

Airports (Environment Protection) Regulations 1997 No. 13

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 13

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

Airports Act 1996

Airports (Environment Protection) Regulations

The Airports Act 1996 (the Act) provides for a comprehensive regulatory regime for leased Commonwealth airports. The Act provides that much of the detail of the regulatory scheme be dealt with in subordinate legislation by providing numerous matters for which regulations may be made. In particular Divisions 2 and 3 of Part 6 of the Act allow regulations to be made which deal with environmental matters at leased Commonwealth airports.

The purpose of the proposed Airports (Environment Protection) Regulations is to establish a Commonwealth system of regulation for pollution and excessive noise and to promote better environmental outcomes on leased Commonwealth airports.

Section 252 of the Act provides that the Governor General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed, or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Subsections 116(2)(j) and 116(3)(j) of the Act provide that an environmental strategy must specify any other matters that are specified in regulations.

Subsection 132(1) of the Act provides that regulations may make standards and impose requirements that are to be complied with in relation to, or in relation to the prevention or minimisation of.

- (a) environmental pollution (including air, water or soil pollution) generated at airport sites; or
- (b) impacts on biota or habitat, or
- (c) interference with sites of heritage value; or
- (d) interference with sites of significance to Aboriginal or Torres Strait Islander people; or
- (e) the emission of noise generated at airport sites (other than noise generated by aircraft in flight); or
- (f) the disposal or storage of waste at airport sites."

Subsection 132(2) stipulates that if a person knowingly or recklessly contravenes a provision of the regulations made for the purpose of subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 250 penalty units.

Subsection 132(3) provides that regulations made for the purposes (if subsection 132(1) may make provision for or in relation to a matter by conferring a power on the Minister.

Subsection 132(4) provides that section 133 does not by implication, limit subsection 132(1).

Subsection 133(1) of the Act provides that the regulations may make provision for and in relation to:

- (a) monitoring, cleaning up, remedying or rectifying environmental pollution (including air, water or soil pollution) generated at airport sites; or
- (b) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to impacts on biota and habitat
- (c) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to interference with sites of heritage value; or
- (d) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to sites of significance to indigenous people; or
- (e) monitoring, mitigating, remedying or rectifying the emission of noise generated at airport sites (other than noise generated by aircraft in flight); or
- (f) monitoring, mitigating, remedying or rectifying contraventions of section 124 standards relating to the disposal or storage of waste at airport sites."

Under subsection 133(2), regulations may be made for the purposes of subsection (1) which prescribe penalties not exceeding 50 penalty units for offences against those regulations.

Subsection 133(3) provides that regulations made for the purposes of subsection 133(1) may make provision for or in relation to a matter by conferring a power on the Minister.

Subsection 133(4) provides that section 132 does not by implication, limit subsection 133(1).

Under sections 134 and 135, provision has been made for the recovery of expenses associated with the breach of the environmental standards as a civil debt.

Regulations may also be made which declare that a specified environmental law of a State or Territory has no effect in relation to a specified airport, subsection 136(2).

Section 137 provides that, in addition to their effect apart from this section, regulations made under sections 132 and 133 also have the effect they would

[Back to Top](#)

have if their application was, by express provision, confined to acts or omissions of constitutional corporations.

Section 138 provides that the regulations may make provision enabling a person who is alleged to have committed an offence against Part 6 or regulations made for the purposes of section 132 to pay it penalty to the Commonwealth as an alternative to prosecution. Under subsection 138(2) this penalty must equal one-fifth of the maximum fine that a court could impose on the person as it penalty for that offence.

Details of the proposed Regulations appear in the Attachment,

The Regulations commenced upon notification in the *Gazette*.

Attachment

Airports (Environment Protection) Regulations

OVERVIEW OF THE REGULATIONS

The object of the Airports (Environment Protection) Regulations, as expressed in regulation 1.02, is:

"(a) to establish, in conjunction with national environment protection measures made under section 14 of the *National Environment Protection Council Act 1994*, a Commonwealth system of regulation of, and accountability for, activities at airports that generate, or have potential to generate:

(i) pollution; or

(ii) excessive noise; and

(b) to promote improving environmental management practices for activities carried out at airport sites."

The Regulations aim to establish a cooperative approach to environmental management on airports. The intent is to promote awareness of environmental issues and to ensure that management systems are in place to deal with the pollution, noise and other environmental impacts that are produced by and on airports, with a view to reducing those environmental impacts and increasing public amenity over time.

This approach is exemplified in Division 2 of Part 6 of the Act, which deals with environment strategies. Environment strategies will become the central plank in the regulatory regime, being the basis upon which the Commonwealth will measure the environmental performance of airport-lessee companies, and the document by which airport users will determine what their environmental responsibilities are. To accommodate this enhanced role, the required content of environment strategies has been further specified in **Part 3** of the Regulations. While the list of contents is quite comprehensive, it contains nothing more than what would be present in an adequate program for environmental management of a major facility such as an airport. Environment strategies remain documents of the airport-lessee companies, and hence will allow those operators considerable flexibility in dealing with the environmental management of their airports.

To provide guidance on what is expected of people undertaking activities on airports, and to give some background by which an airport-lessee company can determine what to put in an environment strategy, Part 4 of the Regulations sets out environmental duties that every operator of an undertaking at an airport is expected to comply with. The first of these duties is

the general duty to avoid polluting. Further environmental duties include duties in relation to pollution control equipment, preservation of environmentally sensitive habitat and sites. prevention of excessive noise, and noise control equipment.

Allied to these environmental duties are the methods by which they are considered to be discharged. There are broadly three ways in which a person is presumed to have complied with the general duty to avoid polluting and the duty not to make excessive noise:

- (a) by complying with a pollution or noise standard set out in one of the Schedules to the Regulations; or
- (b) by complying with a local pollution or noise standard approved by the Minister under Division 1 of **Part 5** of the Regulations; or
- (c) by complying with the terms and conditions of an authorisation granted under Division 2 of **Part 5** of the Regulations.

The first two methods of "presumed" compliance operate to allow airport users. "safe havens", but the objective of imposing the duties is not merely to enforce compliance with objective standards or authorisations, but to make people aware of the environmental impacts associated with their activities. The third method of presumed compliance with the duty, compliance with the terms and conditions of an authorisation, is designed for those airport users who can demonstrate that their activities (whether or not they breach the objective standards) are conducted in such a way that the net effect is that the environmental health of the airport is no worse, and preferably better, than it would be had there been rigid compliance with the standards.

In conjunction with the environmental duties present in Part 4, Part 6 of the Regulations imposes pollution monitoring, and reporting obligations on the airport-lessee company. The purpose of this Part is to ensure that the environmental health of an airport is initially determined and then continually monitored, with a view to improving that health.

As can be seen by the approach to environmental management noted above.. much of the responsibility for positive environmental outcomes is placed upon the airport-lessee company, sublessees, and airport users. Regulation is less a

[Back to Top](#)

matter of prescriptive rules and penalties for non-compliance, and more a matter of broad duties and obligations to maintain and improve the environmental health of an airport. Occupiers of airport land are given flexibility in determining how they will discharge their duties and obligations, in conjunction with the regulator, so that mutually beneficial outcomes are reached. The "regulator" in this equation will usually be the airport environment officer, a person appointed by the Secretary of the Department under **Part 10**, with suitable qualifications and experience, to work with the airport-lessee company, sublessees and airport users on environmental matters.

To perform their job, airport environment officers will be authorised to exercise powers under Part 18 of the Act in relation to monitoring and searches, and will be able to make decisions under the Regulations in relation to such matters as the grant of authorisations, land contamination investigation, directions to remediate, issue of environment protection orders and directions to comply with authorisations. The Secretary will retain certain powers of compulsion and enforcement, and will be able to review decisions of airport environment officers.

While the underlying theme of the Regulations is one of cooperative environmental management between the airport-lessee company, sublessees, airport users, and the regulator, there may be occasions when enforcement of the duties and obligations becomes necessary to protect the environment. Part 7 of the Regulations provides the airport environment officer with powers of enforcement. Enforcement will primarily be through the mechanism of environment protection orders. These orders are issued by the airport environment officer where he or she is of the opinion that one of the environmental duties is or will be breached. The order may direct compliance with a duty, for example, by taking particular action which will prevent pollution, or ceasing to perform some activity which is causing pollution. The environment protection order is the primary tool for enforcement of the duties, as intentional or reckless failure to comply with the terms of an order is a criminal offence under subsection 132(2) of the Act, with a penalty of up to \$125,000 per day of non-compliance by corporations (up to 525,000 per day for individuals). However, under **Part 8** of the Regulations there is scope for infringement notices to be issued for such offences, and payment of the fine will prevent prosecution.

Part 7 of the Regulations also provides for general offences which are not linked to the duties and obligations, but are intended to deal with the intentional or reckless polluters who cause environmental nuisance or material or serious environmental harm.

Part 9 of the Regulations provides that most decisions of the regulator under the Regulations are susceptible to merits review to ensure consistent and fair decisions and best outcomes for the environment, airport-lessee companies, sublessees, and airport users. Decisions of airport environment officers are reviewable by the Secretary, and decisions of the Secretary are reviewable by the Administrative Appeals Tribunal.

Schedules 1, 2, 3 and 4 set out pollution and noise standards. If these are followed, an operator of an undertaking will be assumed to have complied with his or her environmental duties as set out in Part 4. These standards are substantially based upon recommendations by the Australian and New Zealand Environment and Conservation Council (hereafter ANZECC) and the National Health and Medical Research Council (hereafter NH&MRC).

An important, emerging development is the commitment of Commonwealth, State and Territory Governments to the formulation of national environmental protection measures (hereafter NEPMs) and this has been kept in mind during the development of these Regulations. As the NEPMs are made over the coming years, the Regulations will be reviewed periodically and amended if necessary to reflect the new measures. It is envisaged that the first review will occur within two years of the Regulations coming into force.

PART 1 - PRELIMINARY

This part deals with a number of preliminary matters and provides for the objects, application and effect of the Regulations, and also introduces some key concepts used throughout the Regulations.

Regulation 1.01 - Citation

The proposed Regulations when made will be known as the Airports (Environment Protection) Regulations.

Regulation 1.02 - Objects

As noted in the Overview above, the objects of the Regulations are:

* to establish, in conjunction with national environment protection measures made under section 14 of the *National Environment Protection Council Act 1994*, a Commonwealth system of regulation of, and accountability for, activities at airports that generate, or have potential to generate:

(i) pollution; or

(ii) excessive noise; and

* to promote improving environmental management practices for activities carried out at airport sites.

That is, the objective of the Commonwealth in enacting the Regulations is not to prescribe or proscribe activities, but to ensure that airports are managed so that the environmental health of airports is improved, or at worst,

[Back to Top](#)

maintained.

Regulation 1.03 - Limited application to aircraft activities

The Regulations will not apply to pollution generated by aircraft, nor to noise generated by aircraft in flight or when landing. taking off or taxiing at an airport nor does the Act contain adequate power for the Regulations to deal with this subject matter. The Commonwealth already regulates these matters through a number of pieces of legislation. The pollution effects of aircraft engine, are dealt with under the Air Navigation (Aircraft Engine Emissions) Regulations, and the noise effects of aircraft operations are dealt with under the Air Navigation (Aircraft Noise) Regulations. These two sets of regulations give effect to requirements set out in the Annexes to the Convention on International Civil Aviation. The Commonwealth also has specific legislation, in the form of the *Sydney Airport Curfew Act 1995* and the Air Navigation (Aerodrome Flight Corridors) Regulations, to deal specifically with environmental impacts associated with aircraft operations at Sydney (Kingsford-Smith) Airport. The Regulations are intended not to interfere with these existing environmental controls over aircraft.

Nevertheless, the noise from ground-running of aircraft engines and auxiliary power units will be regulated by the Regulations, as these matters are dealt with under Federal Airports Corporation By-laws which will not apply to airports following leasing.

Regulation 1.04 - Effect on State laws

Importantly, the Regulations do not, and do not purport to, cover the field of environmental regulation on airport. State laws related to the environment are still given effect to on airport sites, other than laws which deal with environmental pollution and noise. Specifically, State laws which make provision about pollution from motor vehicles, occupational health and safety matters, emission of ozone-depleting substances, and use of pesticides all apply to airports. For example, a person storing or handling hazardous substances on an airport site must still store the substances, wear the protective clothing, and take the protective measures required by relevant State hazardous substances and occupational health and safety laws. State laws dealing with the disposal or storage of waste will also apply to airports.

Apart from these areas, the Regulations are intended to operate to the exclusion of State laws which make standards and impose requirements, that, are to be complied with in relation to, or in

relation to the prevention or minimisation of, environmental pollution (including air, water or soil pollution) and the emission of noise generated at airport sites, including State laws which relate to monitoring, cleaning tip, remedying or rectifying environmental pollution mild noise generated at airport sites.

It should be noted that Commonwealth laws which protect endangered species (a matter of biota and habitat protection); national heritage; and matters of Aboriginal and Torres Strait Islander heritage will still have effect on airport sites.

State laws dealing with biota, habitat, heritage sites and sites of indigenous significance will also have effect on airports to the extent they are not inconsistent with Commonwealth laws dealing with the subject matters.

Regulation 1.05 - Definitions

This regulation will define terms used in the proposed Regulations that do not appear in the Act.

Regulation 1.06 - References to Australian Standards ('AS')

This regulation provides that Australian standards in force at the commencement of the Regulations can be identified by the letters "AS" followed by the number of the standard.

Regulation 1.07 - Who is an operator of an undertaking at an airport

A key concept used throughout the Regulations is that of an "operator of an undertaking". It is upon such people that most of the duties and obligations contained in the Regulations fall. This Regulation defines the concept to encompass people operating businesses, facilities, plants, machines or equipment, or carrying out any activity, dealing, operation, process or work; that is, just about everybody on an airport site. However, it is important to note that airport-lessee companies are not considered to be the operators of undertakings which are performed by sublessees on subleased land merely because they are the "landlords". Similarly the activity of "whole-of-airport management" is not considered to be an undertaking.

Regulation 1.08 - Testing Standards

This regulation sets out the standards for testing under the Regulations. Generally testing must be done at a NATA accredited laboratory in accordance with a method approved by the NATA. Provision has been made, where no such method is approved, for testing to be conducted in accordance with methods approved by several US authorities or bodies.

PART 2 - WHAT IS ENVIRONMENTAL POLLUTION OR EXCESSIVE NOISE

Part 2 of the Regulations provides the definitions of pollution and excessive noise for the purposes of interpreting the Regulations. These definitions are related to the Schedules to the Regulations, and provide a basis for the issue of environment protection orders under Part 7.

Division 1 - Pollution

Regulation 2.01 - What is air pollution

Regulation 2.01 defines for the purposes of the Regulations what is meant by air pollution. Air pollution occurs when a pollutant is present in air in a

[Back to Top](#)

quantity, way or condition, or under a circumstance, *in* which harm is likely to be caused to the environment or unreasonable inconvenience is likely to be caused to a person in a public place or at a place other than in the immediate vicinity of the source of the pollutant.

Note that a pollutant includes an objectionable odour, as well as substances normally regarded as pollutants, such as the substances identified in Table 1 of Part 1 of Schedule 1. However, substances are not pollutants if they are only pollutants because they cause depletion of ozone in the stratosphere. Ozone depleting substances are not dealt with in the Regulations, leaving State and Territory laws to deal with the matter, see paragraph 1.04(2)(c).

Regulation 2.02 - What is water pollution

Regulation 2.02 defines for the purposes of the Regulations what is meant by water pollution. Water pollution occurs when waters contain a substance or organism that causes, or is reasonably likely to cause, an adverse effect on beneficial use of the waters, or the physical, chemical or biological condition of the waters to be adversely affected.

"The term "adverse effect" includes the effects described in Schedule 2, see e.g.. clauses 2 and 3 of Schedule 2 of the Regulations. The term "beneficial use" is very broadly defined to encompass all positive uses of water, and would include, (for example, the use of wetlands as a wildlife sanctuary.

Regulation 2.03 - What is soil pollution

Regulation 2.03 defines for the purposes of the Regulations what is meant by soil pollution. Soil pollution occurs when soil (including subterranean groundwater) is contaminated by a substance in one or more of the five ways listed in paragraphs 2.03(1)(a) to (c). Whether soil is contaminated in such a way as to be polluted within the definition of soil pollution is to be determined following an assessment under Division 2 of Part 6 of the Regulations.

Division 2 - Offensive noise

Regulation 2.04 - What is offensive noise

Regulation 2.04 defines for the purposes of the Regulations what is meant by offensive noise. The test for offensive noise depends upon an assessment by all airport environment officer of whether noise is generated at a volume, in its way, or under a circumstance that intrudes offensively on public amenity. While such a test appears arbitrary and subjective, an airport environment officer must have regard to a number of factors in coming to his or her conclusion, see subregulation 2.04(2). These factors, particularly the excessive noise guidelines in Schedule 4, provide considerable guidance to airport users on when and how they can produce noise.

PART 3 - ENVIRONMENTAL STRATEGIES

Part 3 of the Regulations supplements section 116 of the Act by detailing matters to be specified and addressed in airport-lessee companies' environment strategies. Environment strategies are central to the successful environmental management of airports, and should comprehensively set out how the airport will be operated so that its environmental health is maintained or improved.

While there are consultation requirements imposed upon airport- lessee companies in the Act, it was felt that because of the impact that strategies will have on airport users, and the impact that airport users will have on the *adequacy* and suitability of environment strategies:

- * airport users should be obliged to assist and contribute to the development and review of environment strategies to the extent that it is practicable to do so (see regulation 3.02); and
- * airport-lessee companies are obliged to make sublessees and licensees aware of environment strategies (see regulation 3.11).

The contents of environment strategies are guided both by section 116 of the Act and Divisions 2 and 3 of Part 3 of the Regulations.

Division 2 of Part 6 of the Act sets out the process for the preparation of a final (ie approved) environment strategy which includes preparation of the strategy by the airportlessee company; a process of consultation in which the public can provide comments; and, finally approval by the Minister. Section 131 of the Act. provides for the publication of a final environment strategy.

Division 1 - Preliminary

Regulation 3.01 - Application

This regulation specifies that this Part of the Regulations applies to both draft and final environment strategies prepared under Division 2 of Part, 6 of the Act.

Regulation 3.02 - Participation by operators of undertakings at an airport

This regulation requires an operator of an undertaking at an airport to assist the airportlessee company and contribute to the development, review and revising of the environment strategy for the airport to the extent that it is practicable to do So.

Division 2 - Additional matters to be specified

Regulation 3.03 - Sites of indigenous significance

This regulation specifies that an environment strategy must specify the areas (if any) within the airport site identified as sites of indigenous significance by the airport-lessee company in consultation with indigenous communities and organisations, and Commonwealth and State government bodies.

Regulation 3.04 - Operations other than airport operations

[Back to Top](#)

This regulation requires an environment strategy to address all the matters specified in this Part of the Regulations for those areas of the airport site that are used for purposes not connected, or directly connected, with airport operations.

The practical effect of this regulation is that it ensures that an environment strategy will cover all areas of an airport, not just those used for civil aviation and civil aviation related purposes.

Regulation 3.05 - Environment management training

This regulation requires an environment strategy to specify the:

training necessary for appropriate environment management by persons employed on the airport site:

- by the airport-lessee company; or
- by other major employers or classes of persons so employed; and

any formal training programs of which the airport-lessee is aware that it considers would meet the training needs of such persons.

The object of this regulation is to promote best practice in, and to encourage a holistic approach to, environmental training.

Division 3 - Things to be addressed in strategy

Regulation 3.06 - Management of airport site

This regulation requires an airport-lessee to address, when specifying its objectives under paragraph 116(2)(a) or (3)(a) of the Act, its policies *and* targets for:

- * continuous improvement in the environmental consequences of activities at the airport;
- * progressive reduction in extant pollution at the airport;
- * development and adoption of a comprehensive environment management system for the airport that maintains consistency with relevant Australian and international standards;
- * identification and conservation of objects and matters at the airport by the airportlessee company and other operators of undertakings at. the airport, that have natural, indigenous or heritage value;
- * involvement of the local community and airport users in development of any future strategy; and
- * dissemination of the strategy to sub-lessees, licensees, other airport users and the local community.

Regulation 3.07 - Identification of environmentally significant areas of airport site

This regulation requires that an airport-lessee in specifying areas Within an airport site that, under paragraph 116(2)(b) or (3)(h) of the Act, it identifies as environmentally significant must address:

- * any relevant recommendation of the Australian Heritage Commission,
- * any relevant recommendation of the Department of the Environment, Sport and Territories regarding biota, habitat, heritage or similar matters.

* any relevant recommendation of a body established in the State in which the airport is located having responsibilities in relation to conservation of biota, habitat, heritage or similar matters.

Regulation 3.08 - Identification of sources of environmental impact at airport

This regulation requires an airport-lessee company, in specifying the sources of environmental impact that, under paragraph 116(2)(c) or (3)(c) of the Act, it associates with airport operations or civil aviation operations (as the case requires) to address:

- * the quality of the air at the airport site (and the regional airshed to the extent that the regional airshed is likely to be affected by airport activities);
- * water quality (including potentially affected groundwater, estuarine waters and marine waters);
- * soil quality (including the soil quality of land known to be contaminated);
- * release into the air of substances that deplete stratospheric ozone;
- * generation (and handling) of hazardous waste and any other kind of waste;
- * the usage of natural resources, both renewable and non renewable;
- * the usage of energy, the production of which generates emissions of "greenhouse gases";
- * generation of noise.

Note that the practical effect of regulation 3.04 is to require the airport-lessee company to address these matters in respect of the whole airport site.

Regulation 3.09 - Proposed studies, reviews and monitoring

This regulation requires an airport-lessee company, in specifying its proposed studies, reviews and monitoring that, under paragraph 116(2)(d) or (3)(d) of the Act, it plans to carry out in connection with airport operations or civil aviation operations (as the case requires), to address:

[Back to Top](#)

- * the matters mentioned under regulation 3.03 (sites of indigenous significance), regulation 3.07 (identification of environmentally significant areas of airport site) and regulation 3.08 (identification of sources of environmental impact at airport);
- * the scope (identified by the airport-lessee company) for conservation of objects and matters at the airport that have natural, indigenous or heritage value;
- * the approaches and measures identified by the airport-lessee company as its preferred conservation approaches and measures;
- * the professional qualifications held by a person to be engaged in carrying out the monitoring,

* the proposed systems of testing, measuring mid sampling to be carried out for possible (or suspected) pollution; and

* the proposed frequency of routine reporting of monitoring results to the airport environment officer, or to the Secretary.

Note that the practical effect of regulation 3.04 is to require the airport-lessee company to address these matters in respect of the whole airport site.

Regulation 3.10 - Proposed measures for preventing, controlling or reducing environmental impact

This regulation requires an airport-lessee company, in specifying the measures under paragraph 116(2)(f) or (3)(1) of the Act, it plans to carry out for the purposes of preventing, controlling or reducing the environmental impact associated with airport operations or civil aviation operations (as the case requires), to address:

* the matters mentioned under regulation 3.06 (management of the airport site), regulation 3.07 (identification of environmentally significant areas of airport site) and regulation 3.08 (identification of sources of environmental impact at airport), and

* the means by which it proposes to achieve the cooperation of other operators of undertakings at the airport in carrying out these plans.

Note that the practical effect of regulation 3.04 is to require the airport-lessee company to address these matters in respect of the whole airport site.

Division 4 - Publicising of strategy

Regulation 3.11 - Sublessees and licensees to be aware of strategy

In addition to its obligation under section 131 of the Act, this regulation requires an airport-lessee company to ensure that all sublessees and licensees are aware of the final environment strategy and of any approved variation to the strategy.

PART 4 - DUTIES OF OPERATORS OF UNDERTAKINGS AT AIRPORTS

Part 4 of the Regulations provides guidance to airport-lessee companies and airport users on what is the least that is expected of their environmental management. Essentially, operators of undertakings (defined in regulation 1.07) are obliged to comply with a number of environmental duties which appear in this Part, and may be forced to comply by the issue of environment protection orders by the airport environment officer under Part 7 of the Regulations.

Division 1 - Pollution

Regulation 4.01 - General duty to avoid polluting

The primary duty that all operators of undertakings at an airport must comply with is the general duty to avoid polluting. Operators of undertakings must take all reasonable and practicable measures:

(a) to prevent the generation of pollution from the undertaking; or

(b) if prevention is not reasonable or practicable - to minimise the generation of pollution from the undertaking.

Whether a measure is reasonable and practicable depends upon a number of factors, including:

- (a) the sensitivity of the receiving environment to pollution;
- (b) the nature of the harm that pollution generated will cause;
- (c) the current state of technical knowledge about preventing or minimising pollution; and
- (d) all measures that might practicably be used to prevent or minimise the pollution.

Regulation 4.01 is modelled on general duties that may be found in recent State environmental legislation, for example, section 25 of the *Environment Protection Act 1993 (SA)* and section 36 of the *Environment Protection Act 1994 (Qld)*.

Failure to comply with the general duty to avoid polluting is not of itself, an offence (although it may constitute the separate offence of causing environmental harm under Division 2 of Part 7 of the Regulations), but may be enforced by an environment protection order issued by an airport environment officer under Division 1 of Part 7 of the Regulations.

Regulation 4.02 - Assumed compliance with general duty

Regulation 4.02 provides for three ways in which operators of an undertaking will be taken to comply with their general duty under regulation 4.0 1. These are:

[Back to Top](#)

- (a) pollution is not generated in excess of the limits set out in Schedules 1, 2 or 3 of the Regulations; or
- (b) where local standards have been approved by the Minister under regulation 5.04 - pollution is not generated in excess of the limits set out in those standards; or
- (c) where the person holds an authorisation granted by the airport environment officer under regulation 5.09 - the operator complies with the terms and conditions of the authorisation.

Regulation 4.03 - Duty - pollution control equipment

This regulation effectively provides that operators of undertakings are not considered to be complying with their general duty to avoid pollution if they are not operating certain equipment in such a manner so as to prevent or minimise the pollution from that equipment. The equipment to which this regulation applies is that equipment supplied with pollution control equipment fitted, or to which the manufacturer specifies or recommends pollution control equipment to be fitted. Failure to have the supplied, specified or recommended pollution control equipment (or similar equipment) fitted, maintained in a proper and efficient condition, and being used effectively, is a failure to comply with the general duty under regulation 4.0 1.

Division 2 - Preservation of habitat, etc.

Regulation 4.04 - General duty to preserve

Regulation 4.04 provides that there is a general duty to ensure that habitat, biota, ecosystems, endangered and vulnerable species, and sites of indigenous and heritage significance are properly protected from the adverse environmental consequences associated with the operation of undertakings at an airport. Like the general duty to avoid polluting, this duty is subject to the granting of authorisations under Division 2 of Part 5 of the Regulations, and may be enforced by the issue of an environment protection order.

Regulation 4.05 - Duty to give notice of cultural, etc., discovery

Allied to the general duty to preserve is a duty to give notice to an airport-lessee company and airport environment officer of an object, species or ecological community which indicates that the site of an undertaking is a site of previously unrecognised significance. By operation of this duty it is envisaged that comprehensive information on the habitat, biota, ecosystems, endangered and vulnerable species, and sites of indigenous and heritage significance within an airport will be built up, to enable sensible planning decisions to be made and environment protection measures to be put in place.

The regulation also imposes a duty upon the airport-lessee company or airport environment officer notified of a discovery to seek advice from "appropriate persons" (defined in subregulation 4.05(3)) on appropriate conservation measures, see subregulation 4.05(2). The airport-lessee company must also record the discovery in the environment site register kept under subregulation 6.02(3).

Division 3 - Offensive noise

Regulation 4.06 - General duty to prevent offensive noise occurring

Regulation 4.06 is a duty in respect of offensive noise analogous to the general duty to avoid polluting. Operators of undertakings at airports are required to take all reasonable and practicable measures to prevent, or if prevention is not reasonable or practicable, to minimise the generation of offensive noise (defined in regulation 2.04).

Subregulation 4.06(2) provides for factors which must be taken into account in determining whether a measure is reasonable and practicable, including:

- (a) the circumstances in which noise is generated, and current standards in best practice management of generation of noise in those circumstances;
- (b) the current state of technical knowledge about preventing or minimising excessive noise, and
- (c) all measures that might practicably be used to prevent or minimise the excessive noise.

This general duty, like the general duties under regulations 4.01 and 4.04, is enforceable by the issue of an environment protection order.

Regulation 4.07 - Assumed compliance with general duty

Similar to the general duty to avoid polluting, compliance with the general duty to prevent offensive noise occurring is presumed in three cases:

- (a) where noise is not generated in excess of the limits specified in Schedule 4 of the Regulations;
- (b) if local standards have been approved by the Minister under regulation 5.04 -where noise is not generated in excess of the limits set out in those standards; or
- (c) if the person holds an authorisation granted by the airport environment officer under regulation 5.09 - where the operator complies with the terms and conditions of the authorisation.

Regulation 4.08 - Duty - noisy, or potentially noisy, equipment

A person is not considered to be complying with the general duty to prevent offensive noise occurring if equipment which could result in offensive noise being generated is not being operated in a proper and efficient manner, or is not maintained in a proper and efficient condition.

Regulation 4.09 - Duty - noise control equipment

Like regulation 4.03, this regulation effectively provides that operators of undertakings are not considered to be complying with their general duty to

[Back to Top](#)

prevent offensive noise occurring if they are not operating certain equipment in such a manner so as to prevent or minimise the noise from that equipment. The equipment to which this regulation applies is that equipment supplied with noise control equipment fitted, or to which the manufacturer specifies or recommends noise control equipment to be fitted. Failure to have the noise control equipment supplied, specified or recommended (or similar equipment) fitted, maintained in a proper and efficient condition, and being used effectively, is a failure to comply with the general duty under regulation 4.06.

PART 5 - LOCAL STANDARDS AND INDIVIDUAL AUTHORISATIONS

This Part of the Regulations deals with the making of local standards and the granting of authorisations.

It is recognised that the pollution and noise standards set out in the Schedules to the Regulations may not be appropriate to certain airports, given climatic, topographic, or similar considerations. For example, the soil at an airport may naturally contain large quantities of a particular pollutant or groundwater may be naturally acidic, resulting in breaches of the Schedule limits on pollutants without any activity taking place whatsoever. In such circumstances there is an opportunity for an airport-lessee company to apply to the Minister for what is, in effect, a variation of the Schedule standards as they apply to the lessee's airport. Standards as varied are called "local standards".

Local standards are not to be seen as alternative standards which allow pollution. They are standards which should take into account the physical attributes of all airport sites, and may, in practice, set lower limits on the generation of pollution than the Schedules would permit at other airports not affected by the same local conditions.

There is also opportunity for people to apply for authorisations. Authorisations, like local standards, should not be viewed as permissions to pollute. Authorisations must be backed up by

environmental management plans detailing how the applicant intends to minimise the negative environmental consequences associated with his or her activities, and to reduce those consequences over time. The system is designed to allow operators of undertakings to exceed pollution limits set out in the Schedules or local standards, provided they can demonstrate that the environment is no worse off for their activities, or they have a management plan that will, over a period of time, bring the consequences of their activities within acceptable limits. It is envisaged that long-term authorisations will only be granted to those operators of undertakings who can demonstrate a commitment to minimising and improving the environmental performance of their organisations and activities in their proposed environmental management plans.

Division I- Local Standards

Regulation 5.01 - Purpose

This regulation sets out the purpose of this Division, which is to enable flexibility in the administration of standards in the regulations through the adoption of 'local' standards. It is intended that this flexibility will enable climatic, topographic and other conditions which are specific to the airport concerned to be acknowledged and reflected through adoption of alternative standards to those set out in the Schedules to the Regulations.

Regulation 5.02 - Airport-lessee company may initiate consultations

This regulation describes the consultative steps the airport-lessee company must take where it considers that, due to the climatic, topographic and other conditions at an airport, the accepted limits of contamination or noise set out in the Schedules to the Regulations are inappropriate and they choose to propose it substitute standard. Consultation requirements include placement by the airport-lessee company of an advertisement in a newspaper (that has general circulation in the State in which the airport is located) setting out the airport-lessee company's intention to propose that local standards be adopted and inviting written comment from interested persons within 90 days of the date of the advertisement.

The regulation also requires that the airport-lessee company consider any comments received in response to their advertisement and consult the relevant State regulatory bodies, the Commonwealth department responsible for (the environment and persons who could be significantly affected by the substitution of standards if it occurred.

Regulation 5.03 - Application to Minister

This regulation allows that if, following the required consultations, the airport-lessee company determines an appropriate alternative local standard it may apply to the Minister for approval of the local standard. The matters to be addressed in the application (including the results of the consultations) are described.

Regulation 5.04 - Determination of application

regulation requires that the Minister decide an application for approval of local standards by granting it (either in full, or *subject to* conditions defined by the Minister), or refusing it. Issues which the Minister must take into account when considering an application include the views of the airport-lessee company and all others consulted, relevant State requirements or standards, the consistency of the proposed local standard with the environment strategy for the airport all the need to avoid inconsistency with any relevant national environment protection measures made under Section 14 of the

National Environment Protection Council Act 1994.

The Minister is also required to base his or her decision whether or not to allow adoption of local standards on expert environmental advice from Commonwealth or State government bodies or officials with relevant experience, or relevant independent experts.

Regulation 5.05 - Notification of determination

This regulation requires the Minister to give the airport-lessee company, within 30 days of receipt of the application, written notice of his or her decision whether or not to allow adoption of local standards at an airport. Where local standards are approved, details of this decision are to be published in the Commonwealth Government *Gazette* within 15 days of the decision and approval is effective from the publication date.

The regulation also requires the Minister to advise the airport-lessee company of the reasons why an application is refused, or granted subject to conditions.

Division 2 - Authorisations

Regulation 5.06 - Effect of authorisation

This regulation describes the nature and effect of authorisations. These instruments authorise the holder to satisfy their general duty to avoid Polluting (regulation 4.01) and/or to prevent offensive noise occurring (regulation 4.06) by acting in a way (or failing to act in a way) described in the authorisation for the period specified in the authorisation.

Regulation 5.07 - Application for authorisation

This regulation specifies the content required to be included in an application to the airport environment officer for an authorisation. This includes details of the applicant_ the airport concerned, the act or acts for which the authorisation is sought, any standard which is intended to be exceeded, the reason the authorisation is needed and the period for which the authorisation is needed. The regulation also requires that applications be supported by an environment management plan which details the actions the applicant intends to take during the period of the authorisation to:

- * ensure pollution emissions overall are not more environmentally damaging than if the relevant standards in the schedules to the regulations were complied with; or
- * where the restriction of pollution emissions to ensure they are not more environmentally damaging can only be achieved by incremental improvements over a period of time greater than that of the proposed authorisation, to make satisfactory progress towards achievement of this outcome.

The regulation also allows the airport environment officer to request in writing that further relevant information be provided by the applicant for, in authorisation, to enable the airport environment officer to determine the. application.

Regulation 5.08 - Certain applications to be advertised

This regulation requires that applications for certain authorisations must be, advertised in a major newspaper and that written submissions on the application must be invited to be received within 14 days of the advertisement. The defined authorisations which are required to be advertised are long-term (90 days or longer) authorisations, authorisations that will allow an activity which is likely to have a significant adverse material impact on another person, and authorisations that will allow an activity which is likely to fail to comply with a pollution or noise standard frequently, or repeatedly and protractedly.

The regulation also sets out requirements regarding the content of the advertisement.

Regulation 5.09 - Determination of application

This regulation requires that the airport environment officer decide an application for an authorisation by granting it (either in full, or subject to conditions defined by the airport environment officer), or refusing it. Issues which the airport environment officer must take into account when considering an application include:

- * any reasonable alternative actions available to the applicant (including undertaking the subject activity at a different place);
- * whether the applicant has taken all available measures to avoid or minimise the need for the authorisation;
- * all likely consequences of the proposed action on the health, safety or comfort (in relation to noise) of any person, the environment, or compliance with ambient air standards set out in Schedule 1 of the Regulations;
- * the period of time for which the authorisation is required;
- * the adequacy of the environment management plan submitted by the applicant under regulation 5.07;
- * whether the authorisation is required to enable existing airport-sourced pollution to be remedied;
- * whether granting of the authorisation would be consistent with the objectives of the relevant environment strategy;
- * whether granting of the authorisation would have a significant impact on the interests of another person;
- * any submissions received following advertisement of

[Back to Top](#)

the application in line with the requirements of regulation 5.08; and

- * any other matter which the airport environment officer considers relevant.

In addition to these considerations, the regulation also notes that a decision made by the airport environment officer under this regulation may also need to take account of any relevant environmental impact statement or public environment report made under the *Environment Protection (Impact of Proposals) Act 1974*.

In considering whether to grant an authorisation with conditions, *the* airport environment officer is required under this regulation to take into account commitments made by the applicant regarding prevention or minimisation of relevant pollution or noise, and to prefer a decision which will promote improved compliance with the regulations by the applicant after the authorisation has ceased.

Regulation 5.10 - Notification of decision

This regulation requires the airport environment officer to give the airport-lessee company, within 30 days of receipt of the application, written notice of his or her decision whether or not to grant an authorisation. Where further information has been sought by the airport environment officer under regulation 5.07, his or her decision must be notified within 30 days of when the information was provided.

The regulation also requires the airport environment officer to advise the applicant of the reasons why an application is refused, or granted subject to conditions,

Regulation 5.11 - Authorisation holder to comply with plan

This regulation makes it a condition of all authorisations that the holder comply with the environmental management plan submitted under subregulation 5.07(3).

Regulation 5.12 - Duration of authorisations

This regulation limits the period for which an authorisation may be given to a maximum of 3 years, defines how this period is to be specified and notes that this maximum period can not be extended via a variation issued under regulation 5.15.

Regulation 5.13 - Urgently required authorisations

In recognition that authorisations may be required to be given urgently in emergency circumstances, this regulation allows that applications for authorisations may be made orally in such circumstances. Such authorisations will only have effect for a maximum of 48 hours and must be confirmed in writing by the applicant at the earliest reasonable opportunity.

The requirements that applications include certain specified details (subregulation 5.07(2)) and that the airport environment officer only determine all applications with regard to a range of specified considerations (regulation 5.09) apply to applications under this regulation as if it were a written application.

Regulation 5.14 - Notification to airport-lessee company

This regulation requires that the airport-lessee company be notified within 2 days of authorisations which are granted by the airport environment officer. It also requires the airport environment officer to make a written record of the authorisation and to give a copy of the authorisation to the airport-lessee company.

Regulation 5.15 - Public notification

To provide for accountability and transparency in relation to the granting of authorisations, this regulation requires that a list of all authorisations granted by an airport environment office in any quarterly period must be published in the Commonwealth Government Gazette quarterly (including a notice that copies of the authorisations are available to be inspected at the offices of the

relevant airport-lessee company), and that all authorisations granted must be notified in the Annual Report of the Department of Transport and Regional Development.

Regulation 5.16 - Authorisations may be varied or revoked

An airport environment officer may vary or revoke an authorisation under this regulation. He or she must first be satisfied that it is proper to do so and can do so whether a request for variation or revocation is received from the authorisation holder or not. Variation or revocation of authorisations does not become effective until written notice is provided to the authorisation holder by the airport environment officer.

The regulation also provides for an authorisation holder to make a written request to the airport environment officer to vary or revoke an authorisation. This request must set out the details of, and reasons for the variation or revocation and the period for which a variation is needed. Provision is made for variations or revocation to be made orally and to become effective immediately in emergency situations (limited to 48 hours duration).

The regulation requires that the fact an authorisation has been varied or revoked be disregarded in proceedings against a person under these regulations where:

- * the person is not the holder of the relevant authorisation; and
- * the person did not know that the authorisation had been varied or revoked.

Regulations detailing requirements that certain applications for authorisations be advertised (regulation 5.08), that applications be determined by the airport environment officer with reference to certain considerations (regulation 5.09)

[Back to Top](#)

and that the airport-lessee company be notified of authorisations which are granted (regulation 5.13) apply to a variation as if they were a grant of an authorisation.

Regulation 5.17 - Annual report by holder

Holders of authorisations granted for a period more than 1 year must give the airport environment officer an annual report detailing their performance in implementing the environment management plan submitted under subregulation 5.07(3) and reducing the generation of pollution or noise, and details of any failure to comply with the terms and any conditions of the authorisation.

Regulation 5.18 - Failure to comply with condition of authorisation

This regulation requires the holder of an authorisation to report to the airport environment officer, within 24 hours of its occurrence or discovery, any contravention of a condition of an authorisation.

Regulation 5.19 - Authorisation may be transferred

This regulation allows for authorisations to be transferred when ownership of an undertaking to which the authorisation applies is transferred from one party to another. Transfer is subject to written notification by the current holder of the intention to transfer, written acknowledgement by the transferee of the relevant terms and conditions of the authorisation and the lack of

objection to the transfer (within 7 days) by the airport environment officer. The right is reserved for the airport environment officer to refuse the transfer of an authorisation where he or she considers it is proper to do so.

PART 6 - MONITORING, REPORTING AND REMEDIAL ACTION

The purpose of Part 6 of the Regulations is to investigate and monitor the environmental health of an airport site so that there is a comprehensive body of information on that health, and so that the information can be used to effectively remediate any pollution or sources of pollution identified. Division 1 deals with the monitoring and reporting obligations of both the airport-lessee company and other persons on the airport site.

Fundamental to knowledge of the environmental health of the airport is information on the pollution of soil and groundwater. Division 2 of Part 6 deals with the assessment of soil and groundwater pollution, and Division 3 of Part 6 deals with the remediation of any pollution found.

The process set out in Divisions 2 and 3 is consistent with the nationally accepted guidelines set out in the ANZECC and National Health and Medical Research Council (NH&MRC) document "Australian Guidelines for the Assessment and Management of Contaminated Sites (1992)".

If pollution occurs on an airport Division 4 empowers the airport environment officers to order specified remedial work to be undertaken or to undertake that remedial work themselves.

Division 1 - Monitoring and reporting

Regulation 6.01 - Existing pollution to be reported

Under this regulation an airport environment officer may direct the "occupier" (defined in subregulation 6.01(6)) of a site at an airport to give the environment officer information relating to pollution at the site within 3 months of the direction. Failure to comply with the direction is a criminal offence, punishable by a fine of up to \$5000 for individuals, \$25,000 for corporations. The information must be passed to the airport-lessee company for the airport who will record it in the environmental site register (see regulation 6.02). Information provided under this regulation will enable a comprehensive database of the airport site's environmental history to be built up and will enable potentially contaminated sites to be more easily identified.

Subregulation 6.01(5) provides that information provided to an airport environment officer under this regulation cannot be used as evidence in proceedings against the occupier giving it for an apparent offence under the Regulations.

Regulation 6.02 - Airport-lessee company to monitor pollution levels

The primary obligation to monitor pollution levels at an airport falls upon the airport-lessee company. Under this regulation, an airport-lessee company must monitor, in accordance with its environment strategy, the levels of pollution present in air, water and soil at the airport. Monitoring must be carried out in a comprehensive and competent manner, and this requirement is set out in subregulation 6.02(2).

The airport-lessee company must maintain a register of information relating to pollution on the airport. Its minimum contents are set out at subregulation 6.02(3). This "environmental site register" will be updated progressively, so that the current environmental health of the airport can be determined relatively easily. It is envisaged that the site register will also be a valuable historical register, as it will illustrate the changes to the environmental health of the airport over

time, and will also serve to identify gaps in knowledge about the environmental health of the airport.

Failure to keep the environmental site register is a criminal offence.

Regulation 6.03 - Annual report

In addition to constant monitoring and recording relevant information in all environmental site register, an airport-lessee company is required to give to the Secretary, every year, a report containing information relating to the environmental health of the airport. This requirement is designed to ensure that the Commonwealth is apprised of the environmental health of the leased airports, which remain Commonwealth places, and can effectively monitor

[Back to Top](#)

airport-lessee companies' performance against the policies and targets of their environment Strategies.

Regulation 6.04 - Additional reporting requirements

This regulation sets out the information that must be contained in a report to the airport environment officer by the airport-lessee company if monitoring discloses pollution or excessive noise.

Failure to provide such a report is an offence.

Regulation 6.05 - Duties of sublessees and licensees

While the primary obligation to monitor the levels of pollution and noise at tile airport falls upon the airport-lessee company, occupiers of land at airport Sites also have obligations with respect to monitoring die environmental effects of their own activities. This regulation provides that sublessees and licensees must give all reasonable assistance to the airport-lessee company including:

- * establishing their own systems of monitoring; and
- * reporting the results of that monitoring to the airport-lessee company.

After receiving written notification, an occupier must give an airport-lessee company any access the airport-lessee company reasonably requires to its occupied area or to any documents under its control.

Subregulation (3) provides that the occupiers may be directed to assist the airportlessee company by the Secretary if they do not comply with the regulation.

Failure to comply with such a direction is an offence.

Regulation 6.06 - Inaccurate or incomplete report to be corrected

Where a person reports a matter under any of the previous regulations in this Division, and subsequently becomes aware that the report is inaccurate or incomplete, they must give the person to whom they reported the matter a corrected report without delay (or put another way as soon as is possible).

Failure to correct an inaccurate or incomplete report promptly is an offence.

Division 2 - Airport environment officer assessment of soil pollution

Regulation 6.07 - Duty to assess soil condition

This regulation specifies that an assessment of the current soil and groundwater pollution at a location on an airport site must be done by the airport environment officer in four situations

- a) if the airport environment officer suspects that a contaminant present on the land is migrating offsite; and after taking samples from the land, finds that any of the substances listed in the schedule is present in concentrations greater than set out in Schedule 3; or
- b) if the airport environment officer suspects the land is contaminated and that this may pose a threat to human health or amenity or to a site identified in a strategy as environmentally significant; and after taking samples from the land, finds that any of the substances listed in Schedule 3 is present in concentrations greater than set out in Schedule 3; or
- c) when a sublease or licence is proposed to be transferred or terminated- and the prior uses of the land indicate possible contamination; or
- d) where there is a proposed change of use of the land from that already set out in the final master plan for the airport and that changed use is a more environmentally sensitive use.

Subregulation (3) provides that a sublessee or licensee must give all airport-environment officer for the airport a written report of an expert investigation of the area at least 2 months prior to the sublease or licence being transferred or terminated.

Failure to supply such a report is a criminal offence.

Regulation 6.08 - Assessment of contamination of soil

This regulation deals with the situations where an airport environment officer must conduct a test under regulation 6.07. If the test shows that a substance mentioned in Schedule 3 is present in excess of the level indicated then the airport environment officer must decide whether:

- * the measures currently being taken by the occupier of the affected site are likely to manage or mitigate the effects of the contamination; or
- * because the contamination could be causing an effect under regulation 2.03 (what is soil pollution), decide that an expert examination is necessary.

A copy of the results of the test and the airport environment officer's decision must be given to the airport-lessee company for incorporation into the environment sites register.

As discussed in the overview above, an airport environment officer will be authorised to exercise monitoring and investigative powers under Part 18 of the Act and will thus be adequately empowered to take samples for testing whenever the need arises.

Regulation 6.09 - Expert site examination

This regulation sets out the requirements for an expert site examination should one be required. After receiving a direction the land occupier must, appoint:

- * a site investigator, who will actually conduct the assessment, and
- * an assessor, who is responsible is responsible for

[Back to Top](#)

approving the site investigator's workplan and final report, and for preparing a recommendation to the airport environment officer.

A site investigator must conduct the investigation in accordance with regulation 6.11 (Conduct of examination) and give the assessor a written report (in accordance with regulation 6.12, Site investigator's report) within 2 months after the occupier receives the airport environment officer's direction or such longer period that the airport environment officer allows.

The assessor must give the airport environment officer a written report on the site investigator's report (which includes any recommendation under regulation 6.13, Assessor's report).

To enable occupiers to easily identify an assessor, subregulation (3) requires an airport environment officer to maintain a list of persons who are eligible to be appointed as an assessor under regulation 6.10.

Regulation 6.10 - Eligible persons to be appointed assessor

This regulation provides that the Secretary may nominate persons eligible to be appointed as an assessor. A suitable person is:

- * one who because of his or her qualifications or employment, is recognised in the State in which the airport is located as having expertise in environmental protection issues, or
- * where such a person is not available, one who because of his or her qualifications or employment, is recognised in another State as having expertise in environmental protection issues.

Examples of appropriate persons that would be nominated as assessors (at least for the States in which the first airports are to be leased) include:

- * a Victorian EPA appointed environmental auditor - contaminated land; or
- * an officer of the Department of Environment in Queensland; or
- * an officer or other appointed person of the Department of Environmental Protection in Western Australia.

Regulation 6.11 - Conduct of examination

This regulation requires that the site investigator must give the appointed assessor a detailed outline of the proposed manner and scope of the examination and must not carry out the examination until the assessor has approved the outline. To ensure the examination can be carried out in the required time, an assessor is required to approve or refuse to approve an outline within 7 days.

The examination must have regard to the matters set out in item 4.4 of the ANZECC and NH&MRC document "Australian Guidelines for the Assessment and Management of Contaminated

Sites (1992)". It must also have regard to the site's history and take full account the state of contamination of the soil in tile area.

Regulation 6.12 - Site investigator's report

This regulation specifies that the site investigator's report must address the potential beneficial uses of an area, having regard to the final master plan for the airport concerned and in relation to a particular pollutant of concern:

- * the background level of other pollutants in the area;
- * the level of pollution mentioned in Schedule 3 as the accepted level: and
- * the potential impact of the pollution on soil and groundwater in the area of examination, and elsewhere.

Regulation 6.13 - Assessor's report

This regulation provides that a report of an assessor must address, whether in the opinion of the assessor, and having regard to the site investigator's report:

- * soil pollution has occurred;
- * the pollution is sufficient, in the area examined, to inhibit viable development of a beneficial use; and
- * the pollution is localised in a way that could enable development in accordance with a beneficial use.

The term beneficial use is explained in subregulation 2.03(1).

These matters are of course additional ones to be covered in the assessor's report besides the written report on site investigator's report required by subregulation 6.09(5) which will cover the matters addressed above in regulation 6.12.

Subregulation (2) requires that if the assessor believes that there is soil pollution, then the assessor's report must identify:

- * the polluting substance or substances;
- * the likely cause or causes of the pollution (this may involve the identification of a particular activity that is or was conducted on the land concerned),
- * the source, or likely source of the pollution (which may be an adjoining piece of land).

Division 3 - Remedial plan for soil pollution

Regulation 6.14 - Occupier may prepare remedial plan

This regulation provides that an occupier of an area that has been identified as tile source, or likely source, pollution may prepare a plan for cleaning up, remedying or rectifying the pollution. The plan must be developed in

[Back to Top](#)

consultation with the appointed assessor and approved by the airport environment officer. Under this remedial plan the occupier must either:

clean up the pollution to end migration of tile pollution and restore potential beneficial uses of the land and groundwater (if any); or develop a risk management program which will end migration of the pollution and minimise the ongoing effects of the pollution.

The term beneficial use is explained in subregulation 2.03(1).

Note that under subregulation 6.18(3), if an occupier is ill the process of implementing an approved plan, that occupier cannot be given a remediation order.

Regulation 6.15 - Reporting of plan

This regulation requires an occupier who is implementing an approved remedial plan to:

- * report at six monthly intervals to the airport environment officer; and
- * prepare a final report to the airport environment officer when a plan has achieved its objectives.

Regulation 6.16 - Duty of airport environment officer to monitor plan

This regulation requires an airport environment officer who approves a remedial plan to monitor its implementation.

Division 4 - Remedial work.. powers of airport environment officer

Regulation 6.17 - Interpretation

This regulation defines the meaning of remedial work.

Regulation 6.18 - Power to order remedial work

Should pollution occur on an airport it is the responsibility of the polluter to clean it up. If the polluter fails to do so, the airport environment officer may direct tile. person to undertake specified remedial work by issuing an environmental remedial order.

If the polluter is unidentifiable, beyond jurisdiction or known to be insolvent the airport environment officer can issue the environmental remedial order to tile operator of the undertaking which has caused the pollution even if this person is not actually the person who has caused the pollution (for example, where a building contractor ruptures a pipeline during construction work).

If such a person cannot be identified or is otherwise unable to undertake the remedial work, the airport environment officer may direct the lessor or licensor of the area that is the location or source of the pollution (and ultimately the airport-lessee company) to undertake the remedial work.

This hierarchy approach is consistent with the ANZECC document "A position paper on financial liability for contaminated site remediation (1994)".

Regulation 6.19 - Power to enter an perform remedial work

This regulation authorises an airport environment officer, or an authorised person to enter part of an airport site to undertake remedial work where it has not been performed satisfactorily and there is some urgency or public health and satisfy reason to undertake the work immediately.

Note that in such circumstances, a person directed to undertake the work under regulation 6.18 will be considered to have breached the regulation, and hence under sections 134 and 135 of the Act the airport-operator company or the Commonwealth, as the case may be, is entitled to payment for the remedial work done.

PART 7-ENFORCEMENT

Part 7 of the Regulations identifies and details the primary method for enforcing the Regulations -the issue of an environment protection order (hereafter, an 'EPO'). An EPO may be issued by an airport environment officer where he or She considers that there has been a breach of one or more of the general duties. EPOs generally direct operators of undertakings to do, or not to do specified things in order to comply with their duties.

In addition to providing for the issue of EPOs, Part 7 provides a general offence; that of intentionally or recklessly causing environmental harm.

Division 1 - Environment Protection Orders

Regulation 7.01 - Pollution

This regulation authorises an airport environment officer to issue an E130 directing the operator of an undertaking at an airport to comply with the duty to avoid polluting. The EPO may direct the person to take a particular action or actions to prevent, minimise or capture pollution, or to cease generating pollution.

An EPO must not be issued unless the airport environment officer is satisfied that the undertaking is creating or contributing to a level of environmental pollution that is, or is likely to become, harmful or offensive, and the operator is not taking, all reasonable and practicable measures to ensure that the undertaking ceases to generate the pollution, paragraph 7.01(2)(a). Further, the airport environment officer must give the operator 48 hours to make a submission about the undertaking or pollution, and must take the submission into account, paragraph 7.01(2)(b). These requirements do not apply to EPOs declared to be emergency EPOs by the airport environment officer.

Regulation 7.02 - Preservation of habitat, etc.

This regulation authorises an airport environment officer to issue in EPO enforcing the general duty to preserve in regulation 4.04. The provision effectively replicates regulations 7.01 and 7.03.

Regulation 7.03 - Excessive noise

[Back to Top](#)

This regulation authorises an airport environment officer to issue an EPO enforcing the general

duty to prevent excessive noise occurring in regulation 4.06. The provision effectively replicates regulations 7.01 and 7.02.

Regulation 7.04 - Order must not conflict with authorisation

Airport environment officers are not permitted to issue EPOs, enforcing compliance with the general duties to avoid polluting and to prevent excessive noise occurring if to do so would be inconsistent with an authorisation granted under Part 5 of the Regulations.

Regulation 7.05 - Compliance with order

This regulation provides that a person issued with an EPO must comply with it, and comply within the time specified (if any) in the order. Intentional or reckless failure to comply with an EPO is a criminal offence, and is punishable by a penalty of up to \$125,000 per day for a corporation. Further, an EPO is capable of being enforced by injunction.

Regulation 7.06 - Compliance with a condition of authorisation

Where an airport environment officer considers that the holder of an authorisation granted under Part 5 of the Regulations is not complying with a condition of that authorisation, the airport environment officer may issue an EPO to that person. The EPO may direct compliance with the authorisation generally, or by specifying an action or actions to minimise the generation of pollution or excessive noise, see subregulation 7.06(1).

If a direction issued under subregulation 7.06(1) is not complied with, the airport environment officer is entitled to issue a notice to the holder of the authorisation which terminates the authorisation. Termination of the authorisation effectively subjects the holder, through the mechanism of the general duties, to the Schedule limits on pollution and noise, or local standards if there are any in force.

Division 2 - Intentional and reckless offences

Regulation 7.07 - Character of environmental harm

This regulation provides definitions for several kinds of environmental harm. Regulation 7.08 provides that it is an offence to intentionally or recklessly cause "**environmental harm**" (defined in subregulation 7.07(5)), and subregulations 7.07(2), (3) and (4) provide three "levels" of environmental harm. These levels, "environmental nuisance", "material environmental harm" and "serious environmental harm", are all subsets of the concept of "environmental harm", and are based upon similar concepts in recent State environmental legislation.

Regulation 7.08 - Offence

It is an offence for a person to knowingly or recklessly cause environmental harm at an airport, punishable by a fine of up to \$25,000 for individuals, \$125,000 for corporations. This offence is designed to capture those polluters who deliberately disregard their environmental duties under Part 4 of the Regulations. Such offenders are unlikely to comply with EPOs, and the public interest demands that they are appropriately punished.

There is currently insufficient power in the Act to provide for a range of penalties for the different levels of environmental harm defined in subregulations 7.07(2), (3) and (4). Nevertheless, the exact fine imposed on an offender is within the discretion of the court, and would depend largely upon the nature of, and circumstances surrounding the causing of, the

environmental harm. A court would be entitled to take into account whether the environmental harm was serious, material, or merely an environmental nuisance.

PART 8 - GENERAL PENALTY PROVISIONS

Division 1 - Continuing Offences

Regulation 8.01 - Continuing offences

This regulation effectively stipulates that, for the purposes of determining when and how many offences have been committed by a person, environmental duties (Part 4 of the Regulations) and monitoring, reporting and remedying obligations (Part 6 of the Regulations) are duties and obligations that arise every if an airport-lessee company has failed to monitor pollution in accordance with its environment strategy, as required under regulation 6.02, and has failed to do so for a week, it has committed seven separate offences, each punishable by a fine of up to 50 penalty units (525,000 for a corporation).

Division 2 - Infringement notices

Regulation 8.02 - Purpose of this Division

Under the Regulations, it will be possible for an airport environment officer to *issue* an infringement notice to a person who the officer *believes has committed* an offence against the Regulations. The offender will be capable of paying the fine (called an infringement notice penalty") stipulated in the infringement notice as an alternative to having the matter dealt with by a court.

This system of "on-the-spot fines" is intended to act as an incentive for sound environmental practices where it is apparent that such practices *are not being* followed. The system should operate as an effective intermediate step between environment protection orders and prosecution. However, there is no impediment to both an infringement notice and an environment protection order being issued in respect of the same activity.

The fines are set as one-fifth of the maximum fine that may be imposed for an offence by a court, see subsection 138(2) of the Act.

Regulation 8.03 - Infringement notices

[Back to Top](#)

This regulation allows an airport environment officer to *serve* an infringement notice on a person whom he or she believes, on reasonable grounds, to have committed an offence against the Regulations. An infringement notice must contain the information set out in subregulation (2), and such other information as the airport environment officer considers necessary. It must be served upon the person believed to have committed the offence within a year of the commission of the offence.

Regulation 8.04 - Extension of time to pay

A fine under this Division must normally be paid in full within 28 days of a person being served with an infringement notice, see subparagraph 8.05(2)(1)(i). However, under this regulation, the

Secretary or an airport environment officer may, on written application by a person on whom an infringement notice has been served, extend the time period within which that person must pay the Fine.

A person may apply for an extension of time at any time, but if applying a after the initial 28 day limit, must explain why they have not dealt with the infringement notice within that period, subregulation (2).

If the Secretary or airport environment officer refuses to extend the period, he or she must provide reasons for that refusal, paragraph 8.04(3)(c). The person must then pay the fine within 7 days of receiving notice of the refusal, or 28 days after being served with the infringement notice, whichever is later, paragraph 8.04(4)(b).

Regulation 8.05 - Payment by instalments

A fine under this Division must normally be paid in full within 28 days of a person being served with an infringement notice, see subparagraph 8.05(2)(1)(i). However, under this regulation, the Secretary or an airport environment officer may make arrangements with a person on whom an infringement notice has been served for that person to pay the fine by instalments.

If the Secretary or airport environment officer refuses to make such an arrangement, he or she must provide reasons for that refusal, paragraph 8.05(2)(c). The person must then pay the fine in full within 7 days of receiving notice of the refusal, or 28 days after being served with the infringement notice, whichever is later, paragraph 8.05(3)(b).

Regulation 8.06 - If infringement notice disputed

The Secretary may, at any time, withdraw an infringement notice if he or she is satisfied that in all the circumstances it is proper to do so.

A person is entitled to give the Secretary notice of facts or matters which should be taken into account in relation to an alleged offence, paragraph 8.03(2)(h), and in light of these facts or matters that Secretary must decide whether or not to withdraw the infringement notice.

If the Secretary refuses to withdraw an infringement notice after being approached by the person on whom it was served, he or she must give reasons for the refusal to withdraw the notice, paragraph 9.06(3)(c).

The Secretary, when deciding whether or not to withdraw an infringement notice, in addition to any other matters he or she considers relevant, must take into account:

- (a) the facts or matters presented by the person served with the infringement notice (if any);
- (b) the circumstances in which the offence occurred;
- (c) whether the person has been convicted previously of an offence against the Regulations; and
- (d) whether an infringement notice has been previously served on the person for an offence of the same kind as that being dealt with.

Regulation 8.07 - Payment of penalty if infringement notice not withdrawn

If the Secretary refuses to withdraw an infringement notice under regulation 8.06 after being approached by a person upon whom it was served, the person must pay the fine within 28 days after receiving notice of the refusal.

Regulation 8.08 - Effect of payment of infringement notice penalty

If a person served with an infringement notice pays the fine in accordance with this Division, the person's liability in respect of the offence for which the notice was issued is discharged, further proceedings cannot be taken against the person for the offence, and the person is not convicted for the offence, subregulation 8.08(1).

Where an arrangement has been made for a person to pay by instalments, subregulation (1) only applies to that person if the person makes the payments in accordance with the arrangement subregulation 8.08(2).

Regulation 8.09 - Admissions under paragraph 8.03(2)(h)

If a person on whom an infringement notice has been served notifies the Secretary of facts or matters under paragraph 8.03(2)(h), and there is evidence of an admission in that notice, that evidence cannot be used against the person in proceedings for the alleged offence.

Regulation 8.10 - Matter not to be taken into account in determining sentence

Where a person does not pay a fine and is convicted of the offence for which the fine was payable, that person's refusal to pay the fine cannot be taken into account by the court in determining the penalty to be imposed on the person for committing the offence. It is a fundamental concept of Australian

[Back to Top](#)

criminal law that a person is entitled to be tried before a court, and the exercise of this right should not be prejudiced by the person not taking up an alternative, e.g. the payment of a fine.

Regulation 8.11 - Refund of an infringement notice penalty if notice withdrawn

Where a person has paid a fine in accordance with an infringement notice. and the infringement notice is subsequently withdrawn, an airport environment officer must arrange for a refund of that fine to the person.

Regulation 8.12 - Evidence for bearing

In proceedings against a person for an offence for which they have been issued an infringement notice, the prosecution will have to prove, among other things, that the infringement notice was served on the person, and the person has not paid the fine. Normally these are undisputed facts, and in order to minimise time and expense in court, a certificate signed by an airport environment officer to the effect that an infringement notice was served and the fine was not paid will be sufficient evidence of those facts. In a similar vein, a certificate stating that all infringement notices have been withdrawn is evidence of that fact, and a certificate purporting to have been signed by an airport environment officer is taken to have been duly signed by that officer.

These "short-cut" methods of the prosecution adducing evidence in no way affect a person's ability to controvert the facts by adducing contrary evidence.

Regulation 8.13 - Payment of penalty by cheque

A payment of a fine by cheque is not regarded as having been made unless the cheque is honoured. However, the effect of the regulation will not mean that a delay in honouring a cheque, e.g. because it takes seven days to clear, will result in a person failing to pay within the required time, so long as the cheque is handed over in accordance with the infringement notice within the required time.

Regulation 8.14 - Infringement notice not compulsory, etc.

Merely because an infringement notice could be served on a person does not mean that it must be, and failure to serve an infringement notice on a person does not affect the liability of that person to be prosecuted for an alleged offence. Indeed, a person may be prosecuted even if an infringement notice is served and later withdrawn.

The existence of a fine, or the system of "on-the spot" fines, for offences against the Regulations does not limit the penalty that may be imposed by a court on a person convicted of an offence.

PART 9 - RECONSIDERATION AND REVIEW OF DECISIONS

This Part provides for the review of certain decisions made by the airport environment officer and the Secretary under the Regulations. Most decisions of the airport environment officer are reviewable at first instance by the Secretary, Most decisions of the Secretary, including decisions made reviewing airport environment officers' decisions, are reviewable by the Administrative Appeals Tribunal (AAT). A decision of an airport environment officer which is capable of review by the Secretary may not be reviewed by the AAT until such time as it has been reviewed by the Secretary.

Division 1 - Decisions of airport environment officer

Regulation 9.01 - Decisions reviewable by Secretary

This regulation provides that a person affected by a decision of an airport environment officer under subregulations 5.09(1), 5.15(1), 5.18(2), 6.01(2), 6.14(1), 6.14(3), 6.18, 7.01(1), 7.02(1), 7.03(1), 7.06(1), and 7.07(1) of the Regulations may apply to the Secretary for a review of that decision. The application must be in writing, and must set out the reasons for the application.

Regulation 9.02 - Review by the Secretary

Where a person applies for a review of a decision under regulation 9.01, the Secretary may either affirm the decision or substitute his or her own decision. In the latter case, the Secretary must provide a statement of reasons for the substituted decision.

A decision supplanted by a substitute decision ceases to have effect, and the substitute decision is taken to be the decision of the airport environment officer.

Regulation 9.03 - Secretary to obtain advice

A decision of the Secretary under regulation 9.02 must be based on expert environmental advice, and to that end the Secretary may consult Commonwealth and State bodies or officers having relevant expertise, for example, State Environment Protection Agencies, and relevant independent experts, such as, private environmental consultants.

Division 2 - AAT review

Regulation 9.04 - Interpretation

This regulation defines, among other things, those decisions under the Regulations which are reviewable by the AAT under the definition reviewable decision. A reviewable decision is a decision of the Secretary:

- (a) to direct a person to provide a written report relating to land and groundwater pollution;
- (b) to direct an occupier of land at an airport to assist the airport-lessee company in environmental monitoring, or to grant access to tile land for that purpose;
- (c) to direct a person to carry out remedial work;
- (d) that relates to an environment protection order;

[Back to Top](#)

or

- (c) that affirms or is a substitute for a decision of an airport environment officer.

Regulation 9.05 - Statement to accompany notification of reviewable decisions

Where the Secretary makes a reviewable decision, notice of the decision must be accompanied by a statement that the decision is reviewable by the AAT.

Nevertheless, failure to do so does not invalidate the decision.

Regulation 9.06 - AAT review of decisions

A person affected by a reviewable decision may apply to the AAT for a review of the decision.

PART 10 - MISCELLANEOUS

Regulation 10.01 - Airport environment officers

This regulation allows the Secretary to appoint a suitably qualified individual, corporation or other body to be an airport environment officer. Such people *will* be required to enter into written agreements with the Secretary about the responsible and accountable exercise of powers under the appointment. To ensure independence from the airport-lessee company the airport environment officer must not hold a stake of more than 5% in the airport-lessee company. Similarly, if the airport environment officer is a body or a corporation, the airport-lessee company must not own a stake greater than 5% in that body or corporation.

The term "stake" is defined in clause 11 of the Schedule to the Act.

Notification of the appointment of an airport environment officer must be given to the airport-lessee company for the airport concerned, and the appointment must also be publicly advertised in a newspaper with daily circulation generally in the State in which the airport concerned is located. The business address of the airport environment officer must be included in the notice and advertisement.

Regulation 10.02 - Airport environment officer's records

This regulation provides that an airport environment officer must keep records in relation to their actions taken under the Regulations and any information or reports supplied them in relation to these Regulations.

Subregulation (2) requires an airport environment officer to transfer these records when their appointment ceases.

Provision is made in subregulation (3) for the Secretary (or an authorised officer) to inspect and copy these records.

Regulation 10.03 - Oversight of airport environment officer

This regulation allows the Secretary (or an authorised officer) by issuing a notice in writing to require an airport environment officer to give the Secretary (or the authorised officer) copies of certain documents within 28 days.

Regulation 10.04 - Giving notices, directions, etc.

This regulation provides for the methods by which a notice, direction or other written instrument may be given under the Regulations.

Regulation 10.05 - Immunity from certain liability

This regulation provides that an airport environment officer has no liability for anything done, or omitted to be done, in good faith under the Regulations or in reliance on advice given by an assessor of soil pollution or by an expert in environmental or other appropriate matters.

Regulation 10.06 - Confidential information in hands of airport environment officer

This regulation provides that information given to an airport environment officer must be protected.

PART 11 - TRANSITIONAL

Regulation 11.01 - Commenced actions that are otherwise lawful

An action that is lawful prior to the commencement of the Regulations, but which constitutes an offence under the Regulations, does not constitute an offence if it commenced prior to the commencement of the Regulations, provided that:

- (a) the character, or environmental consequence, of the action does not significantly change (or if it does, an appropriate authorisation under the Regulations has been granted); or
- (b) the action does not continue for a period longer than 6 months following the commencement of the Regulations.

This regulation is intended to give current operators of undertakings at airports 6 months to arrange their activities so that they comply with the new environmental regime or to obtain suitable authorisations to conduct their activities.

SCHEDULE 1

AIR POLLUTION - ACCEPTED LIMITS

Part 1 - Air pollutants emitted from a stationary source

Clause 1.01 - Definitions

This clause defines a number of technical terms used in Schedule 1.

Clause 1.02 - Table 1 - accepted limits of contamination

Table 1 sets out the allowable point of emission standards for air contamination by various pollutants as specified in regulation 2.01(2). These limits are used to determine whether operators of undertakings at airports have complied with their general duty to avoid polluting, when there are no local standards or authorisations which allow different limits of air pollutant

[Back to Top](#)

emission to apply.

The standards set in the table for air quality over time are used, to determine whether or not an operator of an undertaking at an airport has breached their duty not to pollute. The standards are based upon the recommendations set out in the Australian Environment Council (AEC) and National Health and Medical Research Council (NH&MRC) document "National guidelines for control of emission on air pollutants from near stationary sources (1985)", supplemented by a number of items sourced from standards used by a number of State Environment Protection bodies.

It should be noted that air pollution by motor vehicles and the release of ozone depleting substances into the air will be regulated by State laws.

Part 2 - Ambient air quality objectives

Clause 2.01 - Ambient objectives

Table 2 of the Schedule defines the allowable average concentration levels of polluting substances in the air at an airport. The objectives have been sourced from the NH&MRC document "Ambient Air Quality Goals (1996)". These objectives must be considered by the airport environment officer under paragraph (c) of subregulation 5.09(2) when deciding to grant an authorisation which is likely to impact on air quality.

SCHEDULE 2

WATER POLLUTION - ACCEPTED LIMITS

The schedule lists the different ways in which there can be an adverse effect on the chemical condition of water, for the purpose of determining whether water pollution, as defined in regulation 2.02, has occurred, and the limits for pollutants in both fresh and marine water.

Clause 1.01 - interpretation

This clause defines a number of technical terms used in Schedule 2.

Clause 1.02 - Indicators of adverse chemical effect

This clause sets out a number of indicators of adverse chemical effect on water. The indicators listed deal with: dissolved oxygen; pH; salinity; turbidity; faecal coliforms; and temperature.

The matters specified in this clause do not limit the definition of water pollution set out in subregulation 2.02(1).

Clause 1.03 - Table - accepted limits of contamination

The limits contained in the table of acceptable contamination of water **will** be used to determine whether operators of undertakings at airports have complied with their duty to avoid polluting, in the absence of local standards or authorisations permitting different limits of water pollution.

The standards set out in the table have been substantially sourced from the recommendations contained in the Australian and New Zealand Environment and Conservation Council (ANZECC) document "National Water Quality Strategy: Australian Water Quality Guidelines for Fresh and Marine Waters (1992)".

SCHEDULE 3

SOIL POLLUTION - ACCEPTED LIMITS

The schedule defines the levels of soil pollution which, if found to be exceeded in an initial sampling of the soil by the airport environment officer, will bring about more extensive investigation and assessment of the affected site under regulation 6.07.

Clause 1.01 - Table 1 - areas of an airport generally

Table 1 sets out the accepted limits of various pollutant substances which apply generally to all areas of an airport, and has been derived from the recommendations set out in the National Health Forum document "Health-based Soil Investigation Levels (1996)".

Clause 1.02 - Table 2 - areas of environmental significance

Table 2 applies only to those areas which have been identified in the airport's final environment strategy as being of environmental significance, and **has**, been sourced from the recommendations set out in the ANZECC and NH&MRC. document "Australian Guidelines for the Assessment and Management of Contaminated Sites (1992)".

SCHEDULE 4

EXCESSIVE NOISE - GUIDELINES

The Schedule sets out the procedures and standards to be employed by an airport environment officer in determining the level and impact of noise upon an area under subregulation 2.04(1). The Schedule allows for a degree of flexibility in the role of the airport environment officer who will administer the schedule, complementing subregulation 2.04(2), rather than prescribing a strict procedure for assessment of noise impact. It is also designed to be consistent with the relevant Australian standards, with State/Territory laws and policies, and current best practice environmental management.

Part 1 - Introductory

The Part states the purpose of the schedule, and defines the standards to be used in measuring noise.

Clause 1.01 - Purpose of Schedule

The purpose of the schedule is to set out indicators of excessive noise, for the purposes of subregulation 2.04(2).

Clause 1.02 - Interpretation

The clause defines the standards of noise measurement which are used in determining whether noise is excessive. Generally, terms used in Schedule 4 have the same meaning as in Australian Standards.

Part 2 - Sensitive Receptors

[Back to Top](#)

The Part defines the level of noise at the site of a sensitive receptor which is considered excessive.

Clause 2.01 - Application

The Part applies to sites of sensitive receptors, as defined in subregulation 2.04(3).

Clause 2.02 - Noise from construction, etc

The clause defines the level of noise from construction and related activities which is regarded as excessive under these regulations. Plant and equipment associated with the construction, maintenance or demolition are included as potential noise sources.

Clause 2.03 - Noise from road traffic

The level of noise originating from road traffic which is regarded as excessive is defined in this clause. The clause limits potential road traffic noise to that which is generated within the boundaries of the airport.

Clause 2.04 - Noise from rail traffic

The level of noise originating from rail traffic which is regarded as excessive is defined in this clause. The clause limits potential rail traffic noise to that which is generated within the boundaries of the airport.

Clause 2.05 - Noise from ground-based aircraft operations

This clause requires that ground-based aircraft running be conducted only in accordance with specific provisions of a final environment strategy for that airport. As a transitional provision, and pending approval of a Final environment strategy, groundbased aircraft running can continue to be carried out in accordance with existing Federal Airports Corporation (FAC) guidelines applying at that airport for a period of one year.

Under subclause (3) whether other types of ground-based aircraft operations give rise to excessive noise is a matter that will be determined based on several criteria instead of a given level of noise, and the considerations which determine this are listed in the subclause.

Subclause (4) defines the various types of ground-based aircraft operations.

Clause 2.06 - Noise from other airport operations

This clause deals with noise generated from a number of other airport operations such as the operation of plant or machinery. It defines the level of noise from other airport operations which is regarded as excessive under these regulations.

Part 3 - Commercial Receptors

This Part relates to the particular considerations to be given in determining the existence of excessive noise at sites of commercial receptors.

Clause 3.01 - Application

This Part applies to commercial receptors, as defined in subregulation 2.04(3).

Clause 3.02 - Noise from any source

This clause sets out that in addition to the indicators of excessive noise used for sites of sensitive receptors, consideration should also be given to other factors particular to the nature of business operations when determining the existence of excessive noise at the site of a commercial receptor.

Part 4 - Measuring Noise

The Part sets out the procedures and standards which are to be applied by an airport environment officer in measuring noise for the purposes of the Regulations.

Clause 4.01 - Procedures and Standards

Subclause (1) states the purpose of the clause.

Procedure

Subclause (2) states the procedure to be used by the airport environment officer when making a noise measurement. The noise assessment is made at the affected site of the receptor, and the procedure used must be in accordance with the relevant Australian Standard or detailed in the final airport environment strategy for the airport concerned, or if neither of those are sufficient, a procedure published by the International Organisation for Standardisation. This ensures that an airport environment officer must refer to the current best practice guidelines when making a noise assessment.

Construction of buildings, etc.

Subclause (3) defines the standard to be applied in determining the level of noise generated from a construction, maintenance or demolition activity at an airport. This guideline noise level is consistent with most environmental protection agencies around the country. A maximum noise

level was chosen, as opposed to the 'background plus threshold' option to take into account the possibly low background noises at some facilities.

Road traffic

Subclause (4) defines the standard to be applied in determining the level of noise generated from particular road traffic at an airport.

The guideline noise level in the clause is consistent with the equivalent noise guidelines used by State environment protection bodies.

Rail traffic

Subclause (5) defines, the standard to be applied in determining the level of noise generated from particular rail traffic at an airport.

Ground-based aircraft operations

Subclause (6) defines the standard to be applied in determining the level of noise generated from particular ground-based aircraft operations at an airport. These operating guidelines are based upon current noise abatement procedures for aircraft ground running in operation at FAC airports.

Other airport operations

Subclause (7) defines the standard to be applied in determining the level of noise generated from an activity mentioned in subclause 2.06(1) in this Schedule, kit all airport. These are generic guidelines used nationally to assess intrusive noise. They are also consistent with the environment protection guidelines in each State.