert “in the case of a building activity on the airport site for an airport other than Sydney West Airport—”.

35 At the end of subsection 99(3)

Add:

- ; or (e) in the case of a building activity on the airport site for Sydney West Airport—all of the following conditions are satisfied:
- (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
 - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
 - (iii) in a case where Part 2 of an airport plan for the airport is in force—the activity is consistent with Part 2 of the airport plan;

- (iv) in a case where the building activity is an element of a major airport development—the activity is consistent with a designated SWA instrument that covers the development;
- (v) in a case where the building activity wholly or partly occurs before the Sydney West Airport completion day, and the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport—the activity is consistent with Part 3 of the airport plan.

Note: For *designated SWA instrument*, see section 103A.

36 Section 101 (heading)

Repeal the heading, substitute:

101 Building approval to be consistent with final master plan and major development plan etc.

37 Subsection 101(3)

Omit all the words after “granted”, substitute:

unless:

- (a) in the case of a building activity on an airport site for an airport other than Sydney West Airport—the activity is consistent with a major development plan approved under Division 4 for the development; and
- (b) in the case of a building activity on the airport site for Sydney West Airport—the activity is consistent with a designated SWA instrument that covers the development.

38 At the end of subsection 101(3)

Add:

Note: For *designated SWA instrument*, see section 103A.

39 At the end of section 101

Add:

- (4) If:

- (a) the building activity is carried out on the airport site for Sydney West Airport; and
 - (b) Part 2 of an airport plan for the airport is in force;
- the approval must not be granted unless the activity is consistent with Part 2 of the airport plan.
- (5) If:
- (a) the building activity is carried out on the airport site for Sydney West Airport; and
 - (b) the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport; and
 - (c) the building activity wholly or partly occurs before the Sydney West Airport completion day;
- the approval must not be granted unless the activity is consistent with Part 3 of the airport plan.

40 Paragraph 103(1)(b)

Omit “subsection (4) does”, substitute “subsections (4) and (4A) do”.

41 Subsection 103(4)

After “a building activity”, insert “on the airport site for an airport other than Sydney West Airport”.

42 After subsection 103(4)

Insert:

- (4A) This subsection applies to a building activity on the airport site for Sydney West Airport if all of the following conditions are satisfied:
- (a) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
 - (b) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
 - (c) in a case where Part 2 of an airport plan for the airport is in force—the activity is consistent with Part 2 of the airport plan;
 - (d) in a case where the building activity is an element of a major airport development—the activity is consistent with a designated SWA instrument that covers the development;

- (e) in a case where the building activity wholly or partly occurs before the Sydney West Airport completion day, and the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport—the activity is consistent with Part 3 of the airport plan.

Note: For *designated SWA instrument*, see section 103A.

43 At the end of Subdivision C of Division 5 of Part 5

Add:

103A Designated SWA instrument

For the purposes of the application of this Subdivision to a building activity that is an element of a major airport development on the airport site for Sydney West Airport:

- (a) if:
 - (i) an airport plan for the airport is in force; and
 - (ii) the major airport development is covered by Part 3 of the airport plan; and
 - (iii) the building activity wholly or partly occurs before the Sydney West Airport completion day;Part 3 of the airport plan is a *designated SWA instrument* that covers the development; and
- (b) if there is a major development plan approved under Division 4 for the major airport development—the major development plan is a *designated SWA instrument* that covers the development.

103B Building activities on associated sites for Sydney West Airport

For the purposes of this Act, if:

- (a) a building activity is, or comprises part of, an ancillary development on an associated site for Sydney West Airport; and
 - (b) the ancillary development is covered by Part 3 of an airport plan for the airport;
- the activity is taken to be a building activity on the airport site for the airport.

44 At the end of Division 6 of Part 5

Add:

112B Sydney West Airport completion day

- (1) The Minister may, by writing, declare that a specified day is the *Sydney West Airport completion day* for the purposes of this Act.
- (2) In making a declaration under subsection (1), the Minister must have regard to:
 - (a) progress in relation to the completion of the developments covered by Part 3 of an airport plan for Sydney West Airport; and
 - (b) any agreement between:
 - (i) the Commonwealth; and
 - (ii) the airport-lessee company for Sydney West Airport; that relates to one or more of the developments covered by Part 3 of an airport plan for Sydney West Airport; and
 - (c) such other matters (if any) as the Minister considers relevant.
- (3) The Minister must cause a copy of a declaration under subsection (1) to be published on the Department's website.
- (4) A declaration under subsection (1) is not a legislative instrument.
- (5) For the purposes of this section, *development* has the same meaning as in Division 4A.

45 After paragraph 242(2)(e)

Insert:

- (f) a decision under section 96B to determine an airport plan for Sydney West Airport;
- (fa) a decision under section 96D to vary an airport plan for Sydney West Airport;
- (fb) a decision under section 112B to declare that a specified day is the Sydney West Airport completion day for the purposes of this Act;

46 After section 251

Insert:

251A Sydney West Airport—miscellaneous provisions

Other leases

- (1) Neither this Act nor the *Airports (Transitional) Act 1996* prevents the Commonwealth from granting a lease of a part of the airport site of Sydney West Airport otherwise than under section 13 of this Act or section 21 or 22 of the *Airports (Transitional) Act 1996*.
- (2) A lease granted as mentioned in subsection (1) is taken not to be an airport lease for the purposes of this Act.
- (3) If:
 - (a) a lease was granted by the Commonwealth before the commencement of the regulation that inserted a paragraph relating to Sydney West Airport in subregulation 1.03(1) of the *Airports Regulations 1997*; and
 - (b) after that commencement, the leased area is a part of the airport site of Sydney West Airport;the lease is taken not to be an airport lease for the purposes of this Act.

Note: Regulation 1.03 of the *Airports Regulations 1997* declares certain places to be airport sites.

Powers of the Commonwealth

- (4) The Commonwealth has power to do all things necessary or convenient to be done for or in connection with the development or use of Sydney West Airport.
- (5) The powers of the Commonwealth include, but are not limited to, the power to form, or participate in the formation of, a company.

251B Regulations declaring airport site

Scope

- (1) This section applies if subregulation 1.03(1) of the *Airports Regulations 1997* declares a place specified in a paragraph of that subregulation (to the extent that it is a Commonwealth place) to be an airport site.

Part of place—amendment of subregulation 1.03(1)

- (2) A regulation may amend that subregulation by inserting a paragraph that specifies a place even if, at the time the amending regulation commences, a part of the place is not a Commonwealth place.
- (3) The part of the place becomes part of the airport site when the part of the place becomes a Commonwealth place, so long as the place satisfies paragraph (c) of the definition of *airport site* in subsection 5(1).

Part of place—amendment of a Part of Schedule 1 to the regulations

- (4) If a paragraph of subregulation 1.03(1) of the *Airports Regulations 1997* refers to a place made up of the land described in a particular Part of Schedule 1 to those regulations, a regulation may amend that Part by inserting a description of land even if, at the time the amending regulation commences, the land is not a Commonwealth place.
- (5) The land becomes part of the airport site when the land becomes a Commonwealth place, so long as the place satisfies paragraph (c) of the definition of *airport site* in subsection 5(1).

Specification of place

- (6) For the purposes of this section, if a paragraph of subregulation 1.03(1) of the *Airports Regulations 1997* refers to a place made up of the land described in a particular Part of Schedule 1 to those regulations, the paragraph is taken to specify the place.

Avoidance of doubt

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

Airports (Building Control) Regulations 1996

47 After paragraph 2.04(1)(b)

Insert:

(ba) in the case of Sydney West Airport:

- (i) if Part 2 of an airport plan for the airport is in force—Part 2 of the airport plan; or
- (ii) if the building activity wholly or partly occurs before the Sydney West Airport completion day, an airport plan for the airport is in force, and the proposed building activity is, or comprises part of, a development covered by Part 3 of the airport plan—Part 3 of the airport plan; or

48 Subregulation 2.04(1) (note)

Omit “(a) and (b)”, substitute “(a), (b) and (ba)”.

49 At the end of subregulation 2.04(2)

Add:

- ; or (c) in the case of the airport-lessee company for Sydney West Airport—under a contract with the Commonwealth that relates to the airport.

50 Subregulation 2.04(3)

After “(b)”, insert “, (ba)”.

51 After paragraph 2.05(1)(b)

Insert:

(ba) if:

- (i) the airport is Sydney West Airport; and
 - (ii) Part 2 of an airport plan for the airport is in force;
- a statement describing how the proposed building activity is consistent with Part 2 of the plan; and

52 Paragraph 2.05(1)(c)

After “Act)”, insert “, and paragraph (caa) does not apply”.

53 After paragraph 2.05(1)(c)

Insert:

(caa) if:

- (i) the airport is Sydney West Airport; and
- (ii) an airport plan for the airport is in force; and

- (iii) the proposed building activity is, or comprises part of, a development covered by Part 3 of the airport plan; and
- (iv) the proposed building activity is to occur wholly or partly before the Sydney West Airport completion day; a statement describing how the proposed building activity is consistent with Part 3 of the airport plan; and

54 Subregulation 2.05(3)

Omit “The declaration”, substitute “A declaration under subregulation (2)”.

55 At the end of regulation 2.05 (before the note)

Add:

- (4) If:
 - (a) the proposed building activity is to take place on the airport site for Sydney West Airport; and
 - (b) an airport plan for the airport is in force; and
 - (c) the activity is, or comprises part of, a development covered by Part 3 of the airport plan; and
 - (d) the proposed building activity is to occur wholly or partly before the Sydney West Airport completion day;the application must be supported by a declaration by the airport-lessee company for the airport.
- (5) A declaration under subregulation (4) must state whether the proposed building activity is consistent with Part 3 of the airport plan.

56 At the end of subregulation 2.11(1A)

Add:

Note: Subregulation (1A) does not apply to a building activity at Sydney West Airport that is covered by Part 3 of an airport plan for the airport and that wholly or partly occurs before the Sydney West Airport completion day—see subregulation (9).

57 At the end of subregulation 2.11(1B)

Add:

Note: Subregulation (1B) does not apply to a building activity at Sydney West Airport that is covered by Part 3 of an airport plan for the airport

and that wholly or partly occurs before the Sydney West Airport completion day—see subregulation (9).

58 At the end of subregulation 2.11(1C)

Add:

Note: Subregulation (1C) does not apply to a building activity at Sydney West Airport that is covered by Part 3 of an airport plan for the airport and that wholly or partly occurs before the Sydney West Airport completion day—see subregulation (9).

59 At the end of subregulation 2.11(2A)

Add:

Note: Subregulation (2A) does not apply to a building activity at Sydney West Airport that is covered by Part 3 of an airport plan for the airport and that wholly or partly occurs before the Sydney West Airport completion day—see subregulation (9).

60 At the end of subregulation 2.11(6)

Add:

Note: Subregulation (6) does not apply to a building activity at Sydney West Airport that is covered by Part 3 of an airport plan for the airport and that wholly or partly occurs before the Sydney West Airport completion day—see subregulation (9).

61 After subregulation 2.11(7)

Insert:

(7A) If:

- (a) a building activity is, or comprises part of, a development covered by Part 3 of an airport plan for Sydney West Airport; and
- (b) the building activity is to wholly or partly occur before the Sydney West Airport completion day;

the airport building controller is taken to have refused to approve the building activity if it has not given the applicant notice of its decision before the end of 28 days after:

- (c) if no further information is requested under subregulation (2)—receiving the application for approval of the building activity; or
- (d) if further information is requested under subregulation (2)—receiving the further information.

62 At the end of regulation 2.11 (before the notes)

Insert:

- (9) Subregulations (1A), (1B), (1C), (2A), (6) and (8) do not apply to a building activity that:
- (a) is carried out on the airport site for Sydney West Airport; and
 - (b) is, or comprises part of, a development covered by Part 3 of an airport plan for the airport; and
 - (c) is to wholly or partly occur before the Sydney West Airport completion day.

63 Paragraph 2.16(2)(b)

Before “the variation”, insert “if the building activity is on the airport site for an airport other than Sydney West Airport—”.

64 At the end of subregulation 2.16(2)

Add:

- ; or (c) in the case of a building activity on the airport site for Sydney West Airport:
- (i) the variation relates to a major airport development; and
 - (ii) there is no major development plan approved for the development; and
 - (iii) if the building activity is to wholly or partly occur before the Sydney West Airport completion day—the development is not covered by Part 3 of an airport plan for the airport.

65 Paragraph 2.19(1)(a)

Omit “3 years”, substitute “the applicable period”.

66 Paragraph 2.19(1)(b)

Omit “3 years”, substitute “the applicable period”.

67 At the end of regulation 2.19

Add:

- (7) In this regulation:
- applicable period* means:

- (a) in the case of a building activity that:
 - (i) is on the airport site for Sydney West Airport; and
 - (ii) is, or comprises part of, a development covered by Part 3 of an airport plan for the airport; and
 - (iii) is to wholly or partly occur before the Sydney West Airport completion day;
5 years; or
- (b) in any other case—3 years.

68 At the end of Part 2

Add:

2.26 Building activities on associated sites for Sydney West Airport

For the purposes of these Regulations, if:

- (a) a building activity is, or comprises part of, an ancillary development on an associated site for Sydney West Airport; and
 - (b) the ancillary development is covered by Part 3 of an airport plan for the airport;
- the activity is taken to be a building activity on the airport site for Sydney West Airport.

69 Regulation 6.01 (item 1 of the table)

After “(7)”, insert “, (7A)”.

Airports Regulations 1997

70 Paragraph 2.04(1)(a)

Repeal the paragraph, substitute:

- (a) a sublease for a purpose inconsistent with the use as an airport of the airport site concerned, as set out in whichever of the following is applicable:
 - (i) if there is a final master plan for the airport site—the final master plan;
 - (ii) if the airport is Sydney West Airport, and Part 2 of an airport plan for the airport is in force—Part 2 of the airport plan;

71 Paragraph 2.12(1)(a)

Repeal the paragraph, substitute:

- (a) a licence for a purpose inconsistent with the use as an airport of the airport site concerned, as set out in whichever of the following is applicable:
 - (i) if there is a final master plan for the airport site—the final master plan;
 - (ii) if the airport is Sydney West Airport, and Part 2 of an airport plan for the airport is in force—Part 2 of the airport plan;

Part 2—Application and transitional provisions

72 Safeguard—contractual rights etc.

- (1) If:
- (a) immediately before the commencement of this item, a person (other than the Commonwealth) was a party to a contract with the Commonwealth; and
 - (b) the person has a right under a provision of the contract;
- then:
- (c) the amendments of section 18 of the *Airports Act 1996* made by this Schedule do not affect the right so as to disadvantage the person; and
 - (d) the amendments of section 18 of the *Airports Act 1996* made by this Schedule do not affect the application of a law to the right so as to disadvantage the person.
- (2) For the purposes of section 248 of the *Airports Act 1996*, disregard the amendments of section 18 of the *Airports Act 1996* made by this Schedule.

73 Compensation for acquisition of property

- (1) If the operation of items 4 and 5 of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

74 Transitional—environmental impact statement

- (1) If:
- (a) in December 2014, proposed action consisted of the construction and operation of a Western Sydney Airport at Badgerys Creek, New South Wales; and

Schedule 1 Amendments

Part 2 Application and transitional provisions

- (b) the proposed action was referred to the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (c) the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* decided under section 87 of that Act that the relevant impacts of the action must be assessed by an environmental impact statement under Division 6 of Part 8 of that Act;

Division 6 of Part 8 (other than section 105) of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the action as if this Act (other than this item) had not been enacted.

- (2) For the purposes of paragraph (1)(b), it is immaterial whether the referral occurred before, at or after the commencement of this item.
 - (3) For the purposes of paragraph (1)(c), it is immaterial whether the decision was made before, at or after the commencement of this item.
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[*Minister's second reading speech made in—
House of Representatives on 4 June 2015
Senate on 17 June 2015*]

(58/15)
