

Airports Regulations 1997 No. 8

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 8

Issued by the authority of the Minister for Transport and Regional Development

Airports Act 1996

Airports Regulations

The Airports Act 1996 (the Act) provides for a comprehensive regulatory regime for Commonwealth-owned and privately-leased airports. The Act provides that much of the detail of the regulatory regime will be dealt with in subordinate legislation by providing numerous matters for which regulations may be made. Because of the large quantity of detail that is to be included in the regime, a number of pieces of subordinate legislation have been made or are proposed to be made under the Act which deal with separate subject matters, including:

- * Airports (Building Control) Regulations;
- * Airports (Environment Protection) Regulations;
- * Airports (Ownership - Interest in Shares) Regulations; and
- * Airports (Protection of Airspace) Regulations.

The purpose of the Airports Regulations (the Regulations) is to provide the detail of those parts of the airports regulatory regime for which a separate body of regulations is not warranted.

Section 252 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations comprise four Parts, numbered and titled according to the Part of the Act to which they correspond:

* Part 1 provides for the declaration of airport sites for the purposes of the Act. Section 5 of the Act defines an airport site to be a place that is, inter alia, "declared by the regulations to be an airport site". A note to that definition also states that the boundaries of an airport site are to be ascertained in accordance with the regulations. The proposed Regulations specify the airport sites, and provides that their boundaries are determined by reference to the parcels of land specified in Schedule 1 of the Regulations.

* Part 2 deals with matters related to the leasing and management of airports. More specifically:

a) section 24 of the Act provides that an airport lease may only be transferred with the written approval of the Minister. However, the Minister may only refuse to approve the transfer on certain grounds, including "a ground specified in the regulations", paragraph 24(3)(a);

b) section 33 of the Act provides that an airport-lessee company may not enter an airport-management agreement unless the other party to the agreement is approved in writing by the Minister. However, the Minister may only refuse to approve the party on certain grounds, including "a ground specified in the regulations", subsection 33(4);

c) subsection 34(1) of the Act provides that the regulations may prohibit specified kinds of subleases of an airport lease"; and

d) subsection 35(1) of the Act provides that the regulations may prohibit specified kinds of licences relating to of an airport lease".

Accordingly, the Regulations specify grounds for the purposes of paragraph 24(3)(a) and subsection 33(4) of the Act, and specify leases and licences for the purposes of sections 34(1) and 35(1) of the Act.

* Part 5 caters for further matters related to land use and planning at airports. Note that building control matters are dealt with in the Airports (Building Control) Regulations.

a) Section 71 of the Act provides that airport master plans must specify certain matters, including "such other matters (if any) as are specified in the regulations", paragraphs 71(2)(j), (3)(j), and must address such things as are specified in regulations, subsection 71(5);

b) section 90 of the Act provides that a major airport development must not be carried out at an airport unless the development is in accordance with a master plan or is declared by the regulations to be exempt, paragraph 90(1)(d); and

c) section 91 of the Act provides that major development plans must address such things that are specified in regulations, subsection 91(3).

The Regulations specify matters for the purposes of sections 71(2)(j), (3)(j) and (5), and 91(3), and declare developments for the purposes of paragraph 90(1)(d).

* Part 7 details the type and form of reports that airport operators are required to produce under Part 7 of the Act:

a) section 141 of the Act provides that an airport-operator company must prepare "such accounts and statements as are specified in... the regulations", subsection 141(2), and those accounts must be prepared in accordance with the regulations, subsection 141(3);

b) section 142 of the Act provides that an auditor of the required accounts must certify the accounts in the prescribed form within the prescribed period, subsection 142(5);

c) section 143 of the Act requires an airport-operator company to give the ACCC the required accounts within a prescribed period, subsection 143(2);

d) section 145 of the Act provides that "the regulations may make provision for and in relation to requiring an airport operator to give the ACCC written reports about the airport", subsection 145(1); and

e) section 146 of the Act provides that "the regulations may make provision for and in relation to requiring a company to keep and retain records", subsection 146(1).

The Regulations specify the required accounts and statements for the purposes of subsections 141(2) and 145(1), how accounts must be prepared for the purposes of subsection 141(3), time periods for the purposes of subsections 142(5), 143(2) and 146(1), and the prescribed form of auditor's certificate for the purposes of subsection 143(2).

Details of the Regulations appear in the Attachment. The proposed Regulations will commence on gazettal.

Attachment

PART 1 - PRELIMINARY

Part 1 of the Regulations deals with preliminary matters related to Part 1 of the Act. Its primary concern is with defining airport sites for the purposes of the Act.

Clause 1.01 - Citation

Clause 1.01 provides that the Regulations, once made, may be cited as the Airports Regulations. The Regulations will commence on gazettal.

Clause 1.02 - Interpretation

This clause merely defines the word "Act" as meaning the Airports Act 1996.

Clause 1.03 - Airport sites

Clause 1.03 declares airport sites for the purposes of the Act. The sites of Melbourne (Tullamarine), Brisbane and Perth airports are declared in regulation 1.03.

The airport sites themselves are those areas of land comprising the parcels of land specified in Parts 1.1 to 1.3 of Schedule 1 of the Regulations.

PART 2 - LEASING AND MANAGEMENT OF AIRPORTS

Part 2 of the Regulations extends and amplifies the scope of airport leasing and management rules contained in Divisions 4 and 6 of Part 2 of the Act. As stated in the Explanatory Memorandum to the Airports Bill, the purpose of Part 2 of the Act, and hence these Regulations, is to:

"ensure that, at all times, the Commonwealth is able to maintain public interest regulatory control over the leasing and management of the airports."

Clause 2.01 - Interpretation

Clause 2.01 of the Regulations defines "**associate**" to have the meaning given by clause 5 of the Schedule to the Act.

Clause 2.02 - Grounds for refusing to approve the transfer of an airport lease

Subsection 24(1) of the Act provides that an airport lease must not be transferred without the written approval of the Minister. The prohibition is designed to ensure that the Commonwealth can regulate to protect the public interest. The grounds of public interest upon which the Minister can refuse to transfer an airport lease are set out in subsection 24(3) of the Act, and include those grounds "specified in the regulations", s. 24(3)(a).

Clause 2.02 specifies those grounds, in addition to those specified in paragraphs 24(3)(b) to (e) of the Act, upon which the Minister may refuse to approve the transfer of an airport lease. Simply put, the Minister must be satisfied that:

* the proposed transferee of an airport lease has the financial strength and managerial capabilities necessary to operate and develop the airport, and provide high quality airport services;

- * the proposed transfer would not be destructive of the diversity in the ownership of Australian airports; and
- * the employees of the transferor company would be fairly and equitably treated, and their accrued benefits preserved.

Further, the Minister must be satisfied that, if the proposed transfer took place the proposed transferee of an airport lease:

- * will act responsibly in matters concerning the environment; and
- * will be responsive to the interests of the airport users and the local region in which the airport is located.

Clause 2.03 - Grounds for refusing to approve an airport-management company

Subsection 33(1) of the Act prohibits an airport-lessee company from entering into an "airport-management agreement" (defined in subsection 33(7)) in relation to the airport unless the other party to the agreement (an "airport-management company") is approved by the Minister.

The Minister must approve an airport-management company unless he or she is satisfied of a matter specified in subsection 33(3) of the Act (which deals with ownership restrictions) or on a ground specified in the regulations, subsection 33(4). Subclause 2.03(1) of the Regulations specifies that the sole ground upon which the Minister may refuse to approve an airport-management company is if the airport-management agreement into which the company proposes to enter does not comply with subclause 2.03(2).

Subclause 2.03(2) stipulates a number of requirements of an airport-management agreement. Paragraphs 2.03(2)(a) to (e) deal with the terms upon which an airport-management agreement may be terminated. These provisions are designed to ensure that, in the event that a management agreement is terminated, there is an ability to continue managing and operating the airport with minimal difficulty. Paragraph 2.03(2)(f) provides that there must be sufficient exchange of financial information between the airport-lessee company and airport-management company to enable the airport-lessee company to fulfil its reporting obligations under Part 7 of the Act.

Subclause 2.03(3) defines "assets" for the purposes of paragraph 2.03(2)(a).

Clause 2.04 - Prohibited kinds of subleases and licences

Subsections 34(1) and 35(1) of the Act provide that the regulations may prohibit specified kinds of subleases on airport lease and specified kinds of licences relating to an airport lease respectively.

Subclauses 2.04(1) and 2.04(2) are in similar terms, the former detailing prohibited subleases, the latter detailing prohibited licences. The paragraphs of these two subclauses are intended to prevent evasion of the leasing and management rules of the Act by subleasing and licensing arrangements, and also to prevent subleasing and licensing that is not in the public interest.

Only certain types of entity can be granted a sublease or licence, including constitutional corporations, banks, Commonwealth, State and Territory governments and agencies, and sole traders, see 2.04(1)(a), (2)(a). State and Territory governments and agencies may only hold subleases and licences with the approval of the Secretary, see 2.04(1)(g), (2)(g). In determining whether or not to grant approval under 2.04(1)(g) or (2)(g), the Secretary must take into account the matters referred to in subclause 2.04(3).

Subleases and licences may not impose obligations inconsistent with obligations under the Act, 2.04(1)(b), (2)(b), and must provide that any further sublease or licence must comply with clause 2.04, 2.04(1)(i), (2)(i). Subleases and licences must be capable of being automatically terminated on the creation of interests in favour of persons in positions to control the operation or development of the airport or a substantial part of it, 2.04(1)(c), (2)(c), and must not constitute airport-management agreements unless the sublessee or licensee is approved by the Minister, 2.04(1)(h), (2)(h). Finally to maintain public amenity and ensure integrity of the planning process, subleases and licences may not be granted for the purposes of residential development, purposes inconsistent with the continued use of the airport site as an airport, nor for the purposes of prostitution (defined in subclause 2.04(4)), see 2.04(1)(d), (e) and (f), (2)(d), (e) and (f).

PART 5 - LAND USE, PLANNING AND BUILDING CONTROLS

Part 5 of the Regulations provides further detail on the matters that must be included in airport master plans and major development plans as required by Part 5 of the Act, as well as stipulating those major developments which may be carried out without a major development plan as required by Part 5 of the Act.

Clause 5.01 - Interpretation

Clause 5.01 defines "**Transitional Act**" to mean the Airports (*Transitional*) Act 1996. The term is used in both clauses 5.02 and 5.04.

Clause 5.02 - Contents of draft or final master plan

Section 71 of the Act specifies matters that must be set out and addressed in master plans for airports. Subsection 71(2) of the Act specifies matters that must be set out in master plans for airports other than joint-user airports, while subsection 71(3) of the Act specifies matters that must be set out in master plans for joint-user airports. Paragraphs 71(2)(j) and (3)(j) of the Act provide that matters may be specified in the regulations, and subsection 71(5) provides that in specifying things in a master plan, regulations may require certain things to be addressed.

Subclause 5.02(1) requires that a master plan must specify predicted changes to the PANS-OPS Surface and OLS for an airport as a result of development of the airport in accordance with the master plan. This requirement links into the Airports (Protection of Airspace) Regulations,¹ assisting the Secretary in determining, under those Regulations, whether or not to protect airspace around an airport in the interests of the safety, efficiency or regularity of future air transport operations into or out of that airport. "PANS-OPS Surface" and "OLS" are defined in the Airports (Protection of Airspace) Regulations.

Subclause 5.02(2) effectively requires the description, level of detail, and terminology used in those parts of airport master plans which relate to the landside parts of airports to be consistent with that required by or applying in legislation in force in the State or Territory in which the airport is located.

Airport master plans must be consistent with the planning laws of the State or Territory in which the airports to which they relate are located, or must address any inconsistency, paragraph 5.02(3)(a). The master plan of Canberra airport must comply with and not be inconsistent with the National Capital Plan, paragraph 5.02(3)(d).

Airport master plans must also address any rights and obligations of people under leases which predate the leasing of the airport, paragraphs 5.02(3)(b) and (c). This provision is intended to ensure that airport-lessee companies determine what these rights and obligations are and how they impact on the master planning process. Because it is intended that pre-existing leases continue to have force according to their tenor (see section 22 of the Act and section 26 of the Airports (*Transitional*) Act 1996), development rights under those leases, for example, may have

an effect on the planning and development of the airport, and these should be addressed by airportlessee companies.

Clause 5.03 - Developments exempt from Division 4 of Part 5 of the Act

Section 90 of the Act prohibits the carrying out of a major development on an airport unless there is in force an approved major development plan for that development under Division 4 of Part 5 of the Act. However, the regulations may declare that a development is exempt from the requirement of producing a major development plan in accordance with Division 4 of Part 5.

Clause 5.03 provides for a transitional arrangement to operate in respect of major developments which have been approved by the Federal Airports Corporation prior to the leasing of the airport upon which the development is to occur or is occurring. Simply put, where the FAC has granted permission for a major development to go ahead, it can continue to do so.

Clause 5.04 - Contents of major development plan

Section 91 of the Act specifies matters that must be set out and addressed in major development plans for developments on airports. Subsection 91(5) provides that in specifying things in a major development plan, regulations may require certain things to be addressed.

Like airport master plans, major development plans must address any rights and obligations of people under leases which predate the leasing of the airport, paragraphs 5.04(a) and (b). This provision is intended to ensure that airportlessee companies determine what these rights and obligations are and how they impact on the development process. Because it is intended that preexisting leases continue to have force according to their tenor (see section 22 of the Act and section 26 of the Airports (*Transitional*) Act 1996), development rights under those leases, for example, may have an effect on the planning and development of the airport, and these should be addressed by airport-lessee companies.

PART 7 - ACCOUNTS AND REPORTS OF AIRPORT-OPERATOR COMPANIES

The regulations under Part 7 of the Act specify the information requirements of the accounts and financial statements that must be prepared by the airport operator company. These requirements are designed to ensure that the financial information provided is consolidated to the appropriate level and adequately transparent and standardised to enable the effective monitoring of aeronautical prices by the Australian Competition and Consumer Commission (ACCC), an appropriate level of public scrutiny and, where appropriate, benchmarking comparisons between airports.

An important aspect of this transparency is that the regulations provide for the financial transactions of aeronautical and non-aeronautical services to be shown separately in the accounts and financial statements.

The proposed regulations require the one set of consolidated accounts and financial statements to include all the financial transactions relating to airport management activities at the airport. Where there are a number of companies involved in the management of the airport, the airport lessee company is responsible for the consolidation of their accounts.

The proposed regulations establish requirements, in addition to those of the Corporations Law, for the purposes of airports regulation, but they do not override the requirements of the Corporations Law.

The proposed regulations also specify the form, audit and record keeping requirements of the accounts and financial statements, and the timeframe for their lodgement with the ACCC.

Clause 7.01 - Application of Part

Clause 7.01 provides that regulations under Part 7 are to apply to all companies operating core regulated airports, regardless of any exemption provided by Corporations Law. It exempts airport operator companies from the requirement of the Corporations Law to provide half yearly financial statements when preparing reports for the purposes of these regulations.

Clause 7.02 - Interpretation

Clause 7.02 provides definitions relating to the accounts and financial statements to be prepared by the airport operator company.

Clause 7.03 - Financial statements

Clause 7.03 requires an airport lessee company to consolidate the accounts and financial statements covering the activities of airport management companies at the airport, so that the one set of consolidated accounts and financial statements covers all the financial transactions relating to the operation of an airport. This information is also required in regard to the provision of aeronautical and non-aeronautical services.

The clause also requires an airport operator company (whether it be an airport lessee company or an airport management company) to prepare, in accordance with the Corporations Law, accounts and financial statements covering the activities at the airport. Further, these are not to be consolidated with those of any other company, and should show separately the financial transactions relating to aeronautical and non-aeronautical services.

Clause 7.04 - Form of statements

Clause 7.04 sets out the form financial statements should take by reference to Corporations Law.

Clause 7.05 - Auditor's certificate

Clause 7.05 specifies how financial statements should be audited by setting out the matters to be reported on in the auditor's certificate. It also specifies that an auditor must provide the certificate within 60 days of the end of the accounting period.

Clause 7.06 - Lodgement of accounts with the ACCC

Clause 7.06 specifies a timeframe of 90 days after the end of the accounting period for lodgement of accounts with the ACCC.

Clause 7.07 - Report on airports

Clause 7.07 requires the airport operator to report on total average staff equivalents of those employed at the airport broken down in terms of the provision of aeronautical and non-aeronautical services.

Clause 7.08 - Record-keeping

Clause 7.08 requires the airport operator to keep for five years after the end of the accounting period the records used to derive the accounts and financial statements of that accounting period.

SCHEDULE 1

The Schedule to the Regulations is divided into three Parts. Each Part defines the parcels of land, in accordance with relevant State or Territory land identification practices, which comprise the airport sites for Melbourne (Tullamarine), Brisbane and Perth airports.

