

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 51

Subject - *Airports Act 1996*

Airports (Building Control) Amendment Regulations 2010 (No. 1)

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 *Airports (Building Control) Regulations 1996* (the Principal Regulations) provide for the approval of building activities and other works at leased federal airports.

The Regulations amend the Principal Regulations to create greater transparency in the approvals process for carrying out building activity on an airport site by requiring an airport-lessee company to publish on its website information about all applications for approval to carry out building activity, as well as information about whether applications have been approved or not.

The Principal Regulations currently list the persons that may apply for an approval to carry out building activity as an airport-lessee company, a sub-lessee or a person with an interest in the land (or someone on their behalf) and require, among others, that the person apply in writing to the airport building controller.

The Principal Regulations also require applicants who are not the airport-lessee company (for example, an airport management company or a sublessee of an airport-lessee company or an airport management company) to provide the airport-lessee company with a copy of the application for approval to carry out building activity. Accordingly, the airport-lessee company should have a copy of every application for approval to carry out building activity.

Currently, there is no requirement for airport-lessee companies to publish information about applications to carry out building activity.

On 16 December 2009, the Australian Government released the National Aviation Policy White Paper (the White Paper). Among reforms to the airport regulatory regime announced in the White Paper was an initiative to “further increase the transparency of airport development” by requiring airports to “notify the community of building applications by publishing them on the airport website”.

The Regulations require the airport-lessee company to publish information about all applications for approval to carry out building activity regardless of whether they are the applicant or not.

In accordance with the policy objective of transparency as expressed in the White Paper, the Regulations ensure that a member of the public can be reasonably informed as to what building activity is proposed for the airport site, and whether or not the proposed building

activity will proceed. The Regulations are not intended to limit the scope or detail of information to be published about building activity by airport-lessee companies.

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.

A comprehensive consultation process was undertaken by the Government over a period of nearly two years in developing the White Paper commencing with the release of an Issues Paper followed by the Green Paper.

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

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

The Minute recommends that Regulations be made in the form proposed.

Authority: Section 252 of the *Airports Act 1996*

ATTACHMENT

Details of the Airports (Building Control) Amendment Regulations 2010 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Airports (Building Control) Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

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

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

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

Schedule 1 – Amendments

Item [1] – After regulation 2.04

Item [1] inserts new regulations 2.04A and 2.04B.

Regulation 2.04A

Regulation 2.04A provides that if a person applies under regulation 2.02 for a building approval for an airport site, then the airport-lessee company for the airport site must publish the following information on the airport's website:

- the name of the person making the application;
- if the applicant is the airport-lessee company – the date on which the company submitted the application to the airport building controller;
- if the applicant is not the airport-lessee company – the date on which the company received the application;
- a description of the proposed building activity covered by the application; and
- the location of the building activity on the airport site.

Regulation 2.04A provides that if the applicant is the airport-lessee company, this information must be published within five business days after the day the company submits the application to the airport building controller. If the applicant is not the airport-lessee company, this information must be published within five business days after the day the company receives the application.

Regulation 2.04B

Regulation 2.04B provides in general terms that the airport-lessee company must update this information with information about whether or not the application has been consented to by the airport-lessee company and/or approved by the airport building controller and/or withdrawn.

In specific terms, regulation 2.04B provides that the airport-lessee company must publish within five business days of such an event occurring details of the event and the date on which the event occurred. This requirement applies if the building application:

- has received consent or not from the airport-lessee company, whether by decision of the airport-lessee company or by consent being taken to be refused because of the expiry of the applicable period for consideration of the application;
- is approved or not approved by the airport building controller, whether by decision of the airport building controller or by approval being taken to be refused because of the expiry of the applicable period for consideration of the application; and/or
- is withdrawn.