

EXPLANATORY STATEMENT

Select Legislative Instrument No. 08, 2018

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

Airports Act 1996

Airports Legislation Amendment (Sydney West Airport Measures No. 1) Regulations 2018

The *Airports Act 1996* (the Act) establishes a framework for the regulation of 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.

Part 5 of the Act regulates land use, planning and building activities on the sites of federally-leased airports. This provides for the determination of an airport plan for Sydney West Airport to act as a transitional measure, which authorises the initial airport development, and specifies the Australian Government's requirements for the airport. On 5 December 2016, the Minister for Urban Infrastructure determined the *Western Sydney Airport: Airport Plan* (the Airport Plan); it is available to download free of charge on the Western Sydney Airport website at <http://westernsydneyairport.gov.au/>.

Part 6 of the Act regulates environmental management at federally-leased airports.

Once the Commonwealth grants an airport lease for Sydney West Airport, Parts 5 and 6 of the Act will apply in full to the airport, along with the *Airports (Building Control) Regulations 1996* (Building Control Regulations) and the *Airports (Environment Protection) Regulations 1997* (Environment Protection Regulations).

The purpose of the *Airports Legislation Amendment (Sydney West Airport Measures No. 1) Regulations 2018* (the Amending Regulations) is to make specific amendments to the Building Control Regulations and the Environment Protection Regulations to facilitate the transition of Sydney West Airport into the management regimes prescribed by Parts 5 and 6 of the Act respectively.

Part 5 of the Act imposes, through section 99, a general prohibition on the carrying out of unapproved building activities on relevant airport sites and, through section 106, a general prohibition on the occupation or use of buildings and works on relevant airport sites without a certificate of compliance. The Building Control Regulations provide certain exemptions from the prohibitions in sections 99 and 106 of the Act.

The Amending Regulations amend the Building Control Regulations to exempt building activities involved in the TransGrid Relocation Works from the prohibition in section 99 of the Act, and to exempt the resulting buildings and works from the prohibition in section 106 of the Act. This removes the need for a building approval or compliance certificate to be granted or issued in relation to the works.

The TransGrid Relocation Works will relocate a section of high voltage transmission line that crosses the Sydney West Airport site and is incompatible with the development of the airport. The works are a development authorised by Part 3 of the Airport Plan, and specifically addressed by condition 4 in section 3.10.2 of the Airport Plan.

This activity is sufficiently unique to justify a different regulatory treatment. As an authorised network operator with self-determining powers under New South Wales legislation, TransGrid would not ordinarily be subject to such external approval requirements. Further, a large portion of the works will occur prior to the grant of an airport lease for Sydney West Airport. The Commonwealth also has assurance that the works will be of an appropriate standard through the approved TransGrid Relocation Plan, which TransGrid submitted under condition 4 of the Airport Plan; a copy is available to download free of charge on the TransGrid website at <https://www.transgrid.com.au/what-we-do/projects/current-projects/Line%2039>.

The Environment Protection Regulations impose duties on the operators of undertakings at federally-leased airports, set standards for pollution and noise, and provide for monitoring, reporting and remedial action, for the purposes of Part 6 of the Act. The Environment Protection Regulations contain many provisions that refer to an airport's final master plan or the environment strategy embodied in the final master plan.

Under Division 3 of Part 5 of the Act, each federally-leased airport is required to have a final master plan in force. Under subsection 75(1A) of the Act, however, Sydney West Airport will not be required to have a final master plan until at least five years after airport lease grant.

The Amending Regulations amend certain provisions of the Environment Protection Regulations that refer to an airport's final master plan or environment strategy so that, for Sydney West Airport, the Airport Plan can stand in place of a final master plan or environment strategy between airport lease grant and the first final master plan approval. The amended provisions are intended to refer to the Airport Plan as in force from time to time.

Consultation

TransGrid, as the entity undertaking the TransGrid Relocation Works, and WSA Co Limited, as the Government Business Enterprise established to develop Sydney West Airport, were notified of the amendments and did not raise any issues. More detailed consultation was not considered appropriate given the nature of the amendments.

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: 22889 and OBPR ID: 22829).

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.

Statement of Compatibility with Human Rights

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

Airports Legislation Amendment (Sydney West Airport Measures No. 1) 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

Airports Legislation Amendment (Sydney West Airport Measures No. 1) Regulations 2018 amend the Airports (Building Control) Regulations 1996 (Building Control Regulations) and the Airports (Environment Protection) Regulations 1997 (Environment Protection Regulations), respectively, to:

- exempt certain utilities relocation works within the Sydney West Airport site from the building control provisions under the Building Control Regulations.
- enable the *Western Sydney Airport: Airport Plan* to stand in place of a final master plan and/or environment strategy in the period between the grant of an airport lease and the approval of the first Sydney West Airport Final Master Plan.

Human rights implications

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

The amendments are intended to clarify the application of the Building Control Regulations and the Environment Protection Regulations to the Sydney West Airport and are minor and machinery in nature.

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

ATTACHMENT B

Details of the Airports Legislation Amendment (Sydney West Airport Measures No. 1) Regulations 2018

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the Airports Legislation Amendment (Sydney West Airport Measures No. 1) 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 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

Airports (Building Control) Regulations 1996

Item 1 – Before subregulation 2.24(1)

This item inserts a new heading, “Exempt building activities on airport sites generally”, before subregulation 2.24(1) of the *Airports (Building Control) Regulations 1996*.

Item 2 –Subregulation 2.24(1) (note)

This item repeals the note to subregulation 2.24(1).

Item 3 – After subregulation 2.24(1)

This item inserts a new heading, “Additional exempt building activities on airport site for Sydney West Airport”, after subregulation 2.24(1), and inserts the new subregulation 2.24(1A).

New subregulation 2.24(1A) is made for subparagraphs 99(1)(e)(i) and (3)(e)(i) of the *Airports Act 1996*. It declares certain kinds of building activities to be exempt from Subdivision C of Division 5 of Part 5 of the Act. Specifically, it declares an exemption for building activities that are carried out on the Sydney West Airport site wholly or partly before the Sydney West Airport completion day, and are, or are incidental to, any of the following:

- (a) installation of an underground high-voltage transmission cable;
- (b) construction of points of transition, of an underground high-voltage transmission cable from underground to above ground, on or near the boundary of the airport site for Sydney West Airport;
- (c) construction of access roads and crossing structures to facilitate:

- (i) a building activity that is described in paragraph (a) or (b); and
- (ii) access for maintenance;
- (d) removal of an above-ground high-voltage transmission line.

The purpose of this amendment is to remove the need for any building approval to be granted in relation to the TransGrid Relocation Works. The TransGrid Relocation Works are being carried out by the utility provider, TransGrid. The works have commenced, and are scheduled to be ongoing at the time when an airport lease is granted for Sydney West Airport.

New subregulation 2.24(1A) also includes the clarifying statement that it does not limit the operation of subregulation 2.24(1) in relation to the Sydney West Airport site.

In addition, this item inserts a new heading “Notifying airport building controller of exempt building activity”, after new subregulation 2.24(1A).

Item 4 – Before subregulation 2.24(3)

This item inserts a new heading, “Certifying safety of building repaired or altered because of emergency”, before subregulation 2.24(3).

Item 5 – Before subregulation 2.24(4)

This item inserts a new heading, “Keeping and inspecting records relating to exempt building activities”, before subregulation 2.24(4).

Item 6 – At the end of Part 3

This item adds the new regulation 3.17 at the end of Part 3.

New regulation 3.17 is made for paragraphs 106(1)(e) and (4)(e) of the Act.

New subregulation 3.17(1) declares that buildings, structures, earthworks, engineering works, electrical works, hydraulic works or eligible alterations (as defined in section 105 of the Act) resulting from building activities to which new subregulation 2.24(1A) applies are exempt from Subdivision D of Division 5 of Part 5 of the Act. The purpose of this amendment is to remove the need for any compliance certificate to be issued in relation to the TransGrid Relocation Works.

The note to subregulation 3.17(1) summarises the effect of new subregulation 2.24(1A).

New subregulation 3.17(2) makes clear that the addition of new subregulation 3.17 does not limit the operation of regulation 3.16 in relation to the Sydney West Airport site.

Airports (Environment Protection) Regulations 1997

Item 7: After subregulation 2.03(1)

This item inserts the new subregulation 2.03(1A) after subregulation 2.03(1) of the *Airports (Environment Protection) Regulations 1997*. New subregulation 2.03(1A) provides that paragraphs 2.03(1)(b) and (e), and the rest of the *Airports (Environment Protection) Regulations 1997* so far as they are affected by either of those paragraphs, apply in relation to Sydney West Airport and a time before the first final master plan comes into force for the airport as if the words “a final master plan” were omitted from the paragraphs and the words “an airport plan” were substituted.

Item 8: After subregulation 5.04(2)

This item inserts the new subregulation 5.04(2A) after subregulation 5.04(2). New subregulation 5.04(2A) provides that paragraph 5.04(2)(c) applies to consideration, of an application for approval of a local standard for Sydney West Airport, before the first final master plan comes into force for the airport, as if the words “the objectives and proposed measures set out in the environment strategy” were omitted from the paragraph and the words “an airport plan for the airport” were substituted.

Item 9: After subregulation 5.09(2)

This item inserts the new subregulation 5.09(2A) after subregulation 5.09(2). New subregulation 5.09(2A) provides that paragraph 5.09(2)(g) applies to consideration of an application for an authorisation relating to Sydney West Airport before the first final master plan comes into force for the airport as if the words “the objectives and proposed measures set out in the environment strategy” were omitted from the paragraph and the words “an airport plan for the airport” were substituted.

Item 10: After subregulation 6.03(1)

This item inserts the new subregulation 6.03(1A) after subregulation 6.03(1). New subregulation 6.03(1A) provides that paragraph 6.03(1)(b) applies in relation to Sydney West Airport and a report for a financial year, or other reporting period, ending before the first final master plan comes into force for the airport as if the words “achieving the policies and targets of the environment strategy” were omitted from the paragraph and the words “complying with the conditions in an airport plan for the airport” were substituted.

Item 11: Regulation 6.12

This item inserts “(1)” before “A report” in regulation 6.12.

Item 12: At the end of regulation 6.12

This item adds the new subregulation 6.12(2) at the end of regulation 6.12. New subregulation 6.12(2) provides that paragraph 6.12(1)(a) applies to a report of an examination carried out in relation to Sydney West Airport before the first final master plan comes into force for the airport as if the words “the final master plan (if any)” were omitted from the paragraph and the words “an airport plan” were substituted.

Item 13: After subclause 2.05(3) of Schedule 4

This item inserts the new subclause 2.05(3A) after subclause 2.05(3) of Schedule 4. New subclause 2.05(3A) provides that clause 2.05 of Schedule 4 applies to noise generated from ground-based aircraft running at Sydney West Airport before the first final master plan comes into force for the airport as if:

- the words “express provision in the final master plan” were omitted from paragraph 2.05(2)(b) and the words “the conditions in an airport plan” were substituted, and
- the words “final master plan (if any)” were omitted from paragraph 2.05(3)(e) and the words “conditions in an airport plan” were substituted.

Item 14: Subclause 2.05(4) of Schedule 4

This item omits the word “regulation” from subclause 2.05(4) of Schedule 4 and substitutes the word “clause”.

Item 15: After subclause 4.01(2) of Schedule 4

This item inserts the new subclause 4.01(2A) after subclause 4.01(2) of Schedule 4. New subclause 4.01(2A) provides that paragraph 4.01(2)(b) applies to a measurement of noise generated at, over or under Sydney West Airport before the first final master plan is in force for the airport as if the words “detailed in the final master plan (if any)” were omitted from subparagraph 4.01(2)(b)(ii) and the words “required by the conditions in an airport plan” were substituted.