

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 376

Subject - *Airports Act 1996*

Airports (Building Control) Amendment Regulations 2009 (No. 3)

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 comprehensive regulatory regime for Commonwealth-owned and privately leased airports. The Act also provides that much of the detail of the regulatory regime can be dealt with in subordinate legislation by providing numerous matters for which regulations may be made.

Division 5, Part 5 of the Act relates to building control and provides, among others, that building activities on airport sites require approval. Section 100 of the Act provides that regulations may be made in relation to building approvals authorising building activities to be carried out on the airport site. These regulations are currently contained in the *Airports (Building Control) Regulations 1996* (the Principal Regulations).

Under section 99 of the Act, an airport-lessee company (ALC) or a person other than an ALC must not carry out a building activity on an airport site unless an approval for the building activity has been granted and other certain conditions have been met.

Regulation 2.02 of the Principal Regulations provides for who may apply for a building approval. The Regulations make it clear that a person who has an interest in land at the airport or his/her representative may apply for a building approval.

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 was exercised.

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

The amendments are minor and machinery in nature and aimed at clarifying the operation of regulation 2.02. Relevant airport stakeholders including airport building controllers and some airport-operator companies have been consulted in accordance with section 17 of the *Legislative Instruments Act 2003*.

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 (Building Control) Amendment Regulations 2009 (No. 3)

Regulation 1 – Name of Regulations

The regulation provides that the title of the Regulations is the *Airports (Building Control) Amendment Regulations 2009 (No. 3)*.

Regulation 2 – Commencement

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

Regulation 3 – Amendment of Airports (Building Control) Regulations 1996

The regulation provides that the *Airports (Building Control) Regulations 1996* are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Before subregulation 2.02 (1)

Item 1 inserts new subregulation 2.02 (1A). This new provision reproduces existing subregulation 2.02(3) which is being repealed and adds another category of persons who may apply for a building approval.

New subregulation 2.02 (1A) specifies the following persons who may apply for a building approval. The following persons may apply:

- (a) the airport-lessee company for the airport site, or a person on behalf of the airport-lessee company;
- (b) the sub-lessee, or a person on behalf of the sub-lessee, of the building or of the land in or on which the building work is to be carried out;
- (c) a person who has an interest in land at the airport, or a person on behalf of the person who has an interest in land at the airport.

An example of a ‘person who has an interest in land at an airport’ includes a person who is entitled to the benefit of an easement over an airport site. An interest could potentially include a licence and other proprietary interest in the land at the airport site. The applicant’s interest in the land of the airport must be current at the time of lodging the application. The interest cannot be an anticipated interest.

Items [2] – [4] Subregulation 2.02

The amendments under items [2] to [4] are consequential to the amendment in item [1].