

EXPLANATORY STATEMENT

Issued by the authority of the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

Subject – *Airports Act 1996*

Airports (Major Airport Developments) Determination 2021

INTRODUCTION

The instrument is made by the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development (the Minister) under subsection 89(8) of the *Airports Act 1996* (the Act). Subsection 89(8) provides a mechanism to enable the Minister to make a legislative instrument to determine the costs of construction for the purpose of establishing the threshold amount triggering the preparation of Major Development Plans (MDPs).

OUTLINE

The Government regulates planning and development on federally-leased airport sites through the Act. Measures contained in the amendments to the Act passed in 2018, fine-tuned the existing regulations under the Act and streamlined policy intentions. The amendments reinforced the Government's commitment to implement measures consistent with its deregulation and productivity agendas. It offers a more proportionate and efficiency-based regulatory approach, which reduces administrative and compliance costs for airport operators. It also creates regulatory certainty for industry and maintains appropriate and effective regulatory oversight. The amendments were passed by the Parliament on 12 September 2018 and received Royal Assent on 21 September 2018.

This legislative instrument sets out the costs which must be included and excluded when calculating the construction cost of a project for the purpose of determining whether it triggers the preparation of a MDP under subsection 89(8)(a) of the Act.

Under this instrument, the following costs, which must be included when estimating the cost of construction under subsection 89(7)(a) of the Act, are:

- site establishment;
- undertaking earthworks;
- constructing the following (if applicable):
 - footings;
 - structure;
 - cladding;
 - roofing;
- constructing or installing base services (such as plumbing, drainage, electrical, communications, heating and cooling);
- builders' margins (the percentage added to the cost price of a building project); and
- for a development that consists of constructing a new building:
 - constructing car parking facilities for use by the building's occupants or visitors; and
 - installing base building fit-out.

All of the above elemental costs will include material, labour, freight, margins, and all applicable taxes (excluding the Goods and Services Tax (GST)).

Under the instrument, the following costs should not be included in the calculations of the cost of construction for the purpose of subsection 89(7)(b):

- design, legal and financial consultant fees;
- construction contingencies;
- installing tenant-specific fit-out costs and tenant-supplied items, including signage;
- obtaining permits, approvals or authorisations (however described);
- site remediation;
- constructing trunk infrastructure;
- financial incentives offered to attract tenants;
- car parking to which does not apply to included car parking costs;
- landscaping, external paving and fencing; and
- Goods and Services Tax (GST).

Details of the Instrument are set out in **Attachment A**.

Consultation before making

Consultation was undertaken with State government planning authorities, local councils, airport Planning Coordination Forums, and airport Community Aviation Consultation Groups members in 2014 and 2015. Further consultation with the Australian Airports Association and Airport-Lessee Companies on the cost of construction was undertaken after the amendments to the Act were passed in 2018 to inform the drafting of the legislative instrument.

Compatibility

This Disallowable Legislative Instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out in **Attachment B**.

The Airports (Major Airport Developments) Determination 2021 is a legislative instrument for the purposes of the Legislation Act 2003.

The Determination commenced on the day after it was registered.

Details of the Airports (Major Airports Developments) Determination 2021

Section 1 – Name

This section provides that the title of the instrument is the Airports (Major Airport Developments) Determination 2021.

Section 2 – Commencement

This instrument commences on the day after is it registered.

Section 3 – Authority

This instrument is made under subsection 89(8) of the *Airports Act 1996*.

Section 4 – Definitions

This section sets out the definitions for terms used throughout the instrument.

The definition of GST has the same meaning as in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Embanking means the construction of a wall to protect, enclose, or confine (a waterway, road, etc).

Section 5 – Costs associated with an activity or thing

Lists the costs included within costs associated with activities or things in sections 6 and 7 of the instrument.

Section 6 – Costs included in cost of construction

Lists the costs to be included in the cost of construction.

Site establishment is defined as including site conditions and preliminaries, including personnel accommodation, offices, amenities, contractors' meeting rooms, ablutions blocks, safety, fire and emergency apparatus specific to the project being costed.

Constructing or installing base services is defined as plumbing, drainage, electrical, communications, heating and cooling.

Builders' margins is defined as the percentage added to the cost price of a building project.

Section 7 – Costs not included in cost of construction

Lists the costs to be included in the cost of construction.

Construction contingencies are defined as a cost set aside to cover any unexpected costs that can arise throughout a construction project. The contingency is in reserve and is not allocated to any specific area of work and acts as insurance against other, unforeseen costs.

Constructing trunk infrastructure is defined as a higher order development infrastructure supplied by the State/Territory or Local Government level infrastructure agency and primarily intended to provide network distribution and collection functions or to provide services shared by a number of developments.

Statement of Compatibility with Human Rights

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

Airports (Major Airport Developments) Determination 2021

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 Airports (Major Airport Developments) Determination 2021 legislative instrument (the Instrument) advises airport-lessee companies (ALCs) of the items which will be included and excluded in the cost of construction calculation for Major Development Plans (MDPs).

The instrument will promote transparency in the MDP process, consistency in project cost considerations across all federally-leased airports, and regulatory certainty for the airport operators regarding the Government's expectations in the application of the legislation.

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.