

EXPLANATORY STATEMENT

Public Works Committee Amendment (WSA Co Limited) Regulations 2017

Public Works Committee Act 1969

Legislative context

The *Public Works Committee Act 1969* (PWC Act) provides for the establishment of the Parliamentary Standing Committee on Public Works (PWC) to inquire into and report on public works referred to the PWC by the Parliament. In general, a public work the estimated cost of which exceeds \$15 million must be referred to the PWC before it commences.

Section 40 of the PWC Act provides that the Governor-General may make regulations, not inconsistent with the PWC Act, prescribing all matters that are required or permitted to be prescribed for carrying out or giving effect to the PWC Act.

Subsection 6A(1) of the PWC Act provides that the PWC Act applies to every authority of the Commonwealth. An authority of the Commonwealth includes an incorporated company over which the Commonwealth is in a position to exercise control. Subsection 6A(2)(a) provides that the PWC Act does not apply to authorities declared under subsection 6A(3). Subsection 6A(3) provides that, where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with another body or other bodies, or with persons, the Governor-General may make regulations declaring that the Act does not apply to that authority.

WSA Co Limited

WSA Co Limited is the company established by the Commonwealth to facilitate the development and operation of the Western Sydney Airport. WSA Co Limited is an authority of the Commonwealth for the purposes of the PWC Act. It is expected that WSA Co Limited will enter into contracts in the coming months for works involved in the initial airport development, with an estimated cost that exceeds \$15 million. These works would potentially be public works that require referral to the PWC before the contracts are granted. However, requiring these works to be subject to PWC scrutiny would place WSA Co Limited at a competitive and commercial disadvantage with its competitors.

WSA Co Limited was incorporated on 7 August 2017. As a wholly owned Commonwealth company limited by shares, WSA Co Limited is subject to the full rigours of both the *Corporations Act 2001* and the *Public Governance, Performance and Accountability Act 2013*, including relevant reporting and disclosure requirements and auditing or reporting on financial statements by the Auditor-General. It is anticipated that WSA Co Limited will be classified as a Public Non-Financial Corporation (PNFC). The PNFC sector comprises government-controlled corporations engaged in providing goods or services which are predominantly market based.

WSA Co Limited will be responsible for contracting significant works into the private construction market. Development works at existing federal airports are subject to a planning framework under the *Airports Act 1996* (Airports Act), and not generally subject to scrutiny by the PWC. The development of the Western Sydney Airport is likewise subject to the Airports Act. Under the Airports Act, airport lessee companies are required to prepare master plans every 5 years with consultation with the community and state and local government authorities. Each major development requires a major development plan, which includes a referral under the *Environment Protection and Biodiversity Conservation Act 1999*.

Purpose and operation of the Regulations

The purpose and effect of the Regulations is to declare WSA Co Limited, under subsection 6A(3) of the PWC Act, to be an authority of the Commonwealth to which the Act does not apply.

WSA Co Limited is, for the purposes of subsection 6A(3) of the PWC Act, currently engaged in activities preliminary to the provision of goods or services in competition with other bodies or persons. These activities themselves involve a competitive element. The airport will not be operational as an airport for a number of years while it is designed and constructed. However, competitive activities are inherent in every stage of its development including the early design work that is currently underway. The design stage of the airport includes ongoing consultations by WSA Co Limited with a number of parties, including prospective customers of the airport such as airlines, aviation support services and businesses that will potentially be located in the business park, to identify their requirements and commence discussions on commercial models and terms for their usage of the airport. The Regulations will therefore limit compliance overheads for WSA Co Limited, not experienced by other airport lessees, while maintaining appropriate planning oversight under the Airports Act.

Attachment B sets out a provision-by-provision overview of the Regulations.

Consultation

No persons or bodies have been identified as having such an interest in the Regulations as to warrant consultation.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement was not required for the Regulation (OBPR ID: 22414).

A Statement of Compatibility with Human Rights is set out in Attachment A.

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

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

ATTACHMENT A**Statement of Compatibility with Human Rights**

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

Public Works Committee Amendment (WSA Co Limited) 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 *Public Works Committee Amendment (WSA Co Limited) Regulations 2017* amends the *Public Works Committee Act 1969* to declare WSA Co Limited to be an authority of the Commonwealth to which the Act does not apply.

Human rights implications

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

The amendments are intended to limit the compliance overheads for WSA Co Limited, including administrative burden, and compliance costs and delays, not experienced by existing federal airports.

Conclusion

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

ATTACHMENT B**Details of the *Public Works Committee Amendment (WSA Co Limited) Regulations 2017*****Section 1 - Name of Regulations**

This section provides that the title of the Regulations is the *Public Works Committee Amendment (WSA Co Limited) Regulations 2017*.

Section 2 - Commencement

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

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

Section 3 - Authority

This section provides that the Regulations are made under section 6A of the *Public Works Committee Act 1969*.

Section 4 - Schedule(s)

Section 4 provides that each instrument that is specified in a Schedule to the 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 Regulations has effect according to its terms.

Schedule 1 - Amendments**Item [1] – section 7 (at the end of the table)**

This item adds new item 15 to the table in section 7 of the *Public Works Committee Regulation 2016* to add WSA Co Limited to the list of authorities of the Commonwealth to which the PWC Act is declared not to apply.