

EXPLANATORY STATEMENT

Select Legislative Instrument No. 07, 2018

Issued by the authority of the Minister for Urban Infrastructure and Cities

Airports Act 1996

Airports Amendment (Sydney West Airport Site) Regulations 2018

The *Airports Act 1996* (the Act) establishes a regulatory framework for federally leased 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.

Section 5 of the Act defines the term ‘airport site’ to mean a place that is:

- declared by the regulations to be an airport site; and
- a Commonwealth place; and
- used, or intended to be developed for use, as an airport (whether or not the place is used, or intended to be developed for use, for other purposes).

Regulation 1.03 of the *Airports Regulations 1997* (the Principal Regulations) declares places to be airport sites for the purposes of this definition. The airport site for Sydney West Airport is the declared place made up of the land described in Part 1.19A of Schedule 1 to the Principal Regulations. The purpose of the *Airports Amendment (Sydney West Airport Site) Regulations 2018* (the Amending Regulations) is to amend the Principal Regulations to update that description.

The Amending Regulations update the description of the place that is declared by the Principal Regulations to be the Sydney West Airport site, by removing certain parcels of land that are to be transferred or otherwise made available to New South Wales Roads and Maritime Services as part of the realignment corridor for The Northern Road, and by updating certain other title references.

Consultation

The Project Deed entered into between WSA Co Limited and the Commonwealth in relation to the development and operation of Sydney West Airport deals with variations to the airport site of this type. No other consultation on the Amending Regulations was considered necessary or appropriate.

Subsection 161(1) of the Act prevents the making of regulations that vary an airport site, if there is an airport lease for the site, unless the lessee has given written consent. However, there is not currently an airport lease relating to the Sydney West Airport site.

Regulation Impact Statement

A statement was obtained from the Office of Best Practice Regulation (OBPR) that a Regulatory Impact Statement was not required (OBPR ID 22697).

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 *Legislation Act 2003*. Details of the Amending Regulations are set out in Attachment B.

The Amending Regulations commenced on the day after it was 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.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Airports Amendment (Sydney West Airport) Regulations 2018

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 purpose of the legislative instrument is to amend the *Airports Regulations 1997* (the Regulations) to excise certain parcels of land from the Sydney West Airport Site definition under Part 1.19A(1) of Schedule 1 of the Regulations.

Human rights implications

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

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 and Cities

Details of the Airports Amendment (Sydney West Airport Site) Regulations 2018

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Airports Amendment (Sydney West Airport Site) Regulations 2018*.

Section 2 - Commencement

Subsection 2(1) provides for the Regulations to commence on the day after the instrument is registered.

Subsection 2(2) confirms that column 3 in the commencement table under proposed 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 the *Airports Act 1996*.

Section 4 - Schedule(s)

This section 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 – Regulation 12.02

This item replaces the reference in regulation 12.02 of the *Airports Regulations 1997* to subitem (2) of Part 1.19A of Schedule 1 to the *Airports Regulations 1997* with a reference to the proposed new subclause 19A(3) of that Schedule.

Item 2 – Subitems (1) and (2) of Part 1.19A of Schedule 1

The description of the place that is declared to be the airport site for Sydney West Airport currently appears in subitems (1) and (2) of Part 1.19A of Schedule 1 to the *Airports Regulations 1997*. This item replaces those subitems with a new clause 19A, which has 3 subclauses.

New subclause 19A(1) provides that the Sydney West Airport site is made up of the land specified in subclauses 19A(2) and (3).

New subclause 19A(2) provides a table of New South Wales certificates of title, and that the Sydney West Airport site includes the land specified in those certificates of title. In effect, the table in new subclause 19A(2) updates the table of New South Wales certificates of title that currently appears in subitem (1) of Part 1.19A of Schedule 1 to the *Airports Regulations 1997*.

New subclause 19A(3) provides that the Sydney West Airport site also includes the area of land which the subclause describes by reference to its boundaries. New subclause 19A(3) describes the same area of land as currently described in subitem (2) of Part 1.19A of Schedule 1 to the *Airports Regulations 1997*, but with updated title references for certain adjacent parcels of land.

Section 251B of the *Airports Act 1996* makes clear that the *Airports Regulations 1997* may be amended to specify a place to be an airport site even if a part of the place is not a Commonwealth place at the time that the amending regulation commences. New subclause 19A(3) describes an area of land that is not currently a Commonwealth place, but will form part of the Sydney West Airport site if and when the Commonwealth acquires the land, provided that the land will be used, or intended to be developed for use, as an airport.