

Airports (Control of On-Airport Activities) Regulations 1997 No. 57

EXPLANATORY STATEMENT

Statutory Rules 1997 No. 57

Issued by Authority of the Minister for Transport and Regional Development

Airports Act 1996

Airports (Control of On-Airport Activities) Regulations

Section 252 of the Airports Act 1996 (the Act) allows the Governor-General to make regulations prescribing matters that are required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part 11 of the Act provides for the making of regulations to control the following onairport activities at specified leased airports:

- * control of liquor (section 170);
- * control of commercial trading (section 171);
- * control of vehicle movements (section 172);
- * control of gambling (section 173); and
- * the prohibition of smoking (section 174).

Section 175 of the Act provides that regulations made for the purposes of Part 11 may prescribe penalties not exceeding 50 penalty units for offences against those regulations.

Section 176 of the Act enables the regulations to make provision enabling a person who is alleged to have committed an offence against regulations made for the purposes of Part 11 to pay a penalty to the commonwealth as an alternative to prosecution.

While subsection 177(1) of the Act provides that Part 11 is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with Part 11, subsection 177(2) enables the regulations to declare that a specified law of a State or Territory has no effect at a specified airport to the extent to which that law deals with Part 11 matters.

The Commonwealth's stated policy preference is that, where possible, State laws should apply to Part 11 matters as applied Commonwealth law in accordance with the *Commonwealth Places (Application of Laws) Act 1970* (the Application of Laws Act). The Commonwealth does, however, wish to see that all activities currently allowed on airports are maintained under any State-based regime.

The Airports (Control of On-Airport Activities) Regulations (the Regulations) establish an interim regime which will apply to Melbourne, Perth and Brisbane airports. These are the first three airports which will be leased. It is expected that these airports will be leased this financial year.

The interim regime has been developed in consultation with the . relevant States, the Federal Airports Corporation and the Airlines. Under the interim regime the Regulations:

- * modify State liquor licensing laws and Victorian trading hours legislation in their application to regulated airports; and
- * displace State laws dealing with vehicle parking, vehicle movements airside, gambling and smoking and Queensland and Western Australian trading hours legislation.

The Regulations adopt a numbering system which will facilitate further amendment to the regulations as an when more airports are leased.

Section 178 requires the Minister to seek submissions from airport-operator companies prior to making any regulations under Part 11. This provision is intended to provide some measure of protection to airport operator companies after airports have been leased. As no airports have been leased this provision has no application prior to the granting of an airport lease.

The Regulations adopt a numbering system which will facilitate further amendment to the regulations as an when more airports are leased.

The Regulations:

- * preserve existing authorisations to sell or supply liquor at premises within Melbourne, Brisbane and Perth airports under the laws applicable in those States (Part 2);
- * modify the application of liquor laws in those States in their application to new licensees at Melbourne, **Brisbane** and Perth airports (Part 2 and the Schedule);
- * preserve existing commercial trading authorisations at Melbourne, Brisbane and Perth airports (Part 3);
- * modify or override the application of "trading hours" legislation in Victoria, Queensland and Western Australia in their application to Melbourne, Perth and Brisbane airports, to ensure that there are no restrictions on trading hours at those airports (Part 3);
- * provide a regime for the regulation of vehicle parking at Melbourne, Brisbane and Perth airports (Part 4);
- * provide a regime for the issue and withdrawal of authorities for vehicles to be used airside and for persons to drive airside (Division 4.4). "Airside" refers to that part of the airport grounds to which the non-travelling public does not have free access;
- * prohibit gambling at regulated airports (Part 5);
- * prohibit smoking in designated no-smoking areas at regulated airports (Part 6); and
- * introduce a scheme of administrative or "on-the-spot fines" for breaches of parking and smoking offences contained in the regulations (Part 7).

Details of the Regulations appear in the Attachment.

The Regulations will commence on 15 May 1997.

ATTACHMENT

PART 1 - PRELIMINARY

Regulation 1.01 provides that the Regulations may be cited as the Airports (Control of On-Airport Activities) Regulations.

Regulation 1.02 provides that the Regulations will commence on 15 May 1997.

Regulation 1.03 defines certain terms and expressions for the purposes of the Regulations.

PART 2 - CONTROL OF LIQUOR

Division 2.1 - Introductory

Regulation 2.11 defines certain terms and expressions for the purposes of the Regulations. In particular, this regulation provides that the airport operator company for the airport is to be treated as the owner of the airport for the purposes of a State law that relates to the control of liquor trading.'

Division 2.2 - Airports in New South Wales

Regulations will be made when airports in New South Wales will be leased.

Division 2.3 - Airports in Victoria

Regulation 2.31 defines certain terms and expressions for the purposes of Division 2.3 of the Regulations.

Regulation 2.32 provides that the application of the *Liquor Control Act 1987* of Victoria (the Victorian Act) at a regulated airport in Victoria is modified as set out in Part 2 of Schedule 1.

Regulation 2.33 preserves existing authorisations to sell liquor within Melbourne Airport.

Regulation 2.34 provides that an existing authorisation may be dealt with under the Victorian Act as if it were a licence granted under that Act.

Regulation 2.35 provides that the holder of an existing authorisation may be dealt with as if the holder were the holder of a licence granted under the Victorian Act.

Regulation 2.36 requires the holder of an existing authorisation to give the Liquor Licensing Commission a copy of a plan of the premises to which the authorisation relates showing the boundaries of the premises within 6 months of the commencement of the regulations.

Regulation 2.37 provides that an unconditional approval for the presence on the premises of persons under the age of 18 is taken to have been given under paragraph 128(2)(d) of the Victorian Act by the Liquor Licensing Commission for the premises to which an existing authorisation applies.

Division 2.4 - Airports in Queensland

Regulation 2.41 defines certain terms and expressions for the purposes of Division 2.4 of the proposed Regulations.

Regulation 2.42 provides that the application of the *Liquor Act 1992* of Queensland (the Queensland Act) at a regulated airport in Queensland is modified as set out in Part 3 of Schedule 1.

Regulation 2.43 preserves existing authorisations to sell liquor within Brisbane Airport.

Regulation 2.44 provides that an existing authorisation may be dealt with under the Queensland Act as if it were a licence granted under that Act.

Regulation 2.45 provides that the holder of an existing authorisation may be dealt with as if the holder were the holder of a licence granted under the Queensland Act.

Regulation 2.46 requires the holder of an existing authorisation to give the chief executive 2 copies of a plan of the premises to which the authorisation relates showing the boundaries of the premises within 6 months of the commencement of the regulations.

Division 2.5 - Airports in South Australia

Regulations will be made when airports in South Australia will be leased.

Division 2.6 - Airports in Western Australia

Regulation 2.61 defines certain terms and expressions for the purposes of Division 2.6 of the Regulations.

Regulation 2.62 provides that the application of the *Liquor Licensing Act 1988* of Western Australia (the WA Act) at a regulated airport in Western Australia is modified as set out in Part 5 of Schedule 1.

Regulation 2.63 preserves existing authorisations to sell liquor within Perth Airport.

Regulation 2.64 provides that an existing authorisation may be dealt with under the WA Act as if it were a licence granted under that Act.

Regulation 2.65 provides that the holder of an existing authorisation may be dealt with as if the holder were the holder of a licence granted under the WA Act.

Regulation 2.66 requires the holder of an existing authorisation to give the licensing authority 3 copies of a plan of the premises to which the authorisation relates showing the boundaries of the premises within 6 months of the commencement of the regulations.

Division 2.7 - Airports in Tasmania

Regulations will be made when airports in Tasmania will be leased

Division 2.8 - Airports in the Australian Capital Territory

Regulations will be made when airports in the Australian Capital Territory will be leased.

Division 2.9 - Airports in the Northern Territory

Regulations will be made when airports in the Northern Territory will be leased

PART 3 - COMMERCIAL TRADING

Regulation 3.01 defines certain terms and expressions for the purposes of Part 3 of the proposed Regulations.

Regulation 3.02 preserves existing authorisations to carry on consumer trading at Melbourne, Brisbane and Perth Airport.

Regulation 3.30 amends the *Shop Trading Reform Act 1996* of Victoria to provide that a shop at a regulated airport in Victoria is an exempt shop under that Act. This will have the effect of ensuring that there are no restrictions on trading hours at Melbourne Airport.

Regulation 3.40 provides that the *Trading (Allowable Hours) Act 1990* of Queensland does not apply to consumer trading at a regulated airport in Queensland. This will have the effect of ensuring that there are no restrictions on trading hours at Brisbane Airport.

Regulation 3.60 provides that the *Retail Trading Hours Act 1987* of Western Australia does not apply to consumer trading at a regulated airport in Western Australia. This will have the effect of ensuring that there are no restrictions on trading hours at Perth Airport.

PART 4 - VEHICLES

Division 4.1 - Introductory

Regulation 4.01 defines certain terms and expressions for the purposes of Part 4 of the proposed Regulations.

Regulation 4.02 enables the Secretary to appoint authorised persons for the purposes of Division 4.2. Subregulation 4.02(2) provides that employees of, and contractors to, an airport operator company must be appointed as authorised persons for the purposes of regulation 4.09 (which deals with the removal of vehicles). The latter powers can only be exercised by public officials.

Division 4.2 - Vehicle Parking

Regulation 4.03 defines certain terms and expressions for the purposes of Division 4.2.

Regulation 4.04 enables the airport-operator company for a regulated airport to designate no-parking areas (including limited no-parking areas) at an airport.

Regulation 4.05 enables the airport-operator company for a regulated airport to designate no-standing areas (including limited no-standing areas) at an airport.

Regulation 4.06 makes it an offence to park a vehicle in a designated no-parking area (including a designated limited no-parking area), and sets a maximum penalty of 3 penalty units.

Regulation 4.07 makes it an offence to stop a vehicle in a designated no-standing area (including a designated limited no-standing area), and sets a maximum penalty of 3 penalty units.

Regulation 4.08 empowers an authorised person to direct the driver of a vehicle that is parked in a designated no-parking area or stopped in a designated no-standing area, to move the vehicle. Failure to comply with a direction is an offence with a maximum penalty of 3 penalty units.

Each of the offences under proposed regulations 4.06, 4.07 and 4.08 are infringement notice offences for the purposes of the Part 7 of the regulations.

Regulation 4.09 empowers an authorised person to move a vehicle which is parked in a designated no-parking area or stopped in a designated no-standing area in circumstances where the driver cannot be found or the driver fails to comply with a direction to move the vehicle.

Regulation 4.10 requires the driver of a vehicle which has been moved under regulation 4.09 to pay the to the airport-operator company the reasonable costs associated with moving and storing the vehicle.

Division 4.4 - Airside vehicle operation

Division 4.4 sets out the rules dealing with the issuing and withdrawal of authorities for vehicles to be used airside and for persons to drive airside. The purpose behind this Division is to provide the airport-operator company with the necessary authority to carry out its obligations for aerodrome safety under the Civil Aviation Act 1988 and the Civil Aviation Regulations.

Regulation 4.41 defines certain terms and expressions for the purposes of Division 4.4.

Regulation 4.42 provides that a person must not take a vehicle airside unless that person is authorised to drive airside, or is escorted by an employee of the airport-operator company.

Regulation 4.43 sets out the system under which an Authority to Drive Airside (ADA) may be obtained. For an authority to be obtained, a person must apply to the airport-operator company, which then must determine whether or not an ADA shall be issued according to the rules set out in the relevant Vehicle Control Handbook. The ADA is held on the condition that the holder will act in accordance with the rules of the relevant Vehicle Control Handbook, conditions of the Authority to Use Airside (AUA) for that vehicle, other conditions of the ADA imposed by the airport-operator company and any directions of an officer of the airport-operator company.

The regulation also authorises an airport-operator company to attach conditions to an ADA, such as conditions requiring the driver or the driver's employer to indemnify the airport-operator company, or limiting the person's right to drive only to particular places, times or circumstances.

Regulation 4.44 sets out the system under which an AUA may be obtained. For such authority to be obtained, a person must apply to the airport-operator company, which must then determine whether or not an Authority is to be issued according to the rules set out in the relevant Vehicle Control Handbook. The Authority is held on the condition that the vehicle is operated in accordance with the rules of the relevant Vehicle Control Handbook, any other conditions of the AUA imposed by the airport-operator company and any directions of an employee of the airport-operator company.

The regulation also authorises an airport-operator company to attach conditions to an MA, such as conditions which require the owner of the vehicle to indemnify the airport-operator company, or limiting the operation of the vehicle to particular places, times or circumstances.

Regulation 4.45 empowers an authorised person to direct a vehicle to be removed from the airside where that vehicle is being operated in a manner likely to be dangerous to a person or property or in a manner likely to interfere with the operation of the airport. If the direction is not complied with, or the driver of the vehicle cannot be found, then the authorised person may move the vehicle to a place within the airport approved for the purpose by the airportoperator company.

Regulation 4.46 empowers the Secretary to appoint authorised persons for the purposes of subregulation 4.45(1). Authorised persons must be either an officer of the Department, an officer of the Australian Protective Services or an employee of the airport-operator company.

Regulation 4.47 allows an airport-operator company to withdraw a person's ADA if the person operates a vehicle on airside otherwise than in accordance with their ADA, the vehicle's ALIA, the relevant Vehicle Control Handbook, or in a manner likely to cause damage or injury. The rules by

which an airportoperator company must withdraw an ADA are set out in the relevant Vehicle Control Handbook.

When an airport-operator company considers that an ADA should be withdrawn, it must ask the holder of the ADA to show cause why it should not be withdrawn. When an ADA is withdrawn, the holder of the ADA should be informed in writing as soon as practicable.

Regulation 4.48 allows an airport-operator company to withdraw an AUA if the vehicle has been operated on the airside otherwise than in accordance with the driver's ADA, the vehicle's AUA or the relevant Vehicle Control Handbook, or in a manner likely to cause damage or injury. The rules by which an airportoperator company must withdraw an AUA are set out in the relevant Vehicle Control Handbook. When an airport-operator company considers that an ADA should be withdrawn, it must ask the holder of the ADA to show cause why it should not be withdrawn. When an AUA is withdrawn, the owner of the vehicle should be informed in writing as soon as practicable.

Regulation 4.49 allows applications to be made to the Administrative Appeals Tribunal for review of specified decisions under Division 4.4.

Regulation 4.50 puts into place transitional arrangements, which allow authorities issued by the FAC to drive a vehicle airside, or for a vehicle to be used airside, to be treated as ADAs and AUAs for the purposes of these regulations. These ADAs and AUAs may be withdrawn as if they had been issued under this Division.

PART 5 - GAMBLING

Regulation 5.01 defines certain terms and expressions for the purposes of Part 5.

Subregulation 5.02(1) prohibits gambling at a regulated airport, and sets a penalty of 10 penalty units.

Subregulation 5.02(2) preserves existing authorities to engage in gambling activity given by the FAC or the Commonwealth.

Regulation 5.03 provides that State laws dealing with gambling do not apply within a regulated airport. However, the holders of existing authorities preserved under subregulation 5.02(2) are required to comply with the applicable State law.

PART 6 - SMOKING

Regulation 6.01 defines certain terms and expressions for the purposes of Part 6.

Regulation 6.02 empowers the airport operator company for a regulated airport to designate no-smoking areas and to put up no-smoking signs.

Regulation 6.03 prohibits smoking in an area where there is a no-smoking sign, and sets a penalty of 5 penalty units. This offence is an infringement notice offence for the purposes of Part 7.

Proposed regulation 6.04 will enable the Secretary to appoint authorised persons for the purposes of subregulation 6.03(1).

PART 7 - INFRINGEMENT NOTICES

Under the Regulations, it is possible for an authorised person to issue an infringement notice to a person who the officer believes has committed certain offences under Parts 4 and 6 of the Regulations (known as "infringement notice offences"). The alleged offender will be capable of paying the penalty stipulated in the infringement notice as an alternative to having the matter dealt with by a court.

The infringement notice scheme will only apply in relation to certain minor breaches of the regulations. In many cases, this will be the most effective enforcement mechanism. The Attorney-General's Department encourages the use of administrative penalties for minor breaches of legislation as a means of relieving pressure on investigation, prosecution and judicial resources.

Regulation 7.01 defines certain terms and expressions for the purposes of Part 7

Regulation 7.02 empowers an authorised person to serve an infringement notice on a person whom he or she believes, on reasonable grounds, to have committed an infringement notice offence.

Regulation 7.03 sets out the requirements for the service of an infringement notice.

Regulation 7.04 provides that the notice penalty is an amount equal to one-fifth of the maximum penalty under the Regulations for the offence.

Regulation 7.05 requires a fine to be paid in full within 28 days of a person being served with an infringement notice or an extended period not exceeding a further 28 days.

Regulation 7.06 sets out what must be included in an infringement notice.

Regulation 7.07 enables the Secretary or an authorised person to withdraw an infringement notice up to 28 days after the date the notice was served on a person (or if a further period has been allowed, before the end of that further period). Subregulation 7.07(2) sets out some of the grounds on which an infringement notice may be withdrawn.

Regulation 7.08 provides that any liability of the person for the alleged offence is discharged if the person pays the notice penalty within the allowed period and the infringement notice has not been withdrawn. In this situation no further proceedings can be taken against the person in respect of the alleged offence and the person will not be considered to have been convicted of the offence.

Regulation 7.09 provides that at the hearing of a prosecution for an offence for which an infringement notice has been served a certificate signed by an authorised person can provide evidence of certain matters stated in the certificate.

Regulation 7.10 provides that if more than one infringement notice is served on a person from the same offence, the payment by the person of the notice penalty in accordance with one of those infringement notices is sufficient for the person to discharge his or her liability.

Regulation 7.11 provides that if a person pays a prescribed penalty by cheque then, unless the cheque is honoured upon presentation, the person is not to be taken to have paid the penalty.

Regulation 7.12 makes it clear that a person is not required to be served with an infringement notice for an offence and may be prosecuted for such an offence. Also the regulation does not limit the fine that a court may impose on the person following a conviction for the offence. The regulation ensures that serious breaches of infringement notice offences can be prosecuted.

SCHEDULE 1 - MODIFICATION OF STATE LIQUOR LEGISLATION

PART 2 - THE LIQUOR CONTROL ACT 1987 OF VICTORIA

This part modifies the application of the Liquor Control Act 1987 of Victoria in respect of regulated airports in Victoria.

PART 3 - THE LIQUOR ACT 1992 OF QUEENSLAND

This part modifies the application of the *Liquor Act 1992* of Queensland in respect of regulated airports in Queensland.

PART 5 - THE LIQUOR LICENSING ACT 1988 OF WESTERN AUSTRALIA

This part modifies the application of the *Liquor Licensing Act 1988* of Western Australia in respect of regulated airports in Western Australia.