

Airports (Ownership - Interests in Shares) Amendment Regulations 2001 (No. 2) 2001 No. 347

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 347

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

Airports Act 1996

Airports (Ownership - Interests in Shares) Amendment Regulations 2001 (No. 2)

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.

The Act imposes limitations on the ownership of leased Federal airports by airlines and foreign persons, and on the cross-ownership of certain airports. The ownership rules of the Act are set out in Part 3 of the Act and the Schedule to the Act.

One of the objects of the Act is to limit the ownership of airports by airlines. Section 44 of the Act limits any airline to a 5% "stake" in an airport. A "stake" is defined as the aggregate of the direct control interests the airline has and the direct control interests "associates" of the airline have in the airport operator company. The definition of "associate" is deliberately broad and includes anyone who holds 15% or more of the airline. However, Paragraph 9(1)(c) of the Schedule to the Act provides that, for the purposes of the ownership provisions, an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed, can be disregarded.

The Regulations increase the scope for investment in general aviation airports by permitting airlines or associates of airlines to take a greater than 5% stake in an airport operator company for any leased Federal general aviation airport (Essendon, Moorabbin, Archerfield, Jandakot and Parafield). The Regulations provide that an interest in a share that results in an airline having a stake in a general aviation airport listed above will be disregarded for the airline-ownership provisions of the Act

The Regulations are also part of the Government's response to the final proposal that the Tesna consortium put to the Government in support of its bid for Ansett Australia. Linfox, one of the jointventure partners in the Tesna consortium, is also the joint owner of the company that leases Essendon Airport. The Government announced on 27 November 2001 that it would exempt all of the general aviation airports, including Essendon, from the airline ownership provisions of the Airports Act.

The airline ownership provisions of the Act were designed to prevent actual or perceived anti-competitive behaviour or collusions between airports and airlines. This is particularly important at Sydney Airport for example where, due to physical constraints associated with the limited size of the site, options for future facilities development may conceivably have differential impacts on individual airline users. A lesser but similar case applies at other major airports where regular public transport services form the greater part of the aviation-related business of the airport. However, there is no convincing rationale for continuing to apply the airline-ownership provisions to the general aviation airports which don't operate the same scope of aviation-related services. The risk of anti-competitive behaviour by major airlines at any of the general aviation airports is very low.

Following the making of the Regulations the Government will write to operators of general aviation airports to clarify its policy intent behind the regulation amendment. This letter will make clear to the operators of the above airports that if the nature of their aviation-related business changes to include operations which, in the Government's view, are of a nature that encourages the regular public transport services more akin to the major airports, then it will not hesitate to reapply the airline ownership restrictions to the effected airport.

Further details of the amendments appear in the Attachment.

The Regulations commenced on notification in the Gazette.

ATTACHMENT

Airports (Ownership - Interests in Shares) Amendment Regulations 2001 (No. 2)

Item 1 - Name of Regulations

Proposed item 1 provides for the name of the proposed regulations.

Item 2 - Commencement

Proposed item 2 provides that the proposed regulations will commence on gazettal.

Item 3 - Amendment of Airports (Ownership - Interests in Shares) Regulations

Proposed item 3 provides that Schedule 1 of the proposed regulations amends the

Airports (Ownership - Interests in Shares) Regulations.

Proposed Schedule 1 - Amendments

Item [1] Insert after regulation 10 proposed regulation, 10AA (Airlines holding stakes in certain, airport-operator companies):

Proposed Item [1] provides that, for paragraph 9(1)(c) of the Schedule to the Act, a person's interest in a share is prescribed if the result of the person's holding the interest is that an airline has a stake in the airport-operator company for Essendon, Archerfield, Moorabbin, Parafield or Jandakot Airport. Proposed Item [1] also prescribes the holder of the interest.