

EXPLANATORY STATEMENT

Select Legislative Instrument No. 11, 2017

Issued by the authority of the Minister for Infrastructure and Regional Development

Airports Act 1996

Airports (Protection of Airspace) Amendment Regulations 2017

The *Airports Act 1996* (the Act) establishes a system for the regulation of airports, including a regime for the protection of airspace surround airports.

Section 252 of 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.

Part 12 of the Act provides for the Commonwealth to regulate certain incursions into airspace around airports. Specifically, section 181 of the Act provides for a ‘prescribed airspace’ to be specified in, or ascertained in accordance with, the regulations, where it is in the interests of safety, efficiency or regularity of existing or future air transport operations into or out of an airport. Section 182 of the Act defines what ‘controlled activities’ are in relation to prescribed airspace. Section 183 prohibits the carrying out of controlled activities in relation to prescribed airspace, unless the activity is approved under the regulations or exempted by the regulations from Division 4 of Part 12 of the Act. Section 184 provides for the regulations to set out a regime for the approval of controlled activities. The *Airports (Protection of Airspace) Regulations 1996* (the Principal Regulations) provide such an approval regime but do not currently exempt any controlled activities from Division 4 of Part 12 of the Act.

The declaration of prescribed airspace for Sydney West Airport (SWA) will be an important element in ensuring the safety, efficiency and regularity of future air transport operations to and from SWA, by helping protect airspace at and around the airport from incompatible developments. It will also increase certainty for relevant land planning authorities who will be able to incorporate the Obstacle Limitation Surface (OLS) heights into their planning and development approval mechanisms.

The declaration of prescribed airspace for SWA – a regulatory action already permitted by the Principal Regulations and separate from the focus of these amendments – is an important step in helping protect the airspace from incompatible developments, once airspace is declared as ‘prescribed’. However, a range of activities on and around the airport site during airport construction and prior to air transport operations commencing to and from SWA may be ‘controlled activities’ and will require approval or exemption to be lawfully carried out. Some activities in that range would, by nature, have no impact on future air transport operations to and from SWA and therefore their regulation under Part 12 of the Act prior to operations commencing could impose unnecessary administrative and regulatory obligations on affected stakeholders. Furthermore, activities relating to the initial construction of the airport would not need to be regulated under Part 12 because they will be sufficiently regulated by the airport plan for SWA.

The *Airports (Protection of Airspace) Amendment Regulations 2017* (the Amending Regulations) amends the Principal Regulations to exempt certain controlled activities in

relation to the prescribed airspace for SWA from Division 4 of Part 12 of the Act. The Amending Regulations amend the Principal Regulations to do this.

Specifically, the Amending Regulations establishes exemptions covering three classes of controlled activities that may be carried out on and around the airport site prior to SWA being operational:

- the first exemption relates to activities involving buildings, structures or things no more than 10 metres high;
- the second exemption relates to activities that do not continue for more than 12 months and do not involve buildings, structures or things that intrude or will intrude into the prescribed airspace and that will not remain in place for longer than 12 months; and
- the third exemption relates to activities covered by the airport plan for SWA.

Consultation

The Amending Regulations were finalised after consultation with the Civil Aviation Safety Authority (CASA) and Airservices Australia as relevant regulatory bodies. CASA were consulted in recognition of their role as the regulatory authority responsible for defining the criteria by which the OLS is established, and for aviation safety generally. Airservices Australia were consulted in recognition of their future role in establishing air navigation procedures for SWA.

Regulation Impact Statement

The amendments are minor and machinery in nature. The Office of Best Practice Regulation advised that no analysis in the form of a Regulatory Impact Statement was not required for the Amending Regulations (OBPR ID: 22413).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment A](#).

The Amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Details of the Amending Regulations are set out in [Attachment B](#).

The Amending Regulations commence the day after they are registered on the Federal Register of Legislation.

Authority

The Amending Regulations amend existing regulations under section 252 of the *Airports Act 1996*. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Airports (Protection of Airspace) Amendment Regulations 2017

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Airports (Protection of Airspace) Amendment Regulations 2017 amends the Airports (Protection of Airspace) Regulations 1996 to exempt certain activities related to prescribed airspace for Sydney West Airport from the need for approval once airspace is declared at SWA but prior to operations commencing. during construction of the airport.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

The amendments are intended to exempt certain activities, relevant to an operating airport, from the need for approval, during the airport's construction period prior to operations commencing.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Paul Fletcher

Minister for Urban Infrastructure

ATTACHMENT B

Details of Airports (Protection of Airspace) Amendment Regulations 2017

Section 1 - Name of Regulations

Section 1 provides that the title of the Amending Regulations is the Airports (Protection of Airspace) Amendment Regulations 2017.

Section 2 - Commencement

Section 2 provides for the Amending Regulations to commence on the day after it is registered.

Subsection 2(2) confirms that column 3 in the commencement table under subsection 2(1) does not form part of the Amended Regulations. This allows the commencement date to be published in column 3.

Section 3 - Authority

Section 3 provides that the Amending Regulations are made under the Airports Act 1996.

Section 4 - Schedule(s)

Section 4 provides that the instruments specified in a Schedule to the Amending Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Regulations has effect according to its terms.

Schedule 1 - Amendments

Item 1 – Before regulation 1

This item inserts a new heading, “Part 1 – Preliminary”, before regulation 1 in the Principal Regulations.

Item 2 –Subregulation 3(1)

This item inserts two new definitions in subregulation 3(1) of the Principal Regulations.

Item 3 – Before regulation 5

This item inserts a new heading, “Part 2 – Prescribed airspace”, before regulation 5 in the Principal Regulations.

Item 4 – Before regulation 6A

This item inserts a new heading, “Part 3 – Matters affecting whether activities are controlled activities”, before regulation 6A in the Principal Regulations.

Item 5 – Before regulation 7

This item inserts a new heading, “Part 4 – Notification and approval of controlled activities”, before regulation 7 in the Principal Regulations.

Item 6 – Subregulation 7(1) note

This item repeals the note to subregulation 7(1) and substitutes it with two new notes. New note 1 states that a person may commit an offence against section 183 of the Act, and remedial orders may be made under section 187 of the Act, if a controlled activity is carried out other than in accordance with an approval. The purpose of this amendment is to consolidate in a single note the two existing notes to subregulations 7(1) and (2).

New note 2 clarifies that approval is not required for controlled activities that are covered by any of the exemptions provided by new Part 5 of the Principal Regulations (inserted by item 11 of the Amending Regulations).

Item 7 – Subregulation 7(2) (note)

This item is consequential to item 6.

Item 8 – Regulation 8

This item is consequential to item 9.

Item 9 – At the end of regulation 8 (after the note)

This item adds new subregulation 8(2) at the end of regulation 8, after the note. Regulation 8 currently requires a building authority that receives a proposal for a building activity that, if undertaken, would constitute a controlled activity to give notice of the proposal to the airport-operator company for the relevant airport or, if there is no airport-operator company, to the Secretary of the Department. Subregulation 8(2) disapplies this requirement if the proposed building activity would be a controlled activity that is exempted from Division 4 of Part 12 of the Act by new regulation 16A (inserted by item 11 of the Amending Regulations).

Item 10 – Subregulations 9(1) and (1A)

This item inserts the words “an application for approval of” after “applies to” in subregulations 9(1) and 9(1A). The purpose of this amendment is to clarify that regulation 9 of the Principal Regulations only applies where an application for approval is received for a proposed controlled activity that, if undertaken, would involve an intrusion into Procedures for Aviation Navigation Services - Aircraft Operations (PANS-OPS) airspace.

Item 11 – After regulation 16

This item inserts a new heading “Part 5 – Exemptions for controlled activities”, after regulation 16 in the Principle Regulations, and insert new regulation 16A.

New regulation 16A declares controlled activities in three classes to be exempt from Division 4 of Part 12 of the Act.

The first exemption appears in new subregulation 16(A)(2). It covers controlled activities that:

- are referred to in paragraph 182(1)(a), (b) or (c) of the Act;
- involve buildings, structures or things that intrude into the prescribed airspace for SWA but do not extend above ground level by more than 10 metres; and
- are not carried out after 31 December 2025.

The purpose of limiting this exemption to relevant controlled activities carried out before 1 January 2026 is to provide an appropriate period of time between the end date of the exemption and the anticipated commencement of air transport operations to and from SWA to enable affected stakeholders to develop sufficient awareness of, and familiarity with, the regulatory regime and approval requirements before SWA operations commence.

Illustrative Example

Tina is a resident of Silverdale Road, Silverdale and would like to build an extension to her house in 2019. While Tina's planned extension will not exceed the average height of a two storey house, which is less than 10 metres, it will intrude into the prescribed airspace for SWA (once declared) and will therefore involve a 'controlled activity' under the Act.

Under subregulation 16(A)(2), Tina's planned extension is exempt from Division 4 of Part 12 of the Act, as the proposed activity would not involve buildings etc that extend above ground level by more than 10 metres, and the extension would be completed before 1 January 2026. Therefore Tina does not need to seek an approval under the Principal Regulations for this work to proceed.

The second exemption appears in new subregulation 16(A)(3). It covers controlled activities that:

- relate to the prescribed airspace for SWA;
- are referred to in paragraph 182(1)(a), (b) or (c) of the Act;
- do not continue for more than 12 months;
- do not involve buildings, structures or things that intrude into the prescribed airspace for SWA and are intended to remain in place for longer than 12 months; and
- are not carried out after 31 December 2025.

The purpose of limiting this exemption to relevant controlled activities carried out before 1 January 2026 is to provide an appropriate period of time between the end date of the exemption and the anticipated commencement of air transport operations to and from SWA to enable affected stakeholders to develop sufficient awareness of, and familiarity with, the regulatory regime and approval requirements before SWA operations commence.

Illustrative Example

Richard is overseeing the construction of an office complex in St Marys. A crane will be required during the substantive construction phase of the office complex which is expected to take approximately nine months between February 2020 and October 2020. The crane will intrude into the prescribed airspace for SWA (once declared) and its use will therefore be a 'controlled activity' under the Act. However, the completed office complex will not penetrate the prescribed airspace.

Under subregulation 16(A)(3), the proposed use of the crane is exempt from Division 4 of Part 12 of the Act, as it would not continue for longer than 12 months, would end before 1 January 2026, and would not involve buildings etc that intrude into the prescribed airspace for SWA. Therefore Richard does not need to seek an approval under the Principal Regulations for this work to proceed.

The third exemption appears in new subregulation 16(A)(4). It covers controlled activities that:

- are, or comprise part of, developments covered by Part 3 of the airport plan for SWA; and
- are not carried out after 30 June 2026.

The Minister for Urban Infrastructure determined an airport plan for SWA under section 96B(1) of the Act on 5 December 2016. This exemption recognises the detailed assessment of the interaction between activities covered by Part 3 of the airport plan and airspace restrictions that was completed as part of the airport plan development process. The purpose of limiting this exemption to relevant controlled activities carried out before 1 July 2026 is to provide an appropriate period of time between the end date of the exemption and the anticipated commencement of air transport operations to and from SWA to enable affected stakeholders to develop sufficient awareness of, and familiarity with, the regulatory regime and approval requirements before SWA operations commence.

The end date for this exemption is six months later than the end dates for the exemptions in subregulations 16(A)(2) and (3), as it is expected that the predefined nature of activities covered by Part 3 of the airport plan enables a shorter transition time.

Item 11 also inserts a new heading, “Part 6 – Miscellaneous”, after new Part 5 in the Principal Regulations.