



# **Airports Amendment Act 2018**

**No. 107, 2018**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Airports Amendment Act 2018

No. 107, 2018

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

[Assented to 21 September 2018]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Airports Amendment Act 2018*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The seventh day after this Act receives the Royal Assent.	28 September 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Airports Act 1996*

#### **1 Paragraphs 71(2)(ga), (gb) and (gc)**

Omit “first 5 years”, substitute “initial period (see subsection (3A))”.

#### **2 Paragraph 71(2)(h)**

Before “an environment strategy that”, insert “in relation to the initial period (see subsection (3A)) of the master plan—”.

#### **3 Paragraphs 71(3)(ga), (gb) and (gc)**

Omit “first 5 years”, substitute “initial period (see subsection (3A))”.

#### **4 Paragraph 71(3)(h)**

Before “an environment strategy that”, insert “in relation to the initial period (see subsection (3A)) of the master plan—”.

#### **5 After subsection 71(3)**

Insert:

*Initial period of the master plan*

(3A) The *initial period* of the master plan is:

- (a) in the case of Sydney (Kingsford-Smith) Airport, Sydney West Airport, Melbourne (Tullamarine) Airport, Brisbane Airport or Perth Airport—the first 5 years of the plan; or
- (b) in the case of any other airport—the first 8 years of the plan.

Note: See section 68 for the airports to which this Part applies.

#### **6 Paragraph 71(4)(b)**

Omit “5-year”.

#### **7 Subsection 72(1)**

Omit “(1)”.

#### **8 Subsection 72(2)**

Repeal the subsection.

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### **9 Paragraph 76(1)(a)**

Repeal the paragraph, substitute:

- (a) no later than:
  - (i) in the case of Sydney (Kingsford-Smith) Airport, Sydney West Airport, Melbourne (Tullamarine) Airport, Brisbane Airport or Perth Airport—5 years after the original plan came into force; or
  - (ii) in the case of any other airport—8 years after the original plan came into force; or

### **10 At the end of subsection 76(1)**

Add:

Note: See section 68 for the airports to which this Part applies.

### **11 After subsection 76(1)**

Insert:

- (1A) In connection with the airport-lessee company giving the Minister a draft master plan under subsection (1), the company:
  - (a) must obtain a new Australian Noise Exposure Forecast; and
  - (b) specify that new Australian Noise Exposure Forecast in that plan.

The new Australian Noise Exposure Forecast must have been endorsed in the last 180 days of the period applicable under paragraph (1)(a) or (b).

### **12 Paragraph 76(2)(a)**

Omit “required to give the Minister a draft master plan under subsection (1)”, substitute “subject to a requirement under subsection (1) or (1A)”.

### **13 Subsection 76(4)**

Omit “5 years after the original plan came into force”, substitute “the period referred to in subsection 77(1)”.

### **14 Subsection 77(1)**

Repeal the subsection, substitute:

- (1) A final master plan for an airport remains in force for:
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- (a) in the case of Sydney (Kingsford-Smith) Airport, Sydney West Airport, Melbourne (Tullamarine) Airport, Brisbane Airport or Perth Airport—5 years; or
  - (b) in the case of any other airport—8 years.

However, if, at the end of that period, a fresh final master plan does not come into force, the original plan remains in force until a fresh plan comes into force.

Note: See section 68 for the airports to which this Part applies.

### **15 After subsection 78(2A)**

Insert:

- (2B) Subsection (2A) does not apply to an Australian Noise Exposure Forecast that is obtained for the purposes of complying with subsection 76(1A).

### **16 Subsection 78(5)**

Omit “5 years after the original plan came into force”, substitute “the period referred to in subsection 77(1)”.

### **17 Section 86A**

Repeal the section.

### **18 Subparagraphs 89(1)(e)(ii), (f)(ii), (g)(ii), (h)(ii), (j)(ii), (k)(ii) and (l)(ii)**

Omit “\$20 million or such higher amount as is prescribed”, substitute “the threshold amount (see subsections (7) and (9))”.

### **19 At the end of section 89**

Add:

*Cost of construction*

- (7) For the purposes of subparagraphs (1)(e)(ii), (f)(ii), (g)(ii), (h)(ii), (j)(ii), (k)(ii) and (l)(ii), the ***cost of construction***:
  - (a) includes the costs determined in an instrument under subsection (8) for the purposes of this paragraph; and
  - (b) does not include the costs determined in the instrument for the purposes of this paragraph.

- (8) The Minister may, by legislative instrument:
- (a) determine costs for the purposes of paragraph (7)(a); and
  - (b) determine costs for the purposes of paragraph (7)(b).

*Threshold amount*

- (9) For the purposes of this section, the **threshold amount** is:
- (a) \$25 million; or
  - (b) if an amount is determined in an instrument under subsection (10) and is in effect in accordance with subsection (11)—that amount.
- (10) Before each third anniversary of this subsection commencing, the Minister may, by legislative instrument, determine an amount for the purposes of paragraph (9)(b). The amount determined must be higher than the amount applicable under subsection (9) on the day the determination is made.
- (11) An amount determined in an instrument under subsection (10) takes effect on that third anniversary concerned.
- (12) Before determining an amount in an instrument under subsection (10), the Minister must take into account changes in construction activity costs since:
- (a) for the first determination—the commencement of this subsection; or
  - (b) otherwise—the last determination made by the Minister.
- (13) Without limiting subsection (12), the Minister may comply with that subsection by taking into account changes in an index of construction activity costs published by the Australian Statistician.
- (14) Subsection (12) does not limit the matters the Minister may take into account.

**20 Subparagraph 92(1)(a)(ia)**

Before “the”, insert “specifying”.

**21 Subparagraph 92(2B)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the proposed development is consistent with the final master plan; and

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**22 After subsection 92(2B)**

Insert:

(2BA) If:

- (a) a request for a particular shorter period is made under subsection (2B); and
- (b) the Minister does not make a decision on the request before the end of the period of 15 business days after the day on which the Minister received the request;

then, at the end of the period referred to in paragraph (b), the request is taken to have been refused.

**23 Subsection 94(7B)**

Repeal the subsection, substitute:

- (7B) The Minister may extend, or further extend, that period by up to 2 years. The Minister may do so only if that period, or that period as last extended, has not yet ended. The Minister may extend, or further extend, that period subject to one or more conditions.

**24 At the end of Division 4 of Part 5**

Add:

**96AA Cessation of approval of major development plan in exceptional circumstances**

(1) If:

- (a) a major development plan for an airport has been approved by the Minister; and
- (b) there is not in force an approval, under the regulations made for the purposes of Subdivision C of Division 5, of a building activity that is an element of the major airport development covered by the plan; and
- (c) the airport-lessee company for the airport considers that exceptional circumstances beyond its control have made proceeding with the major airport development unviable;

the airport-lessee company may, at least 50 business days before the end of the period worked out in accordance with subsections 94(7A) and (7B), give the Minister a written notice

(the *withdrawal notice*) of its intention not to proceed with the major airport development.

- (2) The airport-lessee company must detail those exceptional circumstances in the withdrawal notice.

*Minister's acknowledgement*

- (3) If the Minister receives a withdrawal notice from the airport-lessee company that is in accordance with subsections (1) and (2), the Minister must, by written notice given to the company, acknowledge receipt of the withdrawal notice.

*When approval ceases to be in force*

- (4) The approval of the major development plan ceases to be in force on the day after the Minister gives the airport-lessee company the notice under subsection (3).

*Public notice*

- (5) The airport-lessee company for the airport must cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
- (a) giving details of the major airport development; and
  - (b) giving details of the exceptional circumstances beyond its control that have made proceeding with the major airport development unviable.

The company must comply with this subsection within 20 business days after receiving the notice under subsection (3).

- (6) A company commits an offence if:
- (a) the company is required to publish a notice under subsection (5); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty for contravention of this subsection: 250 penalty units.

## **25 After paragraph 242(2)(d)**

Insert:

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- (da) a decision under subsection 89(8) or (10) (which deal with legislative instruments in connection with major airport developments);
- (db) a decision under section 96AA (which deals with the cessation of approval of major development plans in exceptional circumstances);

## **26 Application and transitional provisions—master plans**

- (1) Subject to subitems (3) and (4), the amendments (the *relevant amendments*) of sections 71 and 72 of the *Airports Act 1996* made by this Schedule apply in relation to a draft master plan given to the Minister on or after the commencement of this item, where the notice under subsection 79(1) of that Act, in relation to that plan, is published on or after that commencement.
- (2) Subject to subitems (3) and (4), the amendments (also the *relevant amendments*) of subsections 76(1) and (4) and 77(1) of the *Airports Act 1996* made by this Schedule apply in relation to a final master plan that comes into force under section 83 of that Act on or after the commencement of this item, where the draft master plan was given to the Minister on or after that commencement.
- (3) If:
  - (a) within the period of 12 months beginning on the day this item commences, an airport-lessee company for an airport gives the Minister a draft master plan for the airport; and
  - (b) the notice under subsection 79(1) of the *Airports Act 1996*, in relation to that plan, was published on or after that commencement;the company may, in a written notice given to the Minister that accompanies the plan, elect to have the relevant amendments not apply in relation to:
  - (c) that draft master plan; and
  - (d) if that draft master plan becomes a final master plan—that final master plan.
- (4) An election under subitem (3) has effect accordingly.
- (5) Subsection 76(1A) of the *Airports Act 1996*, as inserted by this Schedule, applies in relation to a draft master plan given under

subsection 76(1) of that Act after the end of the period of 28 days beginning on the day this item commences, regardless of whether:

- (a) a notice in relation to the draft master plan is published under subsection 79(1) of that Act before, on or after that commencement; and
  - (b) an election under subitem (3) is made.
- (6) The amendment of subsection 76(2) of the *Airports Act 1996* made by this Schedule applies in relation to conduct engaged in on or after the commencement of this item.

## **27 Application and transitional provisions—major airport developments**

- (1) The amendments of section 89 of the *Airports Act 1996* made by this Schedule apply in relation to major airport developments that are required to be carried out in accordance with a major development plan that is approved on or after the commencement of this item, where the draft major development plan was given to the Minister on or after that commencement.

- (2) If:
- (a) before the commencement of this item, an airport-lessee company gave the Minister a draft major development plan; and
  - (b) the major airport development was covered by paragraph 89(1)(e), (f), (g), (h), (j), (k) or (l) of the *Airports Act 1996*; and
  - (c) immediately before the commencement of this item, the Minister had not made a decision under subsection 94(2) of that Act in relation to the plan;

then the company may, before the Minister makes a decision on the plan, give the Minister a written notice withdrawing the plan.

## **28 Application and saving provisions—major development plans**

- (1) Subsection 92(2BA) of the *Airports Act 1996*, as inserted by this Schedule, applies in relation to a request made on or after the commencement of this item.

- (2) The repeal and substitution of subsection 94(7B) of the *Airports Act 1996* made by this Schedule applies in relation to a major development plan approved before, on or after the commencement of this item.
  - (3) The repeal and substitution of subsection 94(7B) of the *Airports Act 1996* made by this Schedule does not affect the validity of an extension granted under that subsection, or the validity of any condition imposed under that subsection, before the commencement of this item.
  - (4) Section 96AA of the *Airports Act 1996*, as added by this Schedule, applies in relation to a major development plan approved before, on or after the commencement of this item.
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*[Minister's second reading speech made in—  
House of Representatives on 1 December 2016  
Senate on 15 August 2018]*

(187/16)

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