

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 231

Subject - *Airports Act 1996*

Airports Legislation Amendment Regulations 2009 (No. 2)

Section 252 of the *Airports Act 1996* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides for a regulatory regime for the federal airports, which are operated on sites owned by the Commonwealth and leased to private operators. The regulatory regime includes provision for planning and control of developments on the airport sites. Section 89 of the Act sets out criteria for determining whether a proposed development constitutes a ‘major airport development’. Paragraph 89(1)(o) allows regulations to be made which will specify a particular kind of development to be a ‘major airport development’.

A ‘major airport development’ must not be carried out except in accordance with an approved major development plan. The Act provides for the assessment of a draft major development plan, which includes a public consultation period, and decision by the Minister for Infrastructure, Transport, Regional Development and Local Government.

The *National Aviation Policy Green Paper: Flight Path to the Future* released in December 2008 states that, as a matter of Government policy, there are a range of activities that will not normally be seen as compatible with the objectives of development of the airport as an airport. These activities include the development of long-term residential uses, community care facilities such as aged care and nursing homes, child care facilities for the general public, hospitals and schools.

The Regulations amend the *Airports Regulations 1997* to provide that certain developments, of the type which the Government considers would normally be incompatible with the operation of an airport as an airport, will constitute ‘major airport developments’. As a result, such developments could only be carried out where they have been subject to a public consultation process and approved by the Minister under the Act.

The potential implications of these types of development include factors such as the attraction of additional people to areas subjected to noise or risk, the creation of additional congestion in roads on or near the airport, and potential limitations on future flexibility in use of the site for aeronautical-related purposes. The Regulations ensure that the impact of each proposed development and its compatibility with state and local government planning would be assessed, with the opportunity for input by the public and relevant agencies.

The Regulations also amend the *Airports (Building Control) Regulations 1996* to provide that the airport building controller must not approve an application to vary a building approval if

the variation relates to a major airport development and there is no major development plan approved for the development.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

A comprehensive consultation process was undertaken in the consideration of the Regulations as required under section 17 of the *Legislative Instruments Act 2003*. Stakeholders consulted include airport lessee companies, state and territory planning and local government authorities.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 252 of the *Airports Act 1996*

Details of the Airports Legislation Amendment Regulations 2009 (No. 2)

Regulation 1 – Name of Regulations

The regulation provides that the title of the Regulations is the *Airports Legislation Amendment Regulations 2009 (No. 2)*.

Regulation 2 – Commencement

The regulation provides for the Regulations to commence on the day after registration.

Regulation 3 – Amendment of Airports Regulations 1997

This regulation provides that the *Airports Regulations 1997* are amended as set out in Schedule 1.

Regulation 4 – Amendment of Airports (Building Control) Regulations 1996

This regulation provides that the *Airports (Building Control) Regulations 1996* are amended as set out in Schedule 2.

Regulation 5 – Application

Regulation 5 provides for an application provision. It makes it clear that where an application has been made to the Airport Building Controller (ABC) for approval of a building activity pursuant to regulation 2.02 of the *Airports (Building Control) Regulations 1996*:

- (a) on or after the commencement of the Regulations; or
- (b) was made prior to commencement of the Regulations, but not finally determined

the ABC must apply the Regulations.

Building activities cannot be carried out on the airport site without the appropriate approval by the ABC in accordance with the *Airports (Building Control) Regulations 1996*.

An application, that is made on or after the commencement of the Regulations, for approval of a building activity that is one of the developments listed in Schedule 1 to the Regulations cannot be considered by the ABC unless an approved major development plan is obtained.

If the ABC has received an application for approval of a building activity that is one of the developments listed in Schedule 1 to the Regulations prior to commencement of the Regulations, but not finally determined by the time the Regulations became operational, the ABC cannot consider the application until the applicant has obtained an approved major development plan.

Schedule 1 – Amendment of *Airports Regulations 1997*

Item [1] – After regulation 5.02

Item 1 inserts a new regulation 5.02A.

Regulation 5.02A specifies certain developments as a major airport development. If a person decides to undertake a development specified under regulation 5.02A, the person will have to obtain an approved major development plan. The Act provides for the assessment and approval processes involved in obtaining approval of a major development plan. This includes a public consultation period and Ministerial approval.

The following developments are specified developments for the purposes of paragraph 89(1)(o) of the Act and therefore constitute a major airport development regardless of the size of these facilities or value of constructing any of these facilities:

- A residential dwelling: Accommodation for students studying at an aviation educational facility at the airport is not captured by the Regulations. The intention is to capture long-term residential accommodations which are not related to aviation educational facilities. It is also the intention that a hotel or a serviced apartment will not be captured by these Regulations. This is because hotels or serviced apartments generally do not cater to long-term residents and there is recognition that they provide an important ancillary service to aviation and aviation-related activities.
- A community care facility: For purposes of the Regulations, a community care facility includes the following:
 - Aged care facility which is a facility that provides aged care. Aged care has the meaning given by Schedule 1 to the *Aged Care Act 1997*;
 - Nursing home as defined in section 4 of the *National Health Act 1953*;
 - Respite care facility which is a facility that provides respite care. Respite care has the meaning given by Schedule 1 to the *Aged Care Act 1997*;
 - Retirement village as defined in section 12 of the *Social Security Act 1991*.

The above enumeration of what may constitute ‘a community care facility’ is non-exhaustive.

- Educational institutions such as a pre-school, a primary, secondary or tertiary educational institution (except an aviation educational facility) are captured by the Regulations. A person proposing to construct any of these facilities will need to obtain an approved major development plan. An aviation educational facility is not captured by the Regulations and is defined to include:
 - A flying training school;
 - An aircraft maintenance training school;
 - A facility that provides training in relation to air traffic control;

- A facility that provides training for cabin crew; and
- Any other facility the primary purpose of which is to provide training in relation to aviation related activities.

Aviation educational facilities provide an important and ancillary service in the aviation industry particularly at general aviation airports.

- A hospital: Facilities for the primary purpose of which is to provide emergency medical treatment to persons at the airport and which do not have in-patient facilities are excluded from the Regulations.
- A child care facility: However, a child care facility that caters principally for the children of persons working at the airport is excluded from the Regulations.

Extensions that increase the capacity of a facility as specified in the Regulations are also captured by the Regulations regardless of whether the original facility was built prior to or after commencement of the Regulations. Existing facilities will not be affected by the Regulations but the Government does not consider it appropriate that such facilities should expand their operations without going through a public consultation and assessment process. For example, an extension that increases the number of classrooms at a school will be captured under the Regulations as this extension will increase the school's capacity to receive more students. An extension that adds to the ancillary features of a facility without affecting its capacity, such as a gym or laundry room at an existing school, would not be caught by the Regulations. Internal refurbishments or minor alterations within a building or structure that is of a type of development listed in Schedule 1 are not intended to be captured by the Regulations provided that the purpose of such refurbishment or alteration does not increase the capacity of the facility. For example, internal refurbishments within an existing nursing home intended to upgrade the amenity and comfort of existing residents without increasing the number of residents will not be captured by the Regulations. However, a plan to increase the number of rooms or beds within an existing nursing home with the effect of increasing the capacity of the nursing home would be captured under the Regulations.

Schedule 2 – Amendment of *Airports (Building Control) Regulations 1996*

Item [1] – Subregulation 2.16(2)

Item 1 replaces existing subregulation 2.16(2) in the *Airports (Building Control) Regulations 1996* (the Building Control Regulations) with a new provision.

Existing regulation 2.16 of the Building Control Regulations allows a person carrying out a building activity under a building approval to apply to the ABC to vary the building approval. Current subregulation 2.16(2) does not allow the variation of a building approval that would significantly alter the character, size or impact of the building activity, or the resulting development. In such a case, a fresh approval would need to be sought.

Subregulation 2.16(2) is amended by adding paragraph (b). The new provision relevantly provides that the ABC must not approve an application to vary a building approval if the variation relates to a major airport development and there is no major development plan that has been approved for that development. For example, if a person has obtained a building approval to construct a development listed in Schedule 1 and has not yet built, or has not completed the construction of, the development, and the person wishes to vary the plan, the ABC must not approve the application for variation if the variation relates to a major airport development and there is no approved major development plan.