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## Airports (Ownership — Interests in Shares) Amendment Regulations 2001 (No. 1)<sup>1</sup>

Statutory Rules 2001 No. 1<sup>2</sup>

92

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 16 MAY 2001 2001

**WILLIAM DEANE**  
Governor-General

By His Excellency's Command

JOHN ANDERSON  
Minister for Transport and Regional Services

**1 Name of Regulations**

These Regulations are the *Airports (Ownership — Interests in Shares) Amendment Regulations 2001 (No. 1)*.

**2 Commencement**

These Regulations commence on gazettal.

**3 Amendment of Airports (Ownership — Interests in Shares) Regulations**

Schedule 1 amends the Airports (Ownership — Interests in Shares) Regulations.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 1**

*substitute*

**1 Name of Regulations**

These Regulations are the *Airports (Ownership — Interests in Shares) Regulations 1996*.

**[2] Regulation 2, at the foot**

*insert*

*Note* Part 3 of the Act imposes certain ownership restrictions on airport-operator companies. Part 4 of the Act contains provisions dealing with schemes designed to avoid the ownership restrictions applying to airport-operator companies, including provisions that allow the Minister to direct a person to dispose of a stake in an airport-operator company in certain circumstances.

**[3] Regulation 6***substitute***6 Prescribed interest in a share —  
foreign-owned investment funds**

For paragraph 9 (1) (c) of the Schedule to the Act, a person's interest in a share is an interest of a prescribed kind if the interest arose solely as a result of an action by the person in his, her or its capacity as trustee or manager of an investment fund in relation to which a declaration is made under subregulation 7 (4).

**[4] Subregulation 7 (1)***omit*

there is prescribed a person to whom paragraph 6 (a) applies,

*insert*

a person to whom regulation 6 applies is prescribed

**[5] Subparagraphs 7 (4) (a) (ii) and (iii)***substitute*

- (ii) within 7 days of making the declaration:
  - (A) give a copy of the declaration to the applicant; and
  - (B) publish a notice of the declaration in the *Gazette*; or

**[6] Paragraph 9 (c)***omit*

fund; and

*insert*

fund.

**[7] Paragraph 9 (d)**

*omit*

**[8] Subregulation 10 (1)**

*omit*

there is prescribed a person to whom paragraphs 9 (a), (b) and (c) apply,

*insert*

a person to whom regulation 9 applies is prescribed

**[9] Subregulation 10 (3), note**

*omit*

obligation

*insert*

obligation

**[10] Subparagraphs 10 (4) (a) (ii) and (iii)**

*substitute*

(ii) within 7 days of making the declaration:

(A) give a copy of the declaration to the applicant; and

(B) publish a notice of the declaration in the *Gazette*; or

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[11] **After Part 3**

*insert*

## **Part 3A Shares in other airports**

### **10A Purpose**

This Part prescribes a kind of interest in a share that must be disregarded in ascertaining whether, within the meaning of section 50 of the Act, an unacceptable cross-ownership situation exists.

### **10B Prescribed interest in a share — other airports**

For the purposes of paragraph 9 (1) (c) of the Schedule to the Act, an interest in a share is an interest of a prescribed kind if the interest is an interest in a share in an airport-operator company for:

- (a) Melbourne (Tullamarine) Airport; or
- (b) Brisbane Airport; or
- (c) Perth Airport.

### **10C Prescribed interest holder — other airports**

- (1) For the purposes of paragraph 9 (1) (c) of the Schedule to the Act, a person is a prescribed person if:
  - (a) the person has an interest of a kind mentioned in regulation 10B (*prescribed interest*); and
  - (b) the Secretary declares that the conditions set out in subregulation (3) have been met; and
  - (c) the person, or an associate of the person, acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport.
- (2) A person who has an interest of a kind mentioned in regulation 10B, or an associate of a person who has an interest of a kind mentioned in regulation 10B, (the *applicant*) may apply to the Secretary, in writing, for a

declaration that the conditions mentioned in subregulation (3) have been met.

- (3) For subregulations (1) and (2), the conditions are:
- (a) that the applicant has given an undertaking to the Secretary:
    - (i) to dispose of the prescribed interest; or
    - (ii) otherwise to ensure that its stake in an airport-operator company mentioned in regulation 10B is reduced, so that an unacceptable cross-ownership situation does not (and would not, in the absence of this regulation) exist in relation to a pair of airport-operator companies and in relation to the applicant;  
within 12 months after the applicant acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport; and
  - (b) that the applicant has outlined to the Secretary a firm strategy and timetable to comply with the undertaking given under paragraph (a).
- (4) The Secretary must:
- (a) if reasonably satisfied that the applicant has met the conditions, and that the application is made in good faith:
    - (i) make the declaration; and
    - (ii) within 7 days of making the declaration:
      - (A) give a copy of the declaration to the applicant; and
      - (B) publish a notice of the declaration in the *Gazette*; or
  - (b) if not so satisfied — refuse to make the declaration.
- (5) If the Secretary refuses to make a declaration, the Secretary must, within 7 days of making that decision, give the applicant written notice of the decision:
- (a) stating the reasons for the decision; and

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- (b) stating that, subject to the *Administrative Appeals Tribunal Act 1975*, the applicant may apply to the Administrative Appeals Tribunal for review of the decision.
- (6) If the Secretary makes a declaration under subregulation (4) in relation to an applicant, and the applicant is aware that it is no longer willing or able to comply with its undertaking under paragraph (3) (a), the applicant must tell the Secretary that this is so within 7 days after becoming aware of it.
- (7) If the Secretary makes a declaration under subregulation (4) in relation to an applicant, the applicant must comply with any request from the Secretary to give the Secretary a report on the progress that it has made towards:
- (a) disposing of the prescribed interest; or
  - (b) ensuring that its stake in an airport-operator company mentioned in regulation 10B is reduced; in accordance with its undertaking under paragraph (3) (a).
- (8) A declaration under this regulation ceases to have effect, unless it is revoked earlier under regulation 11, at the end of 12 months after the applicant acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport.
- (9) Despite regulation 10B and subregulation (1), a prescribed interest held by the applicant, or by an associate of the applicant, is disregarded only for the purpose of determining whether an unacceptable cross-ownership situation is created by the acquisition of a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport in relation to which the undertaking under paragraph (3) (a) is given.

**[12] Subregulation 11 (1)***omit*

7 (4) or 10 (4)

*insert*

7 (4), 10 (4) or 10C (4)

**[13] Paragraph 11 (1) (b)***omit*

(8) or 10 (6), (7) or (8),

*insert*

(8), 10 (6), (7) or (8) or 10C (6) or (7),

**[14] Subregulation 11 (3)***substitute*

(3) Before the end of 7 days after a declaration is revoked, the Secretary must give the holder written notice stating:

- (a) the reasons for the revocation; and
- (b) the date of effect of the revocation; and
- (c) that, subject to the *Administrative Appeals Tribunal Act 1975*, the holder may apply to the Administrative Appeals Tribunal for review of the decision to revoke the declaration.

**[15] Regulation 12***substitute***12 Review of decisions**

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, an applicant for a declaration under regulation 7, 10 or 10C may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary,



under subregulation 7 (4), 10 (4) or 10C (4), to refuse to make the declaration.

- (2) Subject to the *Administrative Appeals Tribunal Act 1975*, a person in relation to whom a declaration under regulation 7, 10 or 10C is made may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary, under subregulation 11 (1), to revoke the declaration.

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### Notes

1. These Regulations amend Statutory Rules 1996 No. 341.

2. Notified in the *Commonwealth of Australia Gazette* on / 2001.

17 May