

Airports (Control of On-Airport Activities) Amendment Regulations 1999 (No. 3) 1999 No. 291

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 291

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

Subject - Airports Act 1996

Airports (Control of On-Airport Activities) Amendment Regulations 1999 (No. 3)

Section 252 of the Airports Act 1996 ('the Act') allows the Governor-General to make regulations prescribing matters:

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

Part 11 of the Act authorises the making of regulations for the control of liquor, gambling, commercial trading, smoking and vehicle movements at certain Commonwealth-owned airports following their leasing.

Section 169 allows the regulations to apply Part 11 of the Act to leased Federal airports. The Airports (Control of On-Airport Activities) Regulations ('the Regulations') provide the detail of the regulatory regime for liquor, commercial trading, vehicle movements, gambling and smoking on leased Federal airports. The Regulations deal with arrangements for those airports sold as part of the Phase 1 and 2 sales - namely Melbourne, Brisbane, Perth, Adelaide, Parafield, Moorabbin, Hobart, Launceston, Canberra, Coolangatta, Archerfield, Townsville, Mount Isa, Darwin, Alice Springs, Tennant Creek and Jandakot airports. The current regulations also apply to the Sydney basin airports and Essendon Airport.

Section 173 of the Act provides that regulations may be made to prohibit or regulate gambling activities at a specified airport. The amended Regulations allow the Secretary to renew existing authorities and impose condition on the authorities when they are renewed. The term of existing authorities extends out to 35 years. Therefore, it was prudent for the Commonwealth to have the power to cancel or suspend existing authorities if there is a breach of the terms of that existing or renewed authority. These amendment regulations give the authority holders the right to appeal to the Administrative Appeals Tribunal regarding decisions made about the conditions placed on the renewed authorities and the suspension or cancellation of existing authorities.

Section 178 of the Act requires the Minister to consult with existing airport operators before making regulations under Part 11. The Minister is required to give each airport operator company a notice stating that there is a proposal to make regulations under Part 11 which will affect that airport, at least 30 days before the regulations are made. The notice must invite them to make a submission within 30 days of receiving the notice. The Minister is to have due regard to the submission when dealing with the proposal to make regulations. Consultation has taken place with the existing airport-operator companies for airports affected by this change, namely Adelaide, Parafield, Coolangatta, Perth, Melbourne and Darwin airports, as required under section 178 of the Act. All supported this change.

Details of the Amendment Regulations are in the attachment. A Regulation Impact Statement is also attached.

The Regulations commenced on gazettal.

ATTACHMENT

Item 1-Name of Regulations

The Regulations are the Airports (Control of On-Airport Activities) Amendment Regulations 1999 (No. 3).

Item 2 - Commencement

The Regulations commenced on gazettal.

Item 3 - Amendment

The Airports (Control of On-Airport Activities) Regulations are amended as set out in Schedule 1 to the Regulations.

Schedule 1 - Amendments

PART 5 - Gambling

The existing Part was substituted with the amendments outlined below.

Division 1 - Preliminary

Item 1 - Regulation 136 (Definitions for Part 5)

Definitions were added for the following terms, continued gambling authority, gambling permission, licensing law, old gambling authority and reporting law as they relate to this part. The identification of the airports not subject to the Regulation was reordered into alphabetical order. Doing so had no effect on the airport operators of leased Federal airports and was only intended to simplify reference for readers of the Regulations.

Division 2 - Gambling at regulated airports

Item 1 - Regulation 137 (Prohibition of gambling at regulated airports)

The Regulation was renumbered and the language was simplified. Doing so had no effect on the airport operators of leased Federal airports.

Item 1 - Regulation 138

The Regulation was renumbered and reference to New South Wales was removed. Doing so had no effect on the airport operators of leased Federal airports.

It is stated in subregulation 138(2) that, while continued gambling authorities must comply with State or Territory laws (except licensing and reporting laws), if the terms of the authority are inconsistent with this provision, the terms of the authority would take precedence. For example, if the terms of a gambling licence require the licensee to report poker machine transactions to the State authority, this takes precedence over the exemption from State reporting laws. This was added to clarify the meaning of the existing regulation.

Division 3 - Transitional Arrangements

Item 1 - Regulation 138A (Transitional - gambling at Part 11 airports in New South Wales)

This regulation was renumbered and subregulation 138(A) was reworded in simple English. Doing so had no effect on the airport operators of leased Federal airports.

Item 1 - Regulation 139 (Transitional - gambling at certain other Part 11 airports)

This regulation renumbered and subregulations 139(1) and 139(3) were reworded to simplify reading of the Regulations. Doing so had no effect on the airport operators of leased Federal airports.

Division 4 - Permissions to carry on gambling activities

Item 1 - Regulation 139A (Secretary may give certain Permissions)

This regulation was included to allow the Secretary to grant permissions for current gambling activities to be continued at the particular airport at which they currently operate.

Item 1 - Regulation 139B (Application for permission)

Given regulation 139A, this regulation requires that applications for gambling permissions be in writing. It also allows the Secretary to request further information as deemed necessary and request written verification of any statements made in the application.

Item 1 - Regulation 139C (Time for the Secretary's decision)

If a decision has not been made after 30 days (excluding time to provide additional information as requested) of the Secretary receiving an application for a permission to carry out a gambling authority then it is assumed that the application has been refused.

Item 1 - Regulation 139D (Terms and conditions of gambling permission)

This regulation ensures that the term of a gambling permission is no longer than five years and that permission becomes effective after the current authority or permission ceases to be in effect.

The Secretary is able to impose conditions on the permission such as times of operation and restrictions on who can participate (especially minors), but not with regards to the location of the gambling activity within the particular airport.

Subregulation 139D(5) prevents permissions from being transferred to another person. This does not prevent a business, which requires a gambling authority or permission, being sold, as the purchaser can apply for a permission.

Item 1 - Regulation 139E (Notice of permission)

This regulation requires the Secretary to give written notice when a permission is granted.

Item 1 - Regulation 139F (What Permissions authorise)

This regulation was included to clarify that a gambling permission gives authorisation for gambling activities to be carried out consistent with the permission's terms.

In addition to the terms of the permissions, holders will be required to comply with any State or Territory law, as long as it is not inconsistent with the terms of the permission.

Item 1 - Regulation 139G (Review of decisions)

This regulation was included to clarify that appeals can be made to the Administrative Appeals Tribunal relating to decisions made under this Division.

Division 5 - Cancellation and suspension of authorities and permissions

Item 1 - Regulation 139H (Suspension and cancellation - show cause notice)

Subregulation 139H(1) enables the Secretary to issue show cause notices if circumstances justify the cancellation of a permission or authority.

Subregulation 139H(2) clarifies the details that are required to be included in a show cause notice to the holder of the authority or permission.

Subregulation 139H(3) allows for show cause notices to state that the authority or permission is suspended.

It is also proposed that suspension commences when a show cause notice is given to the holder and that the Secretary may revoke suspensions.

Subregulation 139H(6) has the effect that if a suspended authority or permission is not cancelled within 90 days, the authority or permission will be reinstated.

Item 1 - Regulation 139I (Cancellation of authority or permission)

This regulation was included to allow the Secretary to cancel an authority or permission. Cancellation will only be possible if a show cause notice has already been issued, the Secretary has taken account of representations made by or for the holder of the permission or authority, and that the holder has acted outside of the conditions of the authority or permission, or breached an applicable State or Territory law.

Subregulation 139I(3) was included to ensure that the Secretary informs the holder of a suspended authority or permission, if the decision is made not to cancel the authority or permission. This is required to be done in writing.

Item 1 - Regulation 139J (Cancellation at request of holder)

This regulation allows the holder of an authority or permission to cancel said authority or permission at any time. Such a cancellation will come into effect when the request is given to the Secretary or at a date after this time, as requested by the holder.

Item 1 - Regulation 139K (Review of decisions)

This regulation was included to clarify that appeals can be made to the Administrative Appeals Tribunal relating to decisions made under this Division.