

# EXPLANATORY STATEMENT

## Airports Regulations 2024

Approved by the Hon Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government

### **Legislative authority**

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

Section 252 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Act identifies a range of matters which may be prescribed by regulations (more details in the notes on sections at [Attachment A](#)).

The instrument is a disallowable legislative instrument for the *Legislation Act 2003*.

### **Purpose and operation of the instrument**

#### *Operation*

The Airports Regulations 2024 (the regulations) prescribe a range of matters to support the operation of the Act, including to:

- apply the regulatory framework in the Act to prescribed leased federal airports, in addition to core-regulated airports regulated under the Act;
- define the boundaries of each airport site;
- prescribe additional requirements for master plans and major development plans beyond what is required in the Act; and
- provide detail for how various regulatory mechanisms established by the Act operate in practice, for example in relation to subleasing and licencing, and monitoring by the Australian Competition and Consumer Commission (ACCC) of financial and quality of service matters.

This instrument replaces the Airports Regulations 1997, which sunset on 1 April 2024. Sunsetting is an automatic repeal of instruments after a fixed period, under the *Legislation Act 2003*. The aim is to ensure instruments remain fit for purpose and only in force for so long as required. One part of the Airports Regulations 1997, relating to the ownership and control of airport-operator companies, has been replaced by the Airports (Ownership) Regulations 2024.

The sunsetting date was set by the Legislation (Airport Instruments) Sunset-altering Declaration 2018, which allowed for a thematic review of a number of instruments related to

airports, including the Airports (Ownership—Interests in Shares) Regulations 1996 and the Airports Regulations 1997.

Public consultation in early 2022, as part of the review of the sunseting regulations, confirmed that there were opportunities to consolidate regulations about airport ownership in a single instrument, to modernise the regulations, and to streamline requirements for subleasing and licensing.

The main purpose of this explanatory statement is to outline the changes that have been made as part of the remaking process. The Federal Register of Legislation provides the legislative history of the sunseting instrument, including past explanatory statements.

### *Consolidation*

The Airports (Ownership) Regulations consolidate all regulations relating to the ownership and control of airport-operator companies, made under or in relation to Part 3 of the Airports Act, into a single set of regulations. It replaces Part 3 of the Airports Regulations 1997 and Part 3 of the Airports (Ownership—Interests in Shares) Regulations 1996. This consolidation could help regulated entities and the public to better navigate these regulations and the regulatory obligations contained in them.

### *Modernisation*

The regulations have been updated to more closely align with the drafting of the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they replace. For example:

- A range of changes to language have been made throughout the instrument – see the notes on sections at [Attachment A](#) for details.
- Definitions have generally been consolidated into section 5 in the regulations. Some definitions are no longer required so have been removed, for example due to the changes to the sublease and licencing provisions and removal of transitional provisions that are no longer required.
- Spent and redundant provisions have not been replaced in the new instrument.

### *Subleasing and licensing*

Subleasing and licensing requirements have been simplified in the regulations. The objective is to maintain the risk-based oversight of subleases and licences, while reducing regulatory burden for airport-operator companies and businesses operating on airport sites.

The requirement for airport-operator companies and their tenants to seek approval of subleases or licences before entering into these commercial arrangements has been removed. Subleases and licences will be permitted by default, provided that they meet certain requirements (are not a kind of prohibited sublease or licence, and includes the required mandatory terms).

The notes on sections at [Attachment A](#) describe these changes in more detail.

## **Consultation**

### *Policy*

The department conducted public consultation on policy through a survey on the sunseting regulations in 2017, and from January to March 2022 through a consultation paper (with the paper and non-confidential submissions published on the [department's website](#)).

### *Draft regulations*

An exposure draft was released for public consultation on 6 September 2023, and consultation closed on 17 October 2023. The Australian Competition and Consumer Commission, Auditing and Assurance Standards Board, and Australian Accounting Standards Board were also consulted on draft regulations.

### *Schedule 1 updates*

The airport-lessee companies for Sydney West Airport and Bankstown Airport have consented under section 161 of the Act for the making of the regulations that vary the airport sites for those airports (see notes on sections for Schedule 1 to the regulations).

## NOTES ON SECTIONS

### Part 1 – Preliminary

#### Section 1 – Name

1. Section 1 names this instrument the *Airports Regulations 2024*.

#### Section 2 – Commencement

2. The section provides that the regulations will commence on 1 April 2024. This is the same date that the Airports Regulations 1997 are due to sunset, although this section could be amended to provide for earlier commencement, depending on when the regulations are made.

#### Section 3 – Authority

3. The *Airports Act 1996* provides authority for this instrument to be made.

#### Section 4 – Schedule 2

4. This section incorporates Schedule 2 to these regulations as part of this instrument, and gives it effect. Schedule 1 to the regulations is incorporated by section 6 of the regulations.

#### Section 5 – Definitions

5. Most defined terms used in these regulations are defined in the Act. A non-exhaustive list of examples is given in the note to section 5 of the regulations. Section 5 provides some additional definitions that have effect for these regulations.
6. To the extent possible, definitions have been consolidated in section 5. In the previous Airports Regulations 1997, definitions were contained in each Part.
7. When the term *Act* is used in this instrument, it means the *Airports Act 1996*. Other Acts referenced in this instrument are referred to each time using their short title, for example, the *Corporations Act 2001*.
8. The term ***aeronautical services and facilities*** is defined in section 20 of the regulations. It means services and facilities at an airport that are necessary for the operation and maintenance of civil aviation at the airport, and includes aircraft-related and passenger-related services and facilities (further defined in subsections 20(3) and (4) respectively).
9. The term ***associate*** has the same meaning as defined in clause 5 of the Schedule to the Act. This is a concept that is used in the restrictions on ownership and control of airport-operator companies for the purpose of Part 3 of the Act and the Airports (Ownership) Regulations 2024. It is also used in paragraphs 11(a) and 13(a) of the regulations, which set out that a mandatory term of a sublease or licence is that it is automatically terminated if an interest is created in the sublease or licence in favour of a

person (alone or with associates) who can exercise substantial control or direction over the operation or development of the airport.

10. **Environment Department** means the department administered by the Commonwealth Environment Minister. Subsection 5(1) of the Act defines **Environment Minister** as the Minister who administers the *Environment Protection and Biodiversity Conservation Act 1999*. The Environment Department is currently the Commonwealth Department of Climate Change, Energy, the Environment and Water. If necessary in future, the Administrative Arrangements Orders published by the Department of the Prime Minister and Cabinet (see [www.pmc.gov.au/resources](http://www.pmc.gov.au/resources)) should be considered in determining which department is the Environment Department.
11. The definition of **non-aeronautical services and facilities** clarifies that such services and facilities must be provided at an airport in order to be counted in financial reports (see paragraph 22(3)(b) of the regulations), consolidated financial reports (see paragraph 22(6)(b)) and airport staffing reports (see subsection 26(2)). Services and facilities provided outside of the airport site, such as those operated by the airport-operator company at a different location would not be included.
12. **Secretary** means the Secretary (head) of the department responsible for administering the Act. This currently refers to the Secretary of the Commonwealth Department of Infrastructure, Transport, Regional Development, Communications and the Arts. If necessary in future, the Administrative Arrangements Orders published by the Department of the Prime Minister and Cabinet (see [www.pmc.gov.au/resources](http://www.pmc.gov.au/resources)) should be considered in determining which department is responsible for administering the Act.
13. **Site of indigenous significance** is defined by reference (in summary) to sites of customary significance to Aboriginal or Torres Strait Islander peoples, or of anthropological or archaeological significance. This term is used in these regulations for the purpose of ensuring that such sites are considered as part of the broader planning framework under the Act (e.g. detailed in environment strategies within a master plan).
14. There could be future opportunities to consider alignment of the term **site of indigenous significance**, or the content of the definition, with other related concepts about protection of First Nations cultural heritage and with culturally appropriate language. Detailed consideration of these opportunities was outside of the scope of the sunset review of the Airports Regulations 1997 as the government's First Nations Cultural Heritage Reform process remains underway. The outcomes of this process could inform consideration of change to the definition, to support a more consistent approach to these issues across government, and involve consultation with First Nations people on policy that concerns them.

## Section 6 – Airport sites

15. This section lists the 22 airports that are **airport sites** for the purpose of section 5 of the Act. This in effect provides that the following airports are within the scope of regulation by the Act:
  - Adelaide Airport;

- Alice Springs Airport;
- Archerfield Airport;
- Bankstown Airport;
- Brisbane Airport;
- Camden Airport;
- Canberra Airport;
- Darwin International Airport;
- Essendon Fields Airport;
- Gold Coast Airport;
- Hobart International Airport;
- Jandakot Airport;
- Launceston Airport;
- Melbourne (Tullamarine) Airport;
- Moorabbin Airport;
- Mount Isa Airport;
- Parafield Airport;
- Perth Airport;
- Sydney (Kingsford-Smith) Airport;
- Sydney West Airport, which is also known as the Western Sydney International (Nancy-Bird Walton) Airport;
- Tennant Creek Airport; and
- Townsville Airport.

16. The boundaries of each airport site are described in Schedule 1.
17. Given the effect of the definition of *airport site* in section 5 of the Act, and principles of regulation for Commonwealth places under section 52(i) of the Constitution, generally it should be expected that if the Commonwealth no longer owns a parcel of land described in Schedule 1, the Act and regulations will no longer apply in relation to that land.
18. This section has a similar intended effect as the previous regulation 1.03 of the Airports Regulations 1997. Subregulation 1.03(2) has not been replaced as it is appropriate to rely on subsection 5(2) of the Act, which sets out similar matters about the preservation of references to land.

## **Part 2 – Leasing and management of airports**

### **Section 7 – Airports to which Part 2 of the Act applies**

19. Part 2 of the Act and Part 2 of the regulations impose regulatory controls on the leasing and management of airports.
20. This section establishes that those controls on leasing and management apply to all 22 airports regulated under the Act (all core-regulated airports are covered because of paragraph 12(1)(a) of the Act, and this section provides that the remainder of the airports are covered).

21. This section has the same intended effect as the previous regulation 2.01A of the Airports Regulations 1997.

### **Section 8 – Grounds for refusing to approve the transfer of an airport lease**

22. Subsection 24(1) of the Act provides that an airport lease must not be transferred without the written approval of the Minister. Subsection 24(3) of the Act sets out the grounds on which the Minister can refuse to approve the transfer. Paragraph 24(3)(a) of the Act enables the regulations to prescribe additional grounds. Section 8 of the regulations is made for this purpose.
23. The Minister must be satisfied of at least one ground set out in subsection 8(2) of the regulations, or the ground set out in subsection 8(3) of the regulations, to refuse to approve the transfer of an airport lease under paragraph 24(3)(a) of the Act.

#### *Relationship with previous regulations*

24. Section 8 is based on the previous regulation 2.02 of the Airports Regulations 1997, with a similar intended effect.
25. The grounds in paragraphs 8(2)(a) to (c) for refusing to approve the transfer of an airport lease are now expressed in terms of the Minister being satisfied that certain circumstances exist, rather than as an objective fact that certain circumstances exist. This makes these grounds more feasible to establish in practice. These grounds are about the proposed transferee not having the financial resources and managerial capability necessary to operate the airport and provide high quality airport services, the transfer being destructive of the diversity of ownership of Australian airports, and the transfer causing unfair treatment of employees or loss of employee entitlements. Other grounds in section 8 were already expressed in terms of the Minister’s satisfaction.
26. The standard of being “satisfied” is also applied for consistency with the Act (this standard is applied in many other instances across the Act for decisions of the Minister).
27. A few changes have been made to meet modern drafting standards, to improve clarity and to more closely align with the drafting of the Act, including:
  - There is a clearer reference to “financial resources” in paragraph 8(2)(a) instead of “financial strength”.
  - There is a more comprehensive reference to “accrued employment benefits of the employees” not being preserved or otherwise being “adversely affected” in subparagraph 8(2)(c)(ii), instead of the simpler reference to “accrued benefits not preserved”.
  - The ground in paragraph 8(2)(d) for the refusal to approve the transfer of an airport lease has been clarified. The paragraph now provides that the Minister must be satisfied that the proposed transferee will not act responsibly in matters affecting the environment *arising from the operation or management of the airport*. The subject of section 10 of the regulations and section 24 of the Act is

about the transfer of a lease, and therefore considerations must be relevant to fitness to be an airport-lessee company, and the function of an airport-lessee company is to operate/manage an airport. For example:

- Proposed transferee for Airport A also operates another airport (Airport B – not a leased federal airport covered by the Act), and Airport B has a substantial record of non-compliance with its environmental obligations (on the public record with criminal convictions or civil penalties), causing environmental damage to waterways and land adjoining the airport. In considering whether the proposed transferee will act responsibly in matters affecting the environment (including the environment in and outside the airport site) arising from the operation or management of Airport A, the Minister may consider the proposed transferee’s environmental track record in operating Airport B. As part of ordinary procedural fairness, the proposed transferee would have an opportunity to establish that they would act responsibly in matters affecting the environment for Airport A, for example by giving details about how they have addressed systemic failures that led to the non-compliance for Airport B.
- If the Minister had a concern that the proposed transferee will not act responsibly in matters affecting the environment generally, but did not have any specific concerns in relation to their operation or management of the airport for which the transfer of lease was sought, then this would not be a relevant concern for the purpose of paragraph 8(2)(d).

## **Section 9 – Criteria for approval of airport-management agreement or variation of an agreement**

28. Section 33 of the Act regulates airport-management agreements. An *airport-management agreement* is defined in subsection 33(7) of the Act, and is in effect an agreement which enables a person to exercise substantial control or direction over the operation of the airport, with limited exceptions.
29. The Minister may refuse to approve an airport-management agreement if the Minister is satisfied of a matter specified in subsection 33(3) of the Act (about breach of ownership restrictions) or on a ground specified in the regulations.
30. The criteria for approval of an airport-management agreement, and for the approval of the variation of an airport-management agreement are the same, and prescribed by subsection 9(2) of the regulations (paragraphs 33(4C)(a) and (4F)(a) of the Act). These criteria broadly relate to arrangements that can be made if the airport-management agreement is terminated, to provide continuity in the management and operation of the airport.



31. In addition to these prescribed matters, the Minister must also have regard to other matters the Minister considers relevant when deciding whether to approve an agreement or variation (paragraphs 33(4C)(b) and (4F)(b) of the Act).

*Relationship with previous regulations*

32. This section has the same intended effect as the previous regulation 2.03 of the Airports Regulations 1997. A few changes have also been made to meet modern drafting standards, to improve clarity and to more closely align with the drafting of the Act, including:
- a different section heading and new subsection 9(1) to clarify the operation of the section and its links to the Act; and
  - improvements to structure, for example in paragraphs 9(2)(b) and (3)(a).

**Sections 10 to 13 – Prohibited kinds of subleases and licences, mandatory terms in subleases and licences**

*Operation*

33. Sections 10 and 12 prohibit the following subleases and licences:
- for a purpose that is inconsistent with the use as an airport of the airport site concerned;
  - that have a duration longer than the total duration of the airport lease, including the initial term of the lease, plus any options that could be exercised;
  - for the purposes of prostitution.
34. Sections 10 and 12 are made under sections 34 and 35 of the Act, which allow the regulations to prohibit specified kinds of subleases and licences.
35. Sections 11 and 13 require that a specified term be included in a sublease or licence (and further subleases or licences of these e.g. sub-subleases). Essentially, the term must be to the effect that the sublease or licence is automatically terminated if an interest is created in the sublease or licence in favour of a person who can exercise substantial control or direction over the operation or development of the airport.
36. The consequence of granting a sublease or licence in contravention of these requirements is that it will be of no effect (subsections 34(3), 34B(3), 35(3) and 35B(3) of the Act).

*Relationship with previous regulations*

37. Subleasing and licensing requirements have been simplified, compared with the previous regulations 2.04 to 2.21 of the Airports Regulations 1997. The objective is to maintain the risk-based oversight of subleases and licences, while reducing regulatory burden for airport-operator companies and businesses operating on airport sites.
38. The requirement for airport-operator companies and their tenants to seek approval of subleases or licences before entering into these commercial arrangements has been abolished. Subleases and licences will be permitted by default, provided that they meet

certain requirements (i.e., they are not a prohibited kind of sublease or licence, and they include the prescribed mandatory terms).

39. The table below summarises changes to restrictions on the kinds of sublease or licence that may be entered into. Rows highlighted in grey indicate a change has been made.

#	Nature of sublease or licence	Previous approach in regulations	New regulatory approach
1	For a purpose inconsistent with use of airport site as an airport	Prohibited for 20 airports	Prohibited for all 22 airports (change in framing)
2	For prostitution	Prohibited	Prohibited
3	For airport management agreement – sublessee/licensee qualified and approved under s33(1) of Act	Permitted	Permitted
4	For airport management agreement – sublessee/licensee not qualified or approved under s33(1) of Act	Prohibited	Prohibited under s33(1) of the Act
5	For a duration longer than the head lease (including the duration of any options that could be exercised)	Subject to approval (but in practice prohibited by considering duration of sublease or licence and refusing approval)	Prohibited
6	To a constitutional corporation	Permitted	Permitted
7	To a bank (other than a state or territory bank)	Permitted	Permitted
8	To the Commonwealth or an authority of the Commonwealth	Permitted	Permitted
9	To a person other than a constitutional corporation, bank or the Commonwealth	Subject to approval	Permitted
10	For residential use of an existing residential property by an individual	Subject to approval (see item 9)	Permitted
11	For residential development	Subject to approval (but typically prohibited through master planning process)	Expected to be prohibited through master planning process
12	To a person as a trustee of a trust	Subject to approval	Permitted
13	To an individual for a single site retail business	Permitted	Permitted
14	To an individual for a car parking bay	Permitted	Permitted
15	To a state or territory government or authority (including a state or territory bank)	Subject to approval	Permitted

16	Existing interest before commencement of 1997 regulations	Transitional arrangements	No transitional arrangements (no longer required)
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40. As item 1 of the table identifies, the regulations continue to prohibit subleases or licences for a purpose inconsistent with the use as an airport of the airport site concerned. The reference to such use as set out in the final master plan for the airport (or Part 2 of the airport plan for Sydney West Airport) has been removed. This means that this prohibition also applies, prospectively from 1 April 2024, in relation to Tennant Creek and Mt Isa Airports, which are not subject to the master planning process.
41. Approval of a sublease or licence, or declaration that a sublease or licence is not prohibited, will not be required from 1 April 2024. If any applications are pending decision by the Secretary at that time, no action (such as approval, refusal, or making of a declaration) will be taken, and these new regulations will apply.

#### *Administrative Appeals Tribunal review*

42. There are no longer any decisions of the Minister in relation to subleases and licences, so the existing regulation 2.20 of the Airports Regulations 1997, which provided for merits review of such decisions, is no longer required.

### **Part 3 – Land use, planning and building controls**

#### **Section 14– Airports to which Part 5 of the Act applies**

43. Part 5 of the Act, Part 3 of the regulations, and the Airports (Building Control) Regulations 1996 impose regulatory controls on land use, planning and building activities.
44. This section establishes that those controls apply to 20 of the 22 airports regulated under the Act (all core-regulated airports are covered because of paragraph 68(1)(a) and subsection 68(1A) of the Act, and this section provides that the remainder of the airports, other than Tennant Creek and Mt Isa Airports, are covered).
45. This section has the same intended effect as the previous regulation 5.01A of the Airports Regulations 1997.

#### **Section 15 – Contents of draft or final master plan—general**

##### *Operation*

46. Section 71 of the Act specifies the matters that must be set out in an airport master plan. Paragraphs 71(2)(j) and (3)(j) of the Act allow the regulations to prescribe further matters, in addition to those set out in the Act, that must be set out in an airport master plan. Section 15 of the regulations is made for this purpose.
47. In summary, section 15 provides that:

- A master plan must set out any change to the Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Systems Operations (PANS-OPS) surface (essentially, any change to protected airspace).
  - The requirement for a master plan to set out this information supports decisions under regulation 5 of the Airports (Protection of Airspace) Regulations 1996 about whether or not to prescribe airspace around an airport in the interests of safety, efficiency or regularity of future air transport operations.
- Where a change of land use would necessitate greater environmental protection measures, a master plan must include reports related to the examination of soil pollution and plans for dealing with this (with reference to certain requirements of the Airports (Environment Protection) Regulations 1997).
- A master plan must describe land use and development proposals in the amount of detail that is equivalent to that required by, and using terminology consistent with that applying in, land use planning, zoning, and development legislation in force in the relevant state or territory for the airport.

*Reference to state and territory land use planning legislation*

48. Subsection 15(2) of the regulations requires, in summary, that the master plan must set out land use and development proposals in the amount of detail that is equivalent to that required by, and using terminology consistent with that applying in, land use planning, zoning, and development legislation in force in the relevant state or territory for the airport.
49. The purpose of this provision is to provide broad consistency in the information included in, and language used in, master plans for airports and similar planning processes in the relevant state or territory. It does not import state or territory planning schemes, but instead provides a baseline for the contents of a master plan, which the Minister will consider approving under Division 3 of Part 5 of the Act.
50. A range of laws may be relevant, depending on the unique circumstances of each proposed land use change or development. These are not listed in the regulations or this explanatory statement so as to avoid being too prescriptive, and to avoid implying the exclusion of certain laws which may only be relevant in rare or limited circumstances.
51. The 22 regulated airport-lessee companies are sophisticated entities with their own expertise, as well as access to further expertise, in land use planning and development matters for their respective state or territory. Experts assisting airport-lessee companies in their land use and development proposals will be well positioned to support compliance with subsection 15(2) of the regulations (including by advising on the content of relevant state or territory laws), as these laws are widely applicable for almost all developments, other than those on airport sites (as the 22 regulated airports are owned by the Commonwealth, and regulated directly by the Commonwealth because of section 52(i) of the Constitution) and other Commonwealth places.

52. If a proposed land use change or development were not occurring on Commonwealth land, the proponent would be required to comply with all relevant state or territory laws, and there would be no comprehensive list of all applicable laws. The relevant state and territory laws are available online, free of charge, on the legislation registries for each jurisdiction.
53. The reference to state and territory legislation is an incorporation at the point the regulations commence (1 April 2024) under paragraph 14(1)(b) of the *Legislation Act 2003*. In this context, there is no authority in the Act for incorporation of the state or territory law as it is in force from time-to-time.

#### *Relationship with previous regulations*

54. This section has the same intended effect as the previous regulation 5.02 of the Airports Regulations 1997.

### **Section 16 – Contents of draft or final master plan—matters to be detailed in environment strategy**

55. Section 71 of the Act specifies the matters that must be set out in an airport master plan. Paragraphs 71(2)(h) and (3)(h) require that a master plan include an environment strategy that details certain matters set out in the Act (subparagraphs (i) to (viii)) and the regulations (subparagraph (ix)).
56. Section 16 of the regulations is made for the purposes of subparagraphs 71(2)(h)(ix) and (3)(h)(ix), so prescribes matters, in addition to those set out in the Act, which must be included in the environment strategy.
57. In summary, the regulations provide that the environment strategy must detail:
- any areas identified by the airport-lessee company as a *site of indigenous significance* (see definition in section 5) following consultation with relevant governments and First Nations peoples;
  - the strategy for environmental management of areas of the airport not used for airport operations; and
  - matters related to training about environmental management.
58. Subsection 16(3) clarifies that the matters mentioned in subsections 17(2) to (6) of the regulations must also be addressed specifically in relation to areas of the airport site that are, or could be, used for a purpose that is not connected with airport operations.
59. This section has the same intended effect as the previous regulation 5.02A and subregulation 5.02B(7) of the Airports Regulations 1997.

### **Section 17 – Contents of draft or final master plan—things to be addressed in environment strategy**

#### *Operation*

60. Section 71 of the Act specifies the matters that must be set out in an airport master plan.

61. Subsection 71(5) of the Act enables the regulations to provide that, in specifying a particular objective, assessment, proposal, forecast or other matter covered by subsection 71(2) or (3), a draft or final master plan must address such things as are specified in the regulations. Section 17 of the regulations is made for the purpose of subsection 71(5).
62. For each thing listed in section 17 as required to be addressed in the environment strategy, the corresponding objective, assessment, proposal, forecast or other matter to which the thing relates is listed in section 17.
63. For example, subsection 17(2) specifies things to be addressed in relation to the objectives for the environmental management of an airport. Subparagraph 71(2)(h)(i) and (3)(h)(i) of the Act requires objectives for the environmental management of an airport to be set out in the master plan.
64. In summary, the things that section 17 requires to be in a master plan relate to:
  - objectives for environmental management, such as improvement in environmental consequences of airport activities, reduction in pollution, consistency with other standards, conservation, and community involvement;
  - recommendations of relevant bodies relating to environmentally significant areas;
  - studies, reviews and monitoring to be conducted in relation to the environmental impacts of airport operations, such as in relation to conservation, noise and pollution, and routine reporting to the airport environment officer; and
  - measures to prevent, control or reduce environmental impact, including measures for achieving co-operation to achieve such prevention, control or reduction.

*Relationship with previous regulations*

65. This section has the a similar intended effect as the previous subregulations 5.02B(1) to (6) of the Airports Regulations 1997. A few changes have been made to meet modern drafting standards and to improve clarity, including:
  - improved explanation of how each subsection aligns with the Act; and
  - improved clarity for the reference to “greenhouse gases” – the *National Greenhouse and Energy Reporting Act 2007* provides a definition of **greenhouse gas** (see section 7A of that Act), which is to be relied on by paragraph 17(4)(g) of the regulations, instead of the less certain meaning of the words “gases known as greenhouse gases” as previously used in the regulations.
66. Subregulation 5.02(7) of the Airports Regulations 1997 has been replaced by subsection 16(3) of the regulations, because the authority for this provision (consistent with the rest of section 16) is in subparagraphs 71(2)(h)(ix) and (3)(h)(ix) of the Act. Section 16 prescribes matters, in addition to those set out in the Act, which must be included in the environment strategy.

67. Subregulation 5.02(8) of the Airports Regulations 1997 has been replaced by the definition of *Environment Department* in section 5 of the regulations.

#### **Section 18 – Meaning of *development*—prescribed activities**

68. Section 96M prescribes the meaning of *development* for the purpose of Division 4A of the Act (about the airport plan for Sydney West Airport). Paragraph 9M(c) enables the regulations to prescribe kinds of activities that are considered *development*. Section 18 of the regulations is made for this purpose.
69. Section 18 provides that the disinterment of remains, and activities related to such disinterment, is included in the meaning of *development*. The effect is that exhumation of human remains and related activities can be authorised under the airport plan for Sydney West Airport, determined in accordance with section 96B of the Act, as stated in the explanatory statement to the Airports Legislation Amendment (2015 Measures No. 2) Regulation 2015.
70. This section has the same intended effect as the previous regulation 5.05 of the Airports Regulations 1997.

#### **Part 4 – Accounts and reports of airport-operator companies**

71. The functions of the Australian Competition and Consumer Commission (ACCC) under Part 7 of the Act and this Part of the regulations complement the ACCC's price monitoring functions pursuant to directions made under section 95ZF of the *Competition and Consumer Act 2010*, and its broader functions in relation to competition policy.

#### **Section 19 – Application of Part**

72. Subsection 19(1) clarifies that the application of requirements in this Part are broader than in the *Corporations Act 2001*. Exemptions under the *Corporations Act 2001* from certain reporting requirements do not apply for reporting requirements under Part 4. Without assuming whether these are presently relevant to any airport-operator companies, examples of such exemptions (and authorities for such exemptions) include:
- Section 341 of the *Corporations Act 2001* allows ASIC to make orders about a specified class of companies, registered schemes or disclosing entities, relieving them or other specified persons from some or all requirements of Parts 2M.2, 2M.3 and 2M.4 of Chapter 2M of the *Corporations Act*. An example is ASIC Class Order [CO 13/1050], which relieves certain persons from complying with requirements about the preparation of financial reports.
  - Section 343 of the *Corporations Act 2001* allows the regulations to modify Chapter 2M of the Act in relation to a company, registered scheme, notified foreign passport fund or disclosing entity specified by the regulations; or in relation to kinds of such companies, schemes, funds or entities specified by the regulations.

73. Paragraph 19(2)(a) exempts regulated entities from requirements to provide half-yearly reports. Accounts and statements prepared under the regulations (with reference to reporting requirements under the *Corporations Act 2001*) are only required to be provided annually. The effect of this paragraph is, for example, to modify the applied meaning of the term **financial report**, which under section 9 of the *Corporations Act 2001* includes a half-year financial report for certain entities.
74. Paragraph 19(2)(b) provides that nothing in this Part affects a company's obligations under any other law. For example, if a company provides a financial report to the ACCC, this has no relevance to a company's compliance with the *Corporations Act 2001* (and the company will still be required to meet its obligations related to financial reporting under that Act).
75. This section has the same intended effect as the previous regulation 7.01 of the Airports Regulations 1997. References to other legislation have been updated to meet modern drafting standards.

### **Section 20 – Meaning of *aeronautical services and facilities***

76. Section 20 sets out the meaning of ***aeronautical services and facilities***, by reference to tables of specified services and facilities that are related to aircraft (subsection 20(3)) and passengers (subsection 20(4)). The meaning of this term excludes services or facilities relating to the provision of a high quality service to certain passengers or that are not necessary for the efficient operation of civil aviation.
77. The terms ***airside area*** and ***landside area*** are used in this section, and have the meanings given by section 9 of the *Aviation Transport Security Act 2004*.
78. This section has the same intended effect as the previous regulation 7.02A of the Airports Regulations 1997. It has been restructured to meet modern drafting standards and to improve clarity.

### **Section 21 – Airports to which Part 7 of the Act applies**

79. Part 7 of the Act and Part 4 of the regulations impose requirements to prepare audited accounts and statements, as well as reports about staffing, and give these to the ACCC. They also impose related recordkeeping requirements.
80. This section establishes that those requirements apply to only five airports regulated under the Act (prescribing these for the purpose of paragraph 140(1)(a) of the Act):
- Brisbane Airport;
  - Melbourne (Tullamarine) Airport;
  - Perth Airport;
  - Sydney (Kingsford-Smith) Airport; and
  - Sydney West Airport.
81. This section has the same intended effect as the previous regulation 7.02B of the Airports Regulations 1997.



## **Sections 22 to 25 – Preparation of accounts and statements—financial reports, directors’ reports; auditor’s certificate; lodgement of accounts**

### *Operation*

82. Sections 22 to 25 set out requirements for the annual preparation of audited accounts and statements, to be lodged with the ACCC.
83. The accounts and statements are financial reports, consolidated financial reports, and directors’ reports (each within the meaning of the *Corporations Act 2001*, with a few adjustments such as information to be included or excluded, or ways for information to be aggregated).
84. The purpose is to support examination of the services and facilities provided by airport-operator companies through a competition lens, as part of the ACCC’s broader price monitoring functions.
85. Subsection 141(2) of the Act allows the regulations to prescribe requirements for the preparation of accounts and statements. It also sets out requirements about the signing and retention of these accounts and statements.
86. Subsections 22(1) to (4) and (7) of the regulations set out the requirement for an airport-operator company to prepare a financial report (as an account or statement, for the purpose of subsection 141(2) of the Act). This is based on the financial report required by Part 2M.3 of the *Corporations Act 2001*, but:
  - must include a separate breakdown of financial information (costs and revenue) relating to the provision of aeronautical services/facilities and non-aeronautical services/facilities;
  - must include costs associated with maintenance and repair in costs for services and facilities (whether aeronautical or non-aeronautical);
  - must include costs recovered directly or indirectly from airlines in costs and revenue for aeronautical services and facilities; and
  - must not be consolidated with the reports of any other company.
87. Subsections 22(5) to (8) of the regulations set out the requirement for an airport-lessee company to prepare a consolidated financial report (as an account or statement, for the purpose of subsection 141(2) of the Act). This consolidated financial report is to be prepared in accordance with the accounting standards under Part 2M.3 of the *Corporations Act 2001*, but:
  - must include a separate breakdown of financial information (costs and revenue) relating to the provision of aeronautical services/facilities and non-aeronautical services/facilities;

- must include costs associated with maintenance and repair in costs for services and facilities (whether aeronautical or non-aeronautical);
  - must include costs recovered directly or indirectly from airlines in costs and revenue for aeronautical services and facilities;
  - must be prepared for the airport-lessee company and all airport-management companies for the airport, as if those airport-management companies were subsidiaries of the airport-lessee company; and
  - is not required to include details about a passenger related service or facility at an airport if the premises are leased, and the lease was in force when the airport lease was granted to the airport lessee company.
88. The accounting standards are made by the Australian Accounting Standards Board (AASB) under section 334 of the *Corporations Act 2001*. As is the case for financial reports, a range of accounting standards may apply in relation to the preparation of a consolidated financial report, depending on the unique financial circumstances of each company. These accounting standards are not listed in the regulations or this explanatory statement so as to avoid being too prescriptive, and to avoid implying the exclusion of certain accounting standards which may only be relevant in rare or limited circumstances. Airport-operator companies will be aware of applicable standards, as they will need to comply with them to meet their obligations under the *Corporations Act 2001* about financial reporting. The key standard for preparation of consolidated financial statements is *AASB Standard 10: Consolidated Financial Statements*.
89. Section 23 of the regulations sets out the requirement for an airport-operator company to prepare a directors' report (as an account or statement, for the purpose of subsection 141(2) of the Act). This is the same directors' report as required by Part 2M.3 of the *Corporations Act 2001*.
90. Section 142 of the Act and section 24 of the regulations prescribe audit requirements for these accounts and statements. Section 142 of the Act provides that accounts and statements must be audited by an approved auditor, and enables the regulations to prescribe details about an auditor's certificate and the timeframe for its preparation. Section 24 sets out the requirement for an auditor's certificate, setting out certain information, to be prepared within 90 days of the end of the financial year.
91. The information required by subsection 24(2) to be set out in an auditor's certificate is, in summary:
- statements about whether the company has kept sufficient records and the auditor has been given sufficient information to complete the audit;
  - statements about whether the financial report and consolidated financial statements comply with relevant requirements (under the Act, regulations and accounting standards) and give a true and fair view of the airport-operator

company's operations, or if not, why (similar to a 'modified opinion'); and

- details of any other matter that the auditor believes should be reported to the ACCC.

92. Alternatively, the auditor's certificate may be taken to meet the contents requirements of subsection 24(2) if it is in the form (including containing the contents) required for an auditor's report under Part 2M.3 of the *Corporations Act 2001*.
93. Section 25 provides that a financial report, consolidated financial report, director's report and auditor's certificate must be lodged with the ACCC within 90 days after the end of each financial year. This section is made for the purpose of subsection 143(2) of the Act, which enables the regulations to prescribe this timeframe.

#### *Details in consolidated financial report – leased premises of passenger related service or facility*

94. Paragraph 22(6)(c) provides that a consolidated financial report is not required to include details about a passenger-related service or facility at an airport if the premises are leased, and the lease was in force when the airport lease was granted to the airport lessee company.
95. The background to this provision is that it (in slightly different form) was inserted into the regulations in 2007, to provide that consolidated financial reports do not need to include detail in relation to 'domestic terminal leases' in force when the airport lease was granted to the airport-lessee company. The provision in its current form was settled in 2009 with the intent to meet modern drafting standards and to achieve a similar effect (that costs and revenue in relation to domestic terminal leases are not to be included in a consolidated financial report).

#### *Protection of commercially sensitive information*

96. Sections 95ZN and 95ZP of the *Competition and Consumer Act 2010* contain specific protections for information given to the ACCC, including commercially sensitive information (i.e. information that would damage the competitive position of a person if disclosed). Section 147 of the Act applies those same protections to accounts and statements given to the ACCC under sections 22 and 23 of the regulations (financial reports, consolidated financial reports, directors' reports, and the auditor's certificate). This provides consistency in protections for information collected and used by the ACCC.

#### *Enforcement*

97. The following table summarises offences under the Act that may be committed in relation to the accounts and statements provisions (sections 141 to 144 of the Act and sections 22 to 25 of the regulations):

Subsection of Act	Person to whom offence applies	Contravention related to	Nature of offence	Maximum penalty
141(6)	Airport-operator company	Preparation of accounts and statements	Criminal	100 penalty units
142(4)	Airport-operator company	Audit of accounts and statements	Criminal	100 penalty units
142(6)	Auditor	Giving an auditor's certificate	Criminal	50 penalty units
143(3)	Airport-operator company	Lodgement of accounts and statements and auditor's certificate	Criminal	100 penalty units

### *Relationship with previous regulations*

98. Sections 22 to 25 have the same intended effect as the previous regulations 7.03 to 7.06 of the Airports Regulations 1997. These sections have been redrafted to meet modern drafting standards, to improve clarity and to more closely align with the drafting of the Act. For example, it:

- clarifies that subsection 141(2) of the Act provides authority for the requirements about financial reports and directors' reports;
- more closely aligns with the language of the Act about preparation of accounts and statements; and
- maintains the existing policy that the meaning of ***financial report, consolidated financial report*** and ***directors' report*** derives from the *Corporations Act 2001*, and maintains the same supplementary requirements about their contents.

## **Section 26 – Airport reports**

### *Operation*

99. Subsection 145(1) of the Act provides that the regulations may require an airport-operator company for an airport to give the ACCC written reports about the airport. Section 26 of the regulations is made for that purpose.
100. Section 26 sets out a requirement that an airport-operator company must submit an annual report about staffing to the ACCC. The report must cover the total average staff equivalent of the persons employed at the airport concerned with the provision of aeronautical services and facilities, and non-aeronautical services and facilities.
101. Subsection 26(3) defines ***average staff equivalent***. It is a measure of the number of staff who would be employed if all staff worked full-time, which helps to compare staffing levels across different airports. For example, if a full-time role would be 38 hours per

week, and an employee worked 19 hours per week as a part-time arrangement in that role, the employee would count as 0.5 towards the average staff equivalent.

102. Subsection 145A(1) of the Act enables the ACCC to publish these reports.

#### *Enforcement*

103. An airport-operator company may commit an offence under subsection 145(2) of the Act if it does not give the ACCC reports as required. This is a criminal offence under the Act, with a maximum penalty of 50 penalty units. This is consistent with liability in relation to the previous regulation 7.07 of the Airports Regulations 1997.

#### *Relationship with previous regulations*

104. This section has the same intended effect as the previous regulation 7.07 of the Airports Regulations 1997.

### **Section 27 – Record-keeping**

#### *Operation*

105. Subsection 146(1) of the Act provides that the regulations may require a company to keep and retain records relevant to the preparation of accounts and statements under section 141 of the Act (the financial report, consolidated financial report and directors' report), and reports under section 145 of the Act (the staffing report). Section 27 of the regulations is made for this purpose, and requires the keeping of those records.

#### *Enforcement*

106. A company may commit an offence under subsection 146(2) of the Act if it does not give the ACCC reports as required. This is a criminal offence under the Act, with a maximum penalty of 50 penalty units. This is consistent with liability in relation to the previous regulation 7.08 of the Airports Regulations 1997.

#### *Relationship with previous regulations*

107. This section has the same intended effect as the previous regulation 7.08 of the Airports Regulations 1997.

### **Part 5 – Quality of service monitoring**

108. Functions conferred on the ACCC by Part 8 of the Act and this Part of the regulations complement the ACCC's broader functions in relation to competition policy.

### **Section 28 – Airports to which Part 8 of the Act applies**

109. Part 8 of the Act and this Part of the regulations impose requirements about the monitoring of quality of airport services and facilities. They require airport-operator companies to keep records and give specified information to the ACCC to support its monitoring, and enable the ACCC to publish reports about quality of service monitoring or evaluation.

110. This section establishes that those requirements apply to only five airports regulated under the Act (prescribing these for the purpose of paragraph 151(1)(a) of the Act):

- Brisbane Airport;
- Melbourne (Tullamarine) Airport;
- Perth Airport;
- Sydney (Kingsford-Smith) Airport; and
- Sydney West Airport.

111. This section has the same intended effect as the previous regulation 8.01 of the Airports Regulations 1997.

### **Section 29 – Aspects of airport services and facilities to be monitored and evaluated by the ACCC**

112. Section 155 of the Act provides that in addition to its functions conferred by other laws, the ACCC has the function of monitoring and evaluating the quality of the aspects of airport services and facilities specified in the regulations.

113. Section 29 lists the aspects of airport services and facilities to be monitored and evaluated by the ACCC, for the purpose of subsection 155(1) of the Act. These are broad categories of services and facilities provided by the monitored airports to airlines and passengers.

114. The matters about which airport-operator companies must keep records are set out in section 30. Each matter corresponds to an aspect in section 29.

115. This section has the same intended effect as the previous regulation 8.01A of the Airports Regulations 1997. It has been restructured to meet modern drafting standards and to improve clarity.

### **Section 30 – Records relevant to a quality of service matter**

#### *Operation*

116. Paragraph 156(1)(a) of the Act enables the regulations to require records to be kept and retained, where the records are relevant to a quality of service matter. Section 30 of the regulations is made for this purpose.

117. Each matter listed in column 1 of the table in subsection 30(2) (and records required to be kept in relation to each matter, listed in column 2) is probative of the quality of an aspect of airport services or facilities specified in section 29.

118. Subsection 30(4) provides, in summary, that if another company agrees to provide a service or facility listed in this section, that company must keep records under this section instead of the airport-operator company.

119. Records must be kept for each financial year. Records must then be retained for 5 years.

### *Enforcement*

120. A company may commit an offence under subsection 156(5) of the Act if it does not keep and retain records as required. This is a criminal offence under the Act, with a maximum penalty of 50 penalty units. This is consistent with liability in relation to the previous regulations 8.02 of the Airports Regulations 1997.

### *Relationship with previous regulations*

121. This section has the same intended effect as the previous regulation 8.02 and Schedule 2 to the Airports Regulations 1997. A few changes have been made to meet modern drafting standards and to improve clarity, including:
- The provisions have been restructured, with the content of Schedule 2 moving into the body of section 30.
  - Note 2 in the previous subregulation 8.02(2) relates to transitional provisions, and the application of the recordkeeping requirements before 1 July 2008. This note is no longer required, because the transitional provision to which it refers is spent and has been repealed.
  - Note 3 in the previous subregulation 8.02(2) relates to the keeping of records electronically, because of the operation of section 12 of the *Electronic Transactions Act 1999*. The note is no longer required as the flexibility to keep records electronically is widely understood.

## **Section 31 – Giving information to the ACCC**

### *Operation*

122. Paragraph 156(1)(b) of the Act enables the regulations to require the giving of information to the ACCC that is relevant to a quality of service matter. Section 31 of the regulations is made for this purpose.
123. Section 31 requires reporting to the ACCC of the following information before 90 days after the end of each financial year:
- information contained in the records required to be kept under section 30 for that financial year; and
  - information about the results of a survey about a quality of service matter carried out in that financial year.
124. Section 31 also requires verification by statutory declaration of information provided under this section (as permitted by subsection 156(3) of the Act).

### *Self-incrimination*

125. Individuals (natural persons) could be required to keep records and provide information to the ACCC under sections 30 and 31 of the regulations. Subsections 30(3) and (4) provide that if a service or facility to which a matter relates is provided by a person

under an agreement with the airport-operator company, that person must keep records. Subsection 31(1) further provides that if a person is required to keep records under section 30, they must also provide the information contained in the record to the ACCC. Subsection 156(4) of the Act clarifies that an individual is not required to give information required by section 31 of the regulations if that information might tend to incriminate the individual or expose them to a penalty.

### *Enforcement*

126. The note at the end of section 31 signals that an airport-operator company may commit an offence under subsection 156(5) of the Act if it does not give information as required. This is a criminal offence under the Act, with a maximum penalty of 50 penalty units. This is consistent with liability in relation to the previous regulations 8.03 of the Airports Regulations 1997.

### *Relationship with previous regulations*

127. This section has the same intended effect as the previous regulation 8.03 of the Airports Regulations 1997. A few changes have been made to meet modern drafting standards, to improve clarity and to more closely align with the drafting of the Act, including:

- Two notes in the previous regulation 8.03 relate to the giving of records electronically, because of the operation of section 9 of the *Electronic Transactions Act 1999*. These notes are no longer required as the flexibility to give records electronically is widely understood.
- In subsection 37(2) (about to sharing survey results with the ACCC), aligning with the words of section 156 of the Act about “giving information”.

## **Part 6 – Protection of airspace around airports**

### **Section 32 – Airports to which Part 12 of the Act applies**

128. Part 12 of the Act and the Airports (Protection of Airspace) Regulations 1996 impose regulatory controls to protect airspace through declarations of prescribed airspace, and controls on activities that result in intrusions into prescribed airspace.

129. This section establishes that those controls apply to all 22 airports regulated under the Act (all core-regulated airports are covered because of paragraph 180(1)(a) of the Act, and this section provides that the remainder of the airports are covered).

130. This section has the same intended effect as the previous regulation 12.01 of the Airports Regulations 1997.

## **Part 7 – Miscellaneous**

### **Section 33 – Declaration of airport sites**

131. Section 251B of the Act is a mechanical provision that clarifies when a parcel of land can become part of an airport site regulated under the Act. It provides that the regulations can, in the description of the airport site in Schedule 1 to the regulations, list



a parcel of land that is not yet owned by the Commonwealth. The parcel of land will become part of the airport site for the purpose of the Act once the Commonwealth acquires that land.

132. This provides flexibility for the land to be listed in the regulations ahead of an acquisition by the Commonwealth being settled, so that the land will be immediately regulated under the Act once the acquisition is complete.
133. Section 33 is made for the purpose of, and enables the application of, section 251B of the Act. In these regulations, there is no parcel of land pending acquisition by the Commonwealth, but this machinery provision remains in place in case this flexibility is required in future.
134. This section has the same intended effect as the previous regulation 13.01 of the Airports Regulations 1997.

### **Part 8 – Application, saving and transitional provisions**

135. Sections 34 to 36 comprise Part 8 of the regulations. This Part sets out application, saving and transitional provisions to assist in a smoother transition between the old regulations and the new.

#### **Section 34 – Definitions**

136. This section provides a shorthand for the reference in this Part to the Airports Regulations 1997, as in force immediately before the commencement of this section on 1 April 2024.

#### **Section 35 – Things done under the *Airports Regulations 1997***

137. This section is a saving provision with broad effect. It preserves the effect of things done under the old Airports Regulations 1997, to the extent that those things can be done under these new regulations. Subsection 35(2) lists examples of such things that are intended to be preserved: directions, notices, applications, authorisations or other instruments being given or made. This list is non-exhaustive.
138. This provision is important given the context in which these regulations are made. These regulations partially replace the Airports Regulations 1997, which sunset on 1 April 2024. The component of the Airports Regulations 1997 which pertained to the ownership and control of airport-operator companies is replaced by the Airports (Ownership) Regulations 2024, which has a similar saving provision.
139. The regulations were remade in substantially the same form (with some updates and modernising changes), so there is a strong need for continuity between the old and new regulations.

#### **Section 36 – Record keeping**

140. This section is also a saving provision, with more specific scope, to supplement the broad effect of section 35. It is not intended to impliedly limit the scope of section 35.

Instead it is intended to put beyond doubt that the requirements it specifies continue to have effect under the new regulations.

141. The saved requirements are:

- requirements to keep and retain records relevant to the preparation of accounts and statements under section 141 of the Act and reports under section 145 of the Act, under regulation 7.08 of the Airports Regulations 1997;
- requirements to keep and retain records about quality of service matters specified in Schedule 2 of the Airports Regulations 1997, under regulation 8.02 of the Airports Regulations 1997; and
- requirements to give information kept under regulation 8.02 and relating to quality of service surveys to the ACCC, under regulation 8.03 of the Airports Regulations 1997.

## SCHEDULE 1 – AIRPORT SITES

### Clauses 1 to 22

#### *Operation*

142. The definition of *airport site* in section 5 of the Act provides that an airport site means a place that is declared by the regulations to be an airport site, a Commonwealth place (i.e. owned by the Commonwealth) and used, or intended to be developed for use, as an airport (in addition to other uses). Schedule 1 is made for this purpose, describing the site of each airport by reference to land titles information, including lot numbers and associated identifiers such as folio and plan numbers, and names of counties and parishes (as relevant for the land titles system in each state and territory).
143. Each Part of Schedule 1 to the regulations sets out the descriptors for one of the 22 regulated airports. The airports are listed alphabetically, and correspond to the airports listed in section 6 of the regulations. The area of the airport regulated under the Act can be determined by reference to these descriptors.
144. Subsection 5(2) of the Act, in summary, preserves references to certificates of title and registered or deposited plans, if the numbers change but interests in the land remain the same. This means that, for example, if a reference number for a parcel of land changes for an administrative reason, there is no practical consequence for whether that parcel of land is regulated under the Act.

#### *Relationship with previous regulations*

145. This section replaces the previous Schedule 1 to the Airports Regulations 1997.
146. The numbering of items has been updated.
147. Details have been updated for Sydney West Airport as follows:
- To reflect that Lot 11 in Deposited Plan 1239207 is owned by the Commonwealth. That lot was included as part of the airport site under subclause

19A(3) of the Airports Regulations 1997.

- To reflect that Lot 11 in Deposited Plan 129674, Lot 28 in Deposited Plan 217001, and Lot 2 in Deposited Plan 1230172 are no longer owned by the Commonwealth.
- To reflect changes to lot and deposited plan numbers.

148. Details have been extensively updated for Bankstown Airport.

*Consent for the purpose of section 161 of the Airports Act 1996*

149. The airport-lessee companies for Sydney West Airport and Bankstown Airport have consented under section 161 of the Act for these regulations to be made.

## SCHEDULE 2 – REPEALS

### Item 1 – Repeal of *Airports Regulations 1997*

150. Item 1 repeals the Airports Regulations 1997. That instrument is being replaced by these regulations and, in part, by the Airports (Ownership) Regulations 2024.
151. Part 8 of these regulations preserves the effect of the old regulations to the extent necessary, for all provisions other than those related to the ownership and control of airport-operator companies.
152. Part 6 of the Airports (Ownership) Regulations 2024 preserves the effect of the provisions of the old regulations, as far as they related to the ownership and control of airport-operator companies, to the extent necessary.

## FURTHER INFORMATION

### Delegation

153. The regulations set out a range of powers of the Minister, which can be delegated.
154. Section 244 of the Act, read alongside the definition of *this Act* as including the regulations, enables the Minister to delegate their powers under the regulations. An additional delegation provision in the regulations is not required.
155. The Minister may exercise powers personally or delegate powers to a limited class of persons at the appropriate level.
156. For each power of the Minister, the Minister will be able to consider delegation to the Secretary or to Senior Executive Service (SES) officers or acting SES officers in the department. SES officers are well-positioned to make such decisions about the rights and obligations of regulated entities because of their seniority and experience. This balances administrative expediency with proportionate controls on decision making.

## Spent and redundant provisions

157. Spent and redundant provisions have not been replaced in the new instrument, including:

- Regulations 1.02A and 1.04 of the Airports Regulations 1997, related to joint-user airports, are redundant or spent (respectively) and have not been replaced. This has no practical effect. There is no change to the status of Canberra Airport, which ceased to be a joint-user airport on 25 July 2000. The boundaries of airport sites continue to be defined by the details (e.g. lot numbers) in Schedule 1 to the regulations. It is intended in general that the leased area of joint-user airports (i.e. the part of the airport subject to regulation under this Act) will be the civilian part of the airport. Only Darwin International Airport and Townsville Airport are joint-user airports.
- Regulation 12.02 of the Airports Regulations 1997 has not been replaced in because it is now redundant. It referred to a parcel of land (which has now been acquired by the Commonwealth) and clarified the application of airspace protection requirements in relation to that parcel of land while it did not belong to the Commonwealth. That parcel of land is now covered by the airspace protection provisions of the Act in the same way as other land for Sydney West Airport.
- Subregulations 2.04(4)-(5), 2.09(2), 2.12(4)-(5) and 2.17(2) provided for pre-existing subleases and licences to be not subject to prohibitions or requirements to include mandatory terms until they were varied. Given the passage of at least 26 years since the relevant agreements could have been entered into, the department is not aware of any subleases or licences in agreements in force which would rely on these provisions, so they have not been replaced.
- Subregulation 5.02(3) required that if certain obligations or interests continue in force under transitional arrangements (pre-dating 1997), these must be addressed in the master plan. Regulation 5.04 set out a similar requirements for major development plans. These are no longer required, and have not been replaced.
- Regulation 5.03 provided an exemption from the requirement to comply with major development plan requirements if a development is covered by a permission or approval granted by the FAC. It also provides that conditions of approvals granted by the FAC also continue in force (to the extent that they are not inconsistent with the current Act or regulations). The department is not aware of any relevant permissions or approvals that would rely on this exemption, or conditions that would need to remain in force, so regulation 5.03 has not been replaced.
- Note 2 to Regulation 8.02 referenced a transitional provision that is no longer in force, and so has not been replaced.

## **Statement of Compatibility with Human Rights**

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

### **Airports Regulations 2024**

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

##### *Operation*

The Airports Regulations 2024 prescribe a range of matters to support the operation of the Act, including to:

- apply the regulatory framework in the Act to prescribed leased federal airports, in addition to core-regulated airports regulated under the Act;
- define the boundaries of each airport site;
- prescribe additional requirements for master plans and major development plans beyond what is required in the Act; and
- provide detail for how various regulatory mechanisms established by the Act operate in practice, for example in relation to subleasing and licencing, and monitoring by the Australian Competition and Consumer Commission (ACCC) of financial and quality of service matters.

This instrument replaces the Airports Regulations 1997, which sunset on 1 April 2024. Sunsetting is an automatic repeal of instruments after a fixed period, under the *Legislation Act 2003*. The aim is to ensure instruments remain fit for purpose and only in force for so long as required. One part of the Airports Regulations 1997, relating to the ownership and control of airport-operator companies, has been replaced by the Airports (Ownership) Regulations 2024.

The sunsetting date was set by the Legislation (Airport Instruments) Sunset-altering Declaration 2018, which allowed for a thematic review of a number of instruments related to airports, including the Airports (Ownership—Interests in Shares) Regulations 1996 and the Airports Regulations 1997.

Public consultation in early 2022, as part of the review of the sunsetting regulations, confirmed that there were opportunities to consolidate regulations about airport ownership in a single instrument, to modernise the regulations, and to streamline requirements for subleasing and licensing.

### *Consolidation*

The Airports (Ownership) Regulations consolidate all regulations relating to the ownership and control of airport-operator companies, made under or in relation to Part 3 of the Airports Act, into a single set of regulations. It replaces Part 3 of the Airports Regulations 1997 and Part 3 of the Airports (Ownership—Interests in Shares) Regulations 1996. This consolidation could help regulated entities and the public to better navigate these regulations and the regulatory obligations contained in them.

### *Modernisation*

The regulations would be updated to more closely align with the drafting of the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they are to replace. For example:

- A range of changes to language have been made throughout the instrument – see the notes on sections at [Attachment A](#) for details.
- Definitions have generally been consolidated into section 5 in the regulations. Some definitions are no longer required so have been removed, for example due to the changes to the sublease and licencing provisions and removal of transitional provisions that are no longer required.
  -
- Spent and redundant provisions have not been replaced in the new instrument.

### *Subleasing and licensing*

Subleasing and licensing requirements have been simplified in the regulations. The objective is to maintain the risk-based oversight of subleases and licences, while reducing regulatory burden for airport-operator companies and businesses operating on airport sites.

The requirement for airport-operator companies and their tenants to seek approval of subleases or licences before entering into these commercial arrangements has been removed. Subleases and licences will be permitted by default, provided that they meet certain requirements (are not a kind of prohibited sublease or licence, and includes the required mandatory terms).

### Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- The Regulations positively engage article 12 of the International Covenant on Economic, Social and Cultural Rights.
- The Regulations positively engage article 15 of the International Covenant on Economic, Social and Cultural Rights.
- The Regulations establish a framework to manage the engagement of article 18 of the International Covenant on Civil and Political Rights.

### International Covenant on Economic, Social and Cultural Rights

*Article 12 - The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

The regulations contain a number of requirements in relation to the environmental management of an airport site. These are consistent with the existing requirements of the Airports Regulations 1997.

The regulations set out a number of grounds on which the Minister may refuse to approve the transfer of an airport lease to a new lessee. Paragraph 8(2)(d) provides that one of these grounds is that the proposed transferee will not act responsibly in matters affecting the environment arising from the operation or management of the airport. This supports the Minister's consideration of the likely treatment of the environment by a proposed lessee, and the promotion of environmental and industrial hygiene.

Each airport must provide the Minister for Infrastructure, Transport, Regional Development and Local Government a draft master plan for the Minister's approval under Part 5 of the Act. In general, an airport is required to provide a master plan for approval once every five years (for major airports) or eight years (for other regulated airports). The Regulations prescribe certain matters that must be detailed and included within a master plan, including an 'environment strategy'. Sections 16 and 17 of the regulations require the environment strategy to set out a wide range matters including:

- training necessary for staff relevant to environmental management;
- policies and targets for the reduction of environmental impacts of airport activities, identification and conservation of objects or matters at the airport that have natural or heritage value, and for the involvement of stakeholders including the local community; and
- the impacts of airport activities on a range of environmental health indicators, including air, water and soil quality, usage of resources and generation of noise, and systems for monitoring this.

Developments undertaken at airports must be consistent with the approved master plan (including the environment strategy), which promotes the consideration of environmental impacts in the grant of later development approvals (for example, major development plans and building permits).

By setting out these requirements, the regulations support the broader requirements of the Act around environmental management of airport site, which consider (and in some cases, promote) industrial and environmental hygiene and the health of people interacting with and residing near the airport.

*Article 15 - Right to take part in cultural life, enjoy the benefits of scientific progress and for authors to benefit from the protection of moral and material interests resulting for scientific, literary or artistic production*

In a similar way for sites that have natural or heritage value, the regulations also maintain existing requirements for the environment strategy to include the identification, and measures for conservation, of objects and matters at the airport that have "Indigenous or heritage value". Further, the regulations require consultation with "relevant indigenous communities

and organisations, and relevant Commonwealth or State body” in the identification of “sites of indigenous significance” (see section 16(2)(a)).

These terms are used for the purpose of ensuring that the sites identified are considered as part of the broader planning framework under the Act (e.g. detailed in environment strategies within a master plan). There could be future opportunities to update these protections or consider alignment of the terms with other related concepts about protection of First Nations cultural heritage and with culturally appropriate language. Detailed consideration of these opportunities was outside of the scope of the sunset review of the Airports Regulations 1997 as the government’s First Nations Cultural Heritage Reform process remains underway. The outcomes of this process could inform consideration of changes to support a more consistent approach to these issues across government, and involve consultation with First Nations people on policy that concerns them.

By requiring the identification and plans for conservation of sites that have heritage value or are significant to First Nations people, the regulations support the protection of cultural life of all Australians, particularly First Nations peoples with connections to the land on which the airports are located.

#### *International Covenant on Civil and Political Rights*

##### *Article 18 - The right to freedom of thought, conscience, religion and belief*

Section 18 of the regulations provides that the disinterment of remains, and activities related to such disinterment, is included in the meaning of development. The effect is that exhumation of human remains and related activities can be authorised under the airport plan for Sydney West Airport, determined in accordance with the Act.

The relocation of grave sites from the airport site for Sydney West Airport are and have been managed by the Commonwealth in consultation with relatives and relevant churches, in accordance with an approved Cemeteries Relocation Management Plan to ensure any necessary work is done in a sensitive and respectful manner in accordance with the right to freedom of religion and belief.

#### Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it largely promotes the rights to health and to take part in cultural life, and it establishes a framework so that any necessary disinterment of human remains is done in a sensitive and respectful manner in accordance with the right to freedom of religion and belief.