

Airports (Building Control) Amendment Regulations 1999 (No. 1) 1999 No. 52

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 52

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

Airports Act 1996

Airports (Building Control) Amendment Regulations 1999 (No. 1)

Section 252 of the Airports Act 1996 (the Act) provides that the Governor-General may 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.

Section 111 of the Act enables the regulations to provide for an infringement notice regime enabling a person who is alleged to have committed an offence against Part 5 of the Act to pay a penalty as an alternative to prosecution.

The purpose of the Amendment to the Airport (Building Control) Regulations (the Regulations) is to set up such an infringement notice regime under the Regulations for the purposes of Part 5 of the Act. Part 5 of the Act deals with land use, planning and building controls at leased federal airports. The regime is modelled on a standard infringement notice regime developed in consultation with the Attorney-General's Department.

The Amendment allows an airport building controller to issue an infringement notice to a person who the controller believes has committed an offence against Part 5 of the Act. The airport building controller is a Commonwealth statutory officer holder appointed under the Regulations to administer the Regulations at leased federal airports. Examples of offences include undertaking building activities at leased federal airports without approval, occupying or using buildings or works that have not been certified as compliant and failing to submit to the Minister a mandatory draft Master Plan for a leased airport. The offender will be capable of paying the fine 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 building control practices where it is apparent that such practices are not being followed. The system should operate as an effective intermediate step before prosecution is pursued. The fines are set as one-fifth of the maximum fine that may be imposed for an offence by a court.

The Amendment provides for appeals to the Administrative Appeals Tribunal for certain decisions that are made under the infringement regime.

Further details of the Regulations appear in the Attachment.

The Regulations commenced upon gazettal.

ATTACHMENT

Item 1 - Name of regulations

Item 1 provides for the name of the regulations.

Item 2 - Commencement

Item 2 provides that the regulations will commence on gazettal.

Item 3 - Amendment of Airports (Building Control) Regulations

Item 3 provides for Schedule 1 that amends the Airports (Building Control) Regulations.

Schedule 1 - Amendments

Amendment 1 - Regulation 1

Amendment 1 substitutes a new regulation 1 that provides for the name of the regulations.

Amendment 2 - Part 5

Amendment 2 substitutes a new Part 5, as follows:

PART 5 General penalty provisions

Division 1 - Continuing Offences

Regulation 5.01 - Continuing offences

This regulation stipulates that for the purposes of determining when and how many offences have been committed by a person, duties that arise under Part 5 of the Airports Act 1996 in relation to building control duties are duties and obligations that arise every day.

Division 2 - Infringement notices

Regulation 5.02 - Purpose of this Division

Under the Regulations, it will be possible for an airport building controller to issue an infringement notice to a person who the controller believes has committed an offence against Part 5 of the Act. 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 building control practices where it is apparent that such practices are not being followed. The system should operate as an effective intermediate step before prosecution is pursued.

The fines are set as one-fifth of the maximum fine that may be imposed for an offence by a court, see subsection 111(2) of the Act.

Regulation 5.03 - Infringement notices

This regulation allows an airport building controller 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 building controller 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 5.04 - 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 5.05(2)(f)(i). However, under this regulation, the Secretary or an airport building controller 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 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 building controller refuses to extend the period, he or she must provide reasons for that refusal, paragraph 5.04(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 5.04(4)(b).

Regulation 5.05 - 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 5.05(2)(f)(i). However, under this regulation, the Secretary or an airport building controller 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 building controller refuses to make such an arrangement, he or she must provide reasons for that refusal, paragraph 5.05(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 5.05(3)(b).

Regulation 5.06 - 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 5.03(2)(h), and in light of these facts or matters the 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 5.06(3)(c).

The Secretary, where 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 5.07 - Payment of penalty if infringement notice not withdrawn

If the Secretary refuses to withdraw an infringement notice under regulation 5.06 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 5.08 - 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 5.08(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 5.08(2).

Regulation 5.09 - Admissions under paragraph 5.03(2)(h)

If a person on whom an infringement notice has been served notifies the Secretary of facts or matters under paragraph 5.03(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 5.10 - 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 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 5.11 - 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 building controller must arrange for a refund of that fine to the person.

Regulation 5.12 - Evidence for hearing

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 building controller 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 an infringement notice has been withdrawn is evidence of that fact, and a certificate purporting to have been signed by an airport building controller 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 5.13 - 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 5.14 - 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 6 Miscellaneous

Part 6 of the Regulations is identical to the current Part 5 that provides for review by the Administrative Appeals Tribunal (AAT). The regulation 6.01 adds three items (items 18, 19 and 20) to the existing items in the current Part 5, providing appeals for decisions under the infringement penalty regime.

Regulation 6.01 - Review by the Administrative Appeals Tribunal

Items 18, 19, 20

Items 18 and 19 provide a person served with an infringement notice with the ability to appeal to the AAT the following two decisions of the Secretary or the airport building controller: the refusal to grant a period of time for payment of an infringement notice penalty under subregulation 5.04(1); and the refusal to make arrangements for the periodical payments of an infringement notice penalty under subregulation 5.05(2).

