

# Airports (Building Control) Amendment Regulations 1999 (No. /)

Statutory Rules 1999 No.

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations under the *Airports Act 1996*.

Dated 1999.

31 March

WILLIAM DEANE

Governor-General

By His Excellency's Command,

JOHN ANDERSON

Minister for Transport and Regional Services



## Regulation 1

### 1 Name of regulations

These regulations are the *Airports (Building Control) Amendment Regulations 1999 (No.)*.

### 2 Commencement

These regulations commence on gazettal.

### 3 Amendment of Airports (Building Control) Regulations

Schedule 1 amends the Airports (Building Control) Regulations.

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## Schedule 1      Amendments

(regulation 3)

### [1]      Regulation 1

*substitute*

#### 1      Name of regulations

These regulations are the *Airports (Building Control) Regulations 1996*.

### [2]      Part 5

*substitute*

#### Part 5              General penalty provisions

#### Division 1          Continuing offences

##### 5.01 Continuing offences

For section 4K of the *Crimes Act 1914*, a requirement in a provision of Part 5 of the Act to do, or not do, an act or thing is a requirement that arises every day and is to be complied with on that day.

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## Division 2 Infringement notices

### 5.02 Purpose of this Division

The purpose of this Division is to provide a procedure under which a person who is alleged to have committed an offence against Part 5 of the Act may, as an alternative to having the matter dealt with by a court, dispose of the matter by payment of a monetary penalty (an *infringement notice penalty*) specified in a notice (an *infringement notice*) served on the person.

### 5.03 Infringement notices

- (1) If there are reasonable grounds for believing that a person has committed an offence against Part 5 of the Act, an airport building controller may serve an infringement notice, or cause an infringement notice to be served, on the person.
- (2) The notice must set out the following information:
  - (a) the name and address of the person served;
  - (b) the provision of the Act that it is alleged has been contravened;
  - (c) details of the alleged offence, including:
    - (i) the day, and (if appropriate) the time, on which it is alleged to have been committed; and
    - (ii) the place at which it is alleged to have been committed;
  - (d) the maximum penalty that may be imposed by a court for the offence;
  - (e) the amount payable as the infringement notice penalty;

- (f) a statement that, if the person prefers that the matter not be dealt with by a court, he or she may signify that preference by paying the infringement notice penalty:
  - (i) before the end of 28 days after the day the notice is served; or
  - (ii) if a further period is allowed by an airport building controller under regulation 5.04 — before the end of that further period; or
  - (iii) if payment by instalments is permitted under regulation 5.05 — in accordance with the permission;
- (g) how, and where, the infringement notice penalty may be paid;
- (h) a statement that if, before the end of 28 days after service of the notice, the person notifies the Secretary, in the manner set out in the infringement notice, of any facts or matters that the person believes ought to be taken into account in relation to the alleged offence, time for payment of the penalty will be extended to the extent necessary to enable a decision to be made in relation to those facts or matters;
- (i) a statement that, if the infringement notice penalty is paid in time:
  - (i) the person's liability in respect of the offence is discharged; and
  - (ii) further proceedings cannot be taken against the person for the offence; and
  - (iii) the person is not taken to have been convicted of the offence;
- (j) a statement to the effect that, if none of the things mentioned in paragraph (f) or (h) is done within the time specified, the person may be prosecuted in relation to the alleged offence;
- (k) the name of the airport building controller by whom the notice is served.

- (3) An infringement notice may contain any other information that the airport building controller considers necessary.
- (4) The notice must be served on the person not more than 12 months after the alleged commission of the offence.

*Note* The infringement notice penalty in respect of an offence is set at one-fifth of the maximum fine that a court could impose for the offence — see Act, s. 111 (2).

#### **5.04 Extension of time to pay**

- (1) On written application by a person on whom an infringement notice has been served, the Secretary or an airport building controller may permit, if satisfied that in all the circumstances it is proper to do so, a further period for payment of the infringement notice penalty, whether or not the period of 28 days after the date of service of the notice has ended.
- (2) If application is made after the end of the 28 day period, the application must include an explanation setting out why the alleged offender could not deal with the notice within that period.
- (3) The Secretary or airport building controller must:
  - (a) grant or refuse a further period; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) The person must pay the penalty:
  - (a) if a further period is granted — before the end of that period; or
  - (b) if the decision is a refusal — before the later of:
    - (i) the end of a period 7 days after receiving notice of the refusal; or
    - (ii) the end of the period of 28 days after the date of service of the notice.

### 5.05 Payment by instalments

- (1) If the Secretary, or an airport building controller, is satisfied that in all the circumstances it is proper to do so, he or she may make an arrangement with a person on whom an infringement notice has been served (whether or not the period of 28 days after the date of service of the notice has ended) for the payment of the amount of the infringement notice penalty by instalments.
- (2) The Secretary or airport building controller must:
  - (a) grant or refuse to make an arrangement; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (3) The person must pay the penalty:
  - (a) if an arrangement is made — in accordance with the arrangement; or
  - (b) if the decision is a refusal — before the end of the later of:
    - (i) the 28 day period; and
    - (ii) the period of 7 days following receipt of notice of the refusal.

### 5.06 If infringement notice disputed

- (1) Whether or not a notice is received under subregulation (2), the Secretary, if satisfied that in all the circumstances it is proper to do so, may withdraw an infringement notice.
- (2) If, before the end of 28 days after receiving an infringement notice, a person gives the Secretary notice under paragraph 5.03 (2) (h), the Secretary must decide whether to withdraw the infringement notice.



- (3) The Secretary must:
  - (a) withdraw, or refuse to withdraw, the notice; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) If the Secretary decides to refuse to withdraw an infringement notice, notice of that decision must state:
  - (a) that if the amount of the infringement notice penalty is paid within 28 days after notice of the decision is given to the person, the person will not be prosecuted for the alleged offence; and
  - (b) that if that amount is not so paid, the person may be prosecuted for the alleged offence.
- (5) In making a decision, the Secretary must consider:
  - (a) the facts or matters set out in the notice (if any) given under paragraph 5.03 (2) (h); and
  - (b) the circumstances in which the offence mentioned in the notice is alleged to have been committed; and
  - (c) whether the person has been convicted previously of an offence against Part 5 of the Act; and
  - (d) whether an infringement notice has previously been given to the person for an offence of the same kind as the offence mentioned in the notice; and
  - (e) any other matter the Secretary considers relevant to the decision.

#### **5.07 Payment of penalty if infringement notice not withdrawn**

If the Secretary refuses to withdraw an infringement notice, the applicant for withdrawal must pay the infringement notice penalty before the end of 28 days after receiving notice of the refusal.

**5.08 Effect of payment of infringement notice penalty**

- (1) If a person served with an infringement notice pays the infringement notice penalty in accordance with this Division:
  - (a) the person's liability in respect of the offence is discharged; and
  - (b) further proceedings cannot be taken against the person for the offence; and
  - (c) the person is not convicted of the offence.
- (2) Subregulation (1) applies to a person who makes an arrangement to pay the infringement notice penalty by instalments, only if the person makes payments in accordance with the arrangement.

**5.09 Admissions under paragraph 5.03 (2) (h)**

Evidence of an admission made by a person in a notice under paragraph 5.03 (2) (h) is inadmissible in proceedings against the person for the alleged offence.

**5.10 Matter not to be taken into account in determining sentence**

- (1) This regulation applies if a person served with an infringement notice:
  - (a) elects not to pay the infringement notice penalty; and
  - (b) is prosecuted for, and convicted of, the alleged offence mentioned in the infringement notice.
- (2) In determining the penalty to be imposed, the court must not take into account the fact that the person chose not to pay the infringement notice penalty.

### **5.11 Refund of infringement notice penalty if notice withdrawn**

If an infringement notice penalty is paid in accordance with an infringement notice that is subsequently withdrawn, an airport building controller must arrange to refund an amount equal to the amount so paid to the person who paid the penalty.

### **5.12 Evidence for hearing**

- (1) At the hearing of a prosecution for an alleged offence specified in an infringement notice, a certificate signed by an airport building controller and stating:
  - (a) that the infringement notice was served on the alleged offender; and
  - (b) that the infringement notice penalty has not been paid in accordance with this Division;is evidence of those facts.
- (2) At the hearing of a prosecution for an alleged offence specified in an infringement notice, a certificate signed by an airport building controller and stating that the notice was withdrawn on a day specified in the certificate is evidence of that fact.
- (3) A certificate that purports to have been signed by an airport building controller is taken to have been signed by that officer unless the contrary is proved.

### **5.13 Payment of penalty by cheque**

If a cheque is given to the Commonwealth in payment of all or part of the amount of an infringement notice penalty, the payment is taken not to have been made unless the cheque is honoured on presentation.

### 5.14 Infringement notice not compulsory, etc

Nothing in this Division is to be taken to:

- (a) require that a person suspected of having contravened a provision of Part 5 of the Act be served an infringement notice; or
- (b) affect the liability of a person to be prosecuted for an alleged offence, if:
  - (i) an infringement notice is not served on the person for the offence; or
  - (ii) an infringement notice is served, and withdrawn; or
- (c) limit the penalty that may be imposed by a court on a person convicted of an offence.

## Part 6 Miscellaneous

### 6.01 Review by Administrative Appeals Tribunal

Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person described in an item in the following table for review of a decision mentioned in the item:

Item	Decision	Person
<b>Part 1 Decision by airport building controller</b>		
1	Subregulations 2.11 (1) and (6) — refusal, or failure, to approve a building activity	the applicant for the approval
2	Subregulation 2.11 (1)— imposition of a condition on a building approval	the applicant for the approval
3	Subregulation 2.11 (1) — giving of a direction in relation to a building approval	the applicant for the approval
4	Paragraph 2.13 (2) (b) — refusal to approve non-compliance with Australian building standards	the applicant for the approval

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<b>Item</b>	<b>Decision</b>	<b>Person</b>
5	Regulation 2.16 — refusal to grant a varied building approval	the applicant for the approval
6	Subregulation 2.18 (1)— imposition of a condition on a building approval	the person carrying out the building activity
7	Subregulation 2.18 (2) — issuing of a stop work order on a building approval	the person carrying out the building activity
8	Subregulation 2.19 (2) — refusal to extend duration of a building approval	the person carrying out the building activity
9	Regulation 2.20 — revocation of a building approval (except at the request of the holder)	the person carrying out the building activity
10	Paragraph 3.02 (2) (a) — estimate of time that will be taken to investigate a building or structure for the issue of a certificate of compliance	the person that applied for the certificate
11	Subregulation 3.04 (2) — refusal to issue a certificate of compliance for a building or works	the holder of the building approval that authorised the building activity that resulted in the building or works
12	Subregulation 3.04 (2) — imposition of a condition on a certificate of compliance	the holder of the building approval that authorised the building activity that resulted in the building or works

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<b>Item</b>	<b>Decision</b>	<b>Person</b>
13	Subregulation 3.10 (1) — variation of a certificate of compliance	the holder of the certificate of compliance
14	Paragraph 3.10 (1A) (a) — estimate of time that will be taken to investigate a building or structure for the variation of a certificate of compliance	the person that applied for the variation
15	Subregulation 3.10 (1) — refusal to vary a certificate of fitness	the holder of the certificate of fitness
16	Subregulation 3.12 (1) — revocation of a certificate of compliance	the holder of the certificate of compliance
17	Subregulation 3.14 (1) — refusal to issue certified copy of a certificate of compliance	the person who applied for the certified copy
18	Subregulation 5.04 (1) — refusal to grant a period of time for payment of an infringement notice penalty	the person served with the infringement notice
19	Subregulation 5.05 (2) — refusal to make an arrangement for periodical payment of an infringement notice penalty	the person served with the infringement notice
20	Subregulation 5.06 (3) — refusal to withdraw an infringement notice	the person served with the infringement notice

Item	Decision	Person
<b>Part 2 Decision by airport-lessee company</b>		
21	Subregulations 2.03 (4) and (6) — refusal, or failure, to grant consent to application	the applicant for the approval
22	wSubregulation 2.03 (4) — imposition of a condition on a grant of consent	the applicant for the approval

**Notes**

1. These regulations amend Statutory Rules 1996 No. 292, as amended by 1997 Nos.114 and 200.
2. Made by the Governor-General on 31 March 1999, and notified in the *Commonwealth of Australia Gazette* on 1 April 1999.

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