

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 119**

Subject - *Airports Act 1996*

*Airports (Control of On-Airport Activities) 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 (Control of On-Airport Activities) Regulations 1997* (the Principal Regulations) provide for the regulation of the following matters at Commonwealth leased airports: liquor; commercial trading; vehicle movements (both at the landside and airside areas); gambling; and smoking. The Principal Regulations also provide for the appointment of ‘authorised persons’ who are empowered to perform certain functions under the relevant parts of the Principal Regulations. The following regulations provide for the appointment of authorised persons:

- regulation 114 in relation to landside vehicle parking at specified airports;
- regulation 121 in relation to airside vehicle parking at specified airports;
- regulation 132 in relation to airside vehicle operation at specified airports; and
- regulation 143 in relation to smoking at specified airports.

The new Regulations amend the above provisions to broaden the category of persons who may be appointed as ‘authorised persons’ to include any of the following:

- an airport-operator company;
- a contractor to an airport-operator company;
- a sub-contractor to an airport-operator company;
- an employee of a sub-contractor to an airport-operator company; or
- any other person that the Secretary considers to be appropriate.

The Regulations allow any person to be authorised by the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government (the Secretary), if the Secretary considers this person to be appropriate. This allows the Secretary to address any emerging circumstances given the variety of operational arrangements at the airports.

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 Department conducted consultations with each effected airport-operator company in accordance with the requirements of section 178 of the Act. The airport-operator companies consulted supported the new Regulations.

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.

Authority: Section 252 of the *Airports Act 1996*

**Details of the Airports (Control of On-Airport Activities) Amendment Regulations 2010 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Airports (Control of On-Airport Activities) 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 (Control of On-Airport Activities) Regulations 1997**

This regulation provides that the *Airports (Control of On-Airport Activities) Regulations 1997* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments**

**Items [1] – [4] Regulations 114 and 121**

Regulation 114 grants the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government (the Secretary) the power to appoint certain individuals as ‘authorised persons’ in relation to landside vehicle parking. An ‘authorised person’ may do certain things such as direct a driver to move a vehicle, personally move illegally parked vehicles or issue ‘parking infringement notice’ to a vehicle driver who breached any of the Australian Road Rules prescribed in the Principal Regulations on the landside area of the airport.

Regulation 121 grants the Secretary the power to appoint certain individuals as ‘authorised persons’ in relation to airside vehicle parking. An ‘authorised person’ may perform certain functions such as:

- direct the driver of a vehicle that is parked in a designated no-parking area, or stopped in a designated no-standing area, to move the vehicle; or
- issue an ‘infringement notice’ to a vehicle driver who committed an infringement notice offence.

The amendments under items [1] to [4] broaden the category of persons who may be appointed by the Secretary, for purposes of regulations 114 and 121, as ‘authorised persons’ to include the following:

- an airport-operator company; or
- a contractor to an airport-operator company; or
- a sub-contractor to an airport-operator company; or
- an employee of a subcontractor to an airport-operator company; or

- any other person that the Secretary considers to be appropriate.

The amendments allow any person to be authorised by the Secretary, if the Secretary considers this person to be appropriate. The policy intention behind this is to reflect the variety of operational arrangements at the airports. The amendments allow the Secretary to appoint an ‘authorised person’ who is not contractually related to an airport-operator company, or not its subcontractor or employee. This allows the Secretary to address any emerging circumstances given the variety of operational arrangements at the airports.

In addition, it is necessary for the Regulations to provide for the situation where an airport-lessee company enables a subcontractor to undertake kerbside management of parking at the airports. Furthermore, to promote transparency and accountability, it may be necessary for the Secretary to appoint an ‘authorised person’ who was not engaged by the airport-operator company.

### **Item [5] – [6] Regulation 132**

Regulation 132 grants the Secretary the power to appoint certain individuals as ‘authorised persons’ in relation to airside vehicle operation. An ‘authorised person’ appointed under regulation 132 may perform certain functions including:

- requiring the driver of a vehicle to show the authorised person the driver’s ADA (authority to drive airside), the AUA for the vehicle (authority for use airside); or the driver’s ASIC (an identification card defined under regulation 129);
- giving directions to drivers pursuant to Division 4, Part 4 of the Principal Regulations;
- moving a vehicle that is illegally parked at an airside of the airport if the driver cannot be found or refuses to comply with a direction; or
- issuing an ‘infringement notice’ to a vehicle driver for breach of an infringement notice offence.

The amendments under items [5] to [6] broaden the category of persons who may be appointed as ‘authorised persons’ by the Secretary under regulation 132 to include the following:

- an airport-operator company; or
- an employee of a contractor to an airport-operator company; or
- a sub-contractor to an airport-operator company; or
- an employee of a subcontractor to an airport-operator company; or
- any other person that the Secretary considers to be appropriate.

Under existing regulation 132, ‘a contractor to an airport-operator company’ is included in the list of persons who may be appointed as ‘authorised persons’ but an ‘employee of a contractor to an airport-operator company’ has not been included. The policy intention is to allow the appointment of an employee of a contractor.

The amendments to regulation 132 make the list of persons who may be appointed under that regulation consistent with the categories of persons who may be appointed under regulations 114, 121 and 143.

### **Item [7] – [8] Regulation 143**

Regulation 143 grants the Secretary the power to appoint certain individuals as ‘authorised persons’ in relation to smoking. An ‘authorised person’ may issue an ‘infringement notice’ to persons who smoke at no-smoking areas.

The amendments under items [7] to [8] broaden the category of persons who may be appointed as ‘authorised persons’ by the Secretary under regulation 143 to include the following:

- an airport-operator company; or
- a contractor to an airport-operator company; or
- a sub-contractor to an airport-operator company; or
- an employee of a subcontractor to an airport-operator company; or
- any other person that the Secretary considers to be appropriate.

The amendments to regulation 143 make the list of persons who may be appointed under that regulation consistent with the categories of persons who may be appointed under regulations 114, 121 and 132.

### **Item [9] – Regulation 144, definition of ‘authorised person’**

Item [9] amends the definition of an ‘authorised person’ in existing regulation 144. An ‘authorised person’ for an infringement notice offence, means a person appointed by the Secretary as an authorised person for the provision of the Principal Regulations that creates the offence, or a person who is an authorised officer for Part 1A of the Principal Regulations.

Part 1A (Control of liquor in NSW) allows for the appointment of ‘authorised officers’ who are able to exercise certain powers including the issuance of infringement notices.

While Part 4 (Vehicles) and Part 6 (Smoking) refer to ‘authorised persons’, Part 1A (Control of liquor in NSW) refers to ‘authorised officers’.

To remove any doubt that the definition of an ‘authorised person for an infringement notice offence’ in regulation 144 also refers to the ‘authorised officers’, who are appointed and who perform functions under Part 1A, the definition in regulation 144 has been amended to include a reference to an ‘authorised officer’.