



# **Airports Act 1996**

**No. 42, 1996**

## **Compilation No. 33**

<b>Compilation date:</b>	6 September 2020
<b>Includes amendments up to:</b>	Act No. 18, 2020
<b>Registered:</b>	23 September 2020

Prepared by the Office of Parliamentary Counsel, Canberra

---

## About this compilation

### This compilation

This is a compilation of the *Airports Act 1996* that shows the text of the law as amended and in force on 6 September 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

---

# Contents

<b>Part 1—Introduction</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	1
3 Objects .....	1
4 Simplified outline .....	2
5 Definitions .....	4
6 Sydney West Airport .....	10
7 Meaning of <i>core regulated airport</i> .....	10
7A Transfers and acquisitions by way of the enforcement of a loan security .....	11
7B Meaning of <i>joint-user airport</i> .....	11
7C Giving information and the Electronic Transactions Act .....	11
8 Crown to be bound .....	12
9 External Territories .....	12
10 Extra-territorial operation .....	12
10A Application of the <i>Criminal Code</i> .....	12
<b>Part 2—Leasing and management of airports</b>	<b>13</b>
<b>Division 1—Simplified outline</b>	<b>13</b>
11 Simplified outline .....	13
<b>Division 2—Scope of Part</b>	<b>15</b>
12 Airports to which Part applies .....	15
<b>Division 3—Grant of airport leases</b>	<b>16</b>
13 Commonwealth may grant airport lease .....	16
14 Rules about airport leases .....	16
15 Termination of airport lease if lessee ceases to be a qualified company .....	17
16 Person may acquire airport leases for only one airport site .....	17
17 Simultaneous grant of leases to the same person must relate to the same airport .....	18
18 Sydney (Kingsford-Smith) Airport and Sydney West Airport may be under common ownership .....	18
19 Only one person to hold airport leases for an airport site .....	18
20 Simultaneous grant of leases relating to the same airport site to be to the same person .....	19
20A Airport leases for an airport site to expire on the same day .....	19
21 No grant of lease if Part 3 contravened .....	19

---

---

22	Airport lease granted subject to existing interests in the land .....	19
<b>Division 4—Restrictions on acquisition and transfer of airport leases</b>		
23	Restriction on acquisition of airport lease .....	21
24	No transfer of airport lease without approval of Minister .....	21
25	No transfer of lease if Part 3 contravened .....	21
26	No declaration of trust in respect of airport lease .....	22
27	Beneficial interest in airport lease must not be transferred independently of legal interest .....	22
28	Notification of acquisition of lease or of entry into possession—enforcement of loan security .....	22
29	Re-transfer of lease—enforcement of loan security .....	23
30	Termination of airport lease otherwise than under this Act .....	25
<b>Division 5—Obligation to use airport site as an airport</b>		
31	Obligation to use airport site as an airport .....	26
<b>Division 6—Restrictions on lessees</b>		
<b>Subdivision A—Airport-operator company must not carry on non-airport business</b>		
32	Airport-operator company must not carry on non-airport business .....	27
<b>Subdivision B—Airport-management agreements</b>		
33	Airport-management agreements .....	28
<b>Subdivision C—Subleases and licences</b>		
34	Regulations may prohibit subleases of airport leases .....	31
34A	Regulations may prohibit terms from being included in sublease of airport lease .....	32
34B	Regulations may require terms to be included in sublease of airport lease .....	33
34C	Regulations may prohibit declaration of trust in respect of sublease of airport lease .....	33
34D	Regulations may provide that a beneficial interest in a sublease of airport lease must not be transferred independently of the legal interest .....	34
35	Regulations may prohibit licences relating to airport leases .....	34
35A	Regulations may prohibit terms from being included in licence relating to airport lease .....	35
35B	Regulations may require terms to be included in licence relating to airport lease .....	35

---

---

35C	Regulations may prohibit declaration of trust in respect of licence relating to airport lease .....	36
35D	Regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest .....	36
35E	Termination of sublease or licence otherwise than under this Subdivision .....	37
35F	Compensation—constitutional safety-net .....	37
<b>Division 7—Lands Acquisition Act 1989 not to apply to anything done under this Part</b>		38
36	<i>Lands Acquisition Act 1989</i> not to apply to anything done under this Part .....	38
<b>Division 8—Entries in title registers</b>		39
37	Entries in title registers .....	39
<b>Part 3—Restrictions on ownership of airport-operator companies</b>		40
<b>Division 1—Simplified outline</b>		40
38	Simplified outline .....	40
<b>Division 2—Definitions in Schedule</b>		42
39	Definitions in Schedule .....	42
<b>Division 3—49% limit on foreign ownership</b>		43
40	Meaning of <i>unacceptable foreign-ownership situation</i> .....	43
41	Acquisitions of shares .....	43
42	Compliance by airport-operator company .....	44
43	Remedial orders .....	44
<b>Division 4—5% limit on ownership by airlines of airport-operator companies for certain airports</b>		46
44	Meaning of <i>unacceptable airline-ownership situation</i> .....	46
45	Acquisitions of shares .....	46
46	Compliance by airport-operator company .....	47
47	Remedial orders .....	47
<b>Division 5—Limits on cross-ownership of pairs of airport-operator companies</b>		49
<b>Subdivision A—Simplified outline</b>		49
48	Simplified outline .....	49

---

---

<b>Subdivision B—Pairs of airport-operator companies</b>	50
49 Pairs of airport-operator companies.....	50
<b>Subdivision C—15% limit on cross-ownership</b>	51
50 Meaning of <i>unacceptable cross-ownership situation</i> .....	51
51 Acquisitions of shares.....	51
52 Compliance by airport-operator companies.....	52
53 Remedial orders.....	52
<b>Subdivision D—Practical control</b>	53
54 Meaning of <i>control</i> .....	53
55 Minister may declare person to have practical control of an airport-operator company .....	54
56 Requirement to relinquish practical control or reduce stake.....	55
57 Remedial orders.....	56
<b>Division 6—Head office of airport-operator company and citizenship/residency of directors of airport-operator company</b>	59
58 Head office to be in Australia.....	59
59 Majority of directors must be Australian citizens or Australian residents .....	59
<b>Division 7—Record-keeping and giving of information</b>	60
60 Record-keeping and giving of information.....	60
<b>Division 8—Concurrent operation of State laws</b>	62
61 Concurrent operation of State laws.....	62
<b>Division 9—Validity of acts done in contravention of this Part</b>	63
62 Validity of acts done in contravention of this Part.....	63
<b>Division 10—Acquisition of property</b>	64
63 Acquisition of property.....	64
<b>Part 4—Anti-avoidance</b>	65
64 Simplified outline .....	65
65 Anti-avoidance—assets etc.....	65
66 Anti-avoidance—airport-management agreements .....	66
<b>Part 5—Land use, planning and building controls</b>	68
<b>Division 1—Simplified outline</b>	68
67 Simplified outline .....	68

---

---

<b>Division 2—Scope of Part</b>	69
68 Airports to which Part applies .....	69
<b>Division 3—Airport master plans</b>	70
69 Simplified outline .....	70
70 Final master plans .....	70
71 Contents of draft or final master plan .....	71
71A Draft or final master plan must identify proposed sensitive developments .....	78
72 Planning period .....	79
73 Assumption of continuity of lease .....	79
74 Plan does not lapse when lease transferred .....	80
75 Draft master plan to be given to Minister after acquisition or grant of airport lease .....	80
76 New draft master plan to be submitted before expiry of old plan .....	81
77 Duration of final master plan .....	82
78 Replacement of final master plan .....	82
79 Public comment and advice to State etc. ....	84
80 Consultations .....	86
80A Minister may request more material for making decision .....	86
81 Approval of draft by Minister .....	87
81A Approval of final master plan—Sydney West Airport .....	89
82 Transfer of airport lease during approval process .....	90
83 Effect of approval .....	90
83A Compliance with environment strategy in final master plan .....	90
84 Minor variation of final master plan .....	91
84AA Minor variation of final master plan—Sydney West Airport .....	92
84A Public comment and advice to State etc.—minor variation .....	93
85 Notification of matters that may affect the achievement of final master plan .....	95
86 Publication of final master plan or variation of final master plan .....	96
87 Transitional—adoption of FAC documents .....	97
<b>Division 4—Major development plans</b>	99
<b>Subdivision A—Introduction</b>	99
88 Simplified outline .....	99
89 Meaning of <i>major airport development</i> .....	99

---

---

<b>Subdivision B—Sensitive developments</b>	104
89A Sensitive development prohibited except in exceptional circumstances .....	104
<b>Subdivision C—Approval process</b>	105
90 Major airport development must not be carried out except in accordance with an approved major development plan etc.....	105
91 Contents of major development plan .....	107
92 Public comment and advice to State etc. ....	110
93 Consultations .....	113
93A Minister may request more material for making decision.....	113
94 Approval of major development plan by Minister .....	114
94AA Approval of major development plan—Sydney West Airport.....	116
94A Examples of conditions .....	117
95 Minor variation of major development plan .....	118
95AA Minor variation of major development plan—Sydney West Airport.....	119
95A Public comment and advice to State etc.—minor variation .....	120
96 Publication of major development plan or variation of major development plan.....	123
96AA Cessation of approval of major development plan in exceptional circumstances .....	124
<b>Division 4A—Airport plan for Sydney West Airport</b>	126
96A Simplified outline of this Division .....	126
96B Determination of airport plan for Sydney West Airport .....	126
96C Contents of airport plan .....	130
96D Variation of airport plan .....	133
96E Automatic variation of airport plan etc. ....	134
96F Publication of airport plan etc.....	135
96G Exemption from Parts 3 and 9 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .....	136
96H Major development plan.....	136
96J Compliance with condition set out in airport plan.....	136
96K Implementation of airport plan .....	137
96L Ancillary developments on associated sites.....	137
96M Meaning of <i>development</i> .....	138
<b>Division 5—Building control</b>	139
<b>Subdivision A—Simplified outline</b>	139
97 Simplified outline .....	139

---



---

<b>Subdivision B—Interpretation</b>	139
98 Interpretation .....	139
<b>Subdivision C—Building approvals</b>	140
99 Building activities not to be carried out without approval .....	140
100 Regulations about building approvals.....	144
101 Building approval to be consistent with final master plan and major development plan etc.....	145
102 Offence of contravening conditions.....	146
103 Remedial directions .....	146
103A Designated SWA instrument .....	148
103B Building activities on associated sites for Sydney West Airport .....	149
<b>Subdivision D—Certificates of compliance</b>	149
104 Certificates of compliance .....	149
105 Eligible alterations.....	149
106 Requirement for certificate of compliance .....	149
107 Regulations about certificates of compliance .....	152
108 Offence of contravening conditions.....	153
109 Remedial directions .....	153
110 Transitional—buildings and structures in existence when airport lease first granted .....	155
<b>Division 6—Miscellaneous</b>	156
111 Infringement notices.....	156
112 Exclusion of State laws.....	156
112A Exclusion of Part III of Australian Capital Territory (Planning and Land Management) Act .....	156
112B Sydney West Airport completion day.....	156
<b>Part 6—Environmental management</b>	158
<b>Division 1—Simplified outline</b>	158
113 Simplified outline .....	158
<b>Division 3—Environmental standards at airports</b>	159
131A Airports to which Division applies .....	159
131B Offence resulting in serious environmental harm .....	159
131C Offence resulting in material environmental harm .....	160
131D Offence resulting in environmental nuisance.....	160
131E Alternative verdicts—offence against section 131B or 131C .....	161

---

---

132	Regulations about environmental standards at airports.....	161
133	Regulations about monitoring, and remedying breaches of, environmental standards at airports .....	162
134	Remedying breaches of environmental standards—recovery of expenses by airport-operator company.....	164
135	Remedying breaches of environmental standards—recovery of expenses by the Commonwealth .....	165
136	Operation of State laws.....	165
137	Severability.....	166
<b>Division 4—Infringement notices</b>		167
138	Infringement notices.....	167
<b>Part 7—Accounts and reports of airport-operator companies</b>		168
<b>Division 1—Simplified outline</b>		168
139	Simplified outline .....	168
<b>Division 2—Scope of Part</b>		169
140	Airports to which Part applies .....	169
<b>Division 3—Accounts</b>		170
141	Preparation and retention of accounts.....	170
142	Audit of accounts.....	171
143	Lodgment of accounts with the ACCC.....	173
143A	Publication of accounts and statements .....	173
144	Approved auditor.....	174
<b>Division 4—Airport reports</b>		175
145	Airport reports .....	175
145A	Publication of airport reports .....	175
<b>Division 5—Record-keeping</b>		176
146	Record-keeping .....	176
<b>Division 6—Protection of documents given to the ACCC</b>		177
147	Protection of documents given to the ACCC.....	177
<b>Division 7—Part supplements the Competition and Consumer Act 2010</b>		178
148	Part supplements the <i>Competition and Consumer Act 2010</i> .....	178
<b>Division 8—Concurrent operation of State laws</b>		179
149	Concurrent operation of State laws.....	179

---

---

<b>Part 8—Quality of service monitoring and reporting</b>	180
<b>Division 1—Simplified outline</b>	180
150 Simplified outline .....	180
<b>Division 2—Scope of Part</b>	181
151 Airports to which Part applies .....	181
152 Airport services and facilities .....	181
<b>Division 4—ACCC to monitor quality of services and facilities</b>	182
155 ACCC to monitor quality of services and facilities .....	182
<b>Division 5—Record-keeping and giving of information</b>	183
156 Record-keeping and giving of information .....	183
<b>Division 6—ACCC may publish quality of service information</b>	185
157 Publication of quality of service information .....	185
<b>Division 7—Protection of information given to the ACCC</b>	186
158 Protection of information given to the ACCC .....	186
<b>Division 8—Part supplements the Competition and Consumer Act 2010</b>	187
159 Part supplements the <i>Competition and Consumer Act 2010</i> .....	187
<b>Part 9—Variation and closure of airport sites</b>	188
160 Simplified outline .....	188
161 Variation of airport sites—consent of lessee .....	188
162 Closure of airport sites.....	188
163 Surrender of airport leases .....	189
163A Variation of airport lease—reducing leased area .....	189
<b>Part 10—Implementation of international agreements relating to airports</b>	191
164 Simplified outline .....	191
165 Designated international agreements .....	191
166 Regulations may give effect to designated international agreements.....	192
167 Compliance by airport operators with regulations .....	192
<b>Part 11—Control of certain on-airport activities</b>	193
168 Simplified outline .....	193
169 Airports to which Part applies .....	193
170 Control of liquor .....	194
171 Control of commercial trading.....	194

---

---

172	Control of vehicle movements .....	194
173	Control of gambling .....	195
174	Control of smoking .....	196
175	Enforcement .....	196
176	Infringement notices .....	196
177	Operation of State laws .....	196
178	Submissions .....	196
<b>Part 12—Protection of airspace around airports</b>		<b>198</b>
<b>Division 1—Simplified outline</b>		<b>198</b>
179	Simplified outline .....	198
<b>Division 2—Scope of Part</b>		<b>199</b>
180	Airports to which Part applies .....	199
<b>Division 3—Prescribed airspace</b>		<b>200</b>
181	Prescribed airspace .....	200
<b>Division 4—Protection of prescribed airspace</b>		<b>201</b>
182	Controlled activities .....	201
183	Controlled activities not to be carried out without approval .....	202
184	Regulations about approvals .....	203
185	Offence of contravening conditions .....	204
186	Notification of proposals to carry out controlled activities .....	204
187	Remedial orders .....	205
188	Compensation—constitutional safety-net .....	207
189	Severability .....	207
<b>Division 5—Part supplements regulations under the Civil Aviation Act 1988</b>		<b>209</b>
190	Part supplements regulations under the <i>Civil Aviation Act 1988</i> .....	209
<b>Part 13—Access to airports and demand management at airports</b>		<b>210</b>
<b>Division 1—Simplified outline</b>		<b>210</b>
191	Simplified outline .....	210
<b>Division 2—Application of the access regime in Part IIIA of the Competition and Consumer Act 2010</b>		<b>211</b>
193	Part IIIA of the <i>Competition and Consumer Act 2010</i> to be subject to the demand management provisions of this Part .....	211

---

---

<b>Division 3—Scope of demand management provisions</b>	212
194 Scope of demand management provisions.....	212
<b>Division 4—Airport capacity declarations</b>	213
195 Airport capacity declarations.....	213
196 Public comment.....	213
197 Submissions.....	214
<b>Division 5—Declarations subjecting airports to statutory demand management</b>	216
198 Declarations subjecting airports to statutory demand management.....	216
199 Criteria for making declaration.....	216
200 Submissions.....	217
<b>Division 6—Demand management schemes</b>	218
201 Demand management schemes.....	218
202 Submissions.....	218
203 Types of schemes .....	219
204 Category exclusion schemes.....	219
205 Slot allocation schemes .....	219
206 Movement limitation schemes .....	220
207 Concurrent schemes.....	220
<b>Division 7—Compliance with demand management schemes</b>	221
208 Compliance with demand management schemes.....	221
209 Infringement notices.....	221
<b>Division 8—Part supplements Sydney Airport Curfew Act and Air Navigation Regulations</b>	222
210 Part supplements Sydney Airport Curfew Act.....	222
211 Part supplements Air Navigation Regulations .....	222
<b>Division 9—Intervals of time</b>	223
212 Recurring intervals of time .....	223
213 Specification of 2 or more intervals of time .....	223
<b>Division 10—Severability</b>	224
214 Severability.....	224
<b>Part 14—Air traffic services and aerodrome rescue and fire fighting services</b>	226
215 Simplified outline .....	226

---

---

216	Air traffic services, and aerodrome rescue and fire fighting services, not to be provided without approval .....	226
<b>Part 15—Injunctions</b>		228
217	Simplified outline .....	228
218	Injunctions .....	228
219	Interim injunctions.....	230
220	Discharge etc. of injunctions .....	230
221	Certain limits on granting injunctions not to apply.....	230
222	Other powers of the court unaffected .....	231
<b>Part 16—Prosecutions</b>		232
223	Simplified outline .....	232
224	Prosecutions of corporations.....	232
225	Prosecutions of persons other than corporations.....	233
<b>Part 17—Incorrect records</b>		236
226	Simplified outline .....	236
228	Incorrect records.....	236
230	Incorrect accounts and statements .....	236
231	False or misleading audit certificates.....	237
<b>Part 18—Monitoring powers</b>		238
232	Simplified outline .....	238
233	Authorised officers .....	238
234	Identity cards .....	239
235	Searches to monitor compliance with Part 5 or 6—occupier consents .....	240
236	Monitoring warrants .....	241
237	Power to require persons to answer questions etc.....	242
238	Monitoring powers .....	243
239	Airport premises .....	244
240	References to <i>Part 5 or 6</i> .....	244
<b>Part 19—Miscellaneous</b>		245
241	Simplified outline .....	245
242	Review of decisions by Administrative Appeals Tribunal.....	246
243	Tabling of Ministerial statements about certain decisions .....	247
244	Delegation .....	248
245	Indictable offences.....	248
246	Constitutional corporations.....	249

---

---

247	Severability.....	249
248	Application of the <i>Competition and Consumer Act 2010</i> .....	249
249	Relocation of abandoned aircraft etc. ....	250
250	Access to airports for defence-related purposes and for emergency or disaster relief.....	251
251	Compensation for access to airports for defence-related purposes and for emergency or disaster relief .....	252
251A	Sydney West Airport—miscellaneous provisions .....	255
251B	Regulations declaring airport site .....	256
252	Regulations.....	257
253	Repeals .....	257
<b>Schedule—Ownership definitions</b>		258
1	Object .....	258
2	Definitions .....	258
3	When foreign citizens are ordinarily resident in Australia .....	262
4	Entering into an agreement or arrangement .....	262
5	Associates.....	263
6	Power to appoint director .....	265
7	Meaning of entitled to acquire .....	265
8	Meaning of interest in a share.....	265
9	Certain interests and stakes to be disregarded .....	266
10	Voting power.....	267
11	Stake in a company.....	268
12	Direct control interests in a company .....	269
13	Substantial interests in trust estates .....	270
14	Airport holding companies in which foreign persons have direct control interests .....	270
<b>Endnotes</b>		272
<b>Endnote 1—About the endnotes</b>		272
<b>Endnote 2—Abbreviation key</b>		274
<b>Endnote 3—Legislation history</b>		275
<b>Endnote 4—Amendment history</b>		279

---





# **An Act about airports**

## **Part 1—Introduction**

### **1 Short title**

This Act may be cited as the *Airports Act 1996*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

### **3 Objects**

The objects of this Act are as follows:

- (a) to promote the sound development of civil aviation in Australia;
- (b) to establish a system for the regulation of airports that has due regard to the interests of airport users and the general community;
- (c) to promote the efficient and economic development and operation of airports;
- (d) to facilitate the comparison of airport performance in a transparent manner;
- (e) to ensure majority Australian ownership of airports;
- (f) to limit the ownership of certain airports by airlines;
- (g) to ensure diversity of ownership and control of certain major airports;
- (h) to implement international obligations relating to airports.

## Section 4

---

### 4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up a system for regulating airports.
- A Commonwealth-owned airport can only be leased to a company. The company is called an *airport-lessee company*.
- There will only be one airport-lessee company for each airport and the company will not be allowed to lease another airport.
- An airport-lessee company's sole business will be to run the airport.
- An airport-lessee company can contract out the management of the airport to another company. The other company is called an *airport-management company*.
- This Act uses the term *airport-operator company* to cover both airport-lessee companies and airport-management companies.
- Airport-operator companies are subject to the following ownership restrictions:
  - (a) a 49% limit on foreign ownership;
  - (b) a 5% limit on airline ownership for certain airports;
  - (c) a 15% limit on cross-ownership for Sydney (Kingsford-Smith)/Melbourne, Sydney (Kingsford-Smith)/Brisbane and Sydney (Kingsford-Smith)/Perth airports.
- For each airport, there will be an airport master plan.

---

Section 4

---

- Major development plans will be required for significant developments at airports.
- Building activities on airport sites will require approval.
- Buildings and structures on airport sites must be certified as complying with the regulations.
- For each airport, there will be an environment strategy.
- The regulations may deal with environmental standards at airport sites.
- An airport-operator company may be required to give accounts and reports to the Australian Competition and Consumer Commission.
- The regulations may require the Australian Competition and Consumer Commission to monitor the quality of certain aspects of airport services and facilities.
- Airport-lessee companies must give written consent before airport sites are varied or closed.
- The regulations may implement certain international agreements relating to airports.

## Section 5

---

- The regulations may deal with the control of the following matters at airports:
  - (a) liquor;
  - (b) commercial trading;
  - (c) vehicle movements;
  - (d) gambling;
  - (e) smoking.
- The regulations may control intrusions into prescribed airspace around airports.
- The Minister may formulate demand management schemes for airports.
- Air traffic services, and aerodrome rescue and fire fighting services, must not be provided at airports without the approval of the Civil Aviation Safety Authority.

## 5 Definitions

- (1) In this Act, unless the contrary intention appears:

**ACCC** means the Australian Competition and Consumer Commission.

**agreement** means any agreement, whether formal or informal and whether express or implied.

**aircraft** means a machine or craft that can derive support in the atmosphere from the reactions of the air.

**aircraft movement** means:

- (a) the landing of an aircraft at an airport; or

(b) the taking off of an aircraft from an airport.

**airline** means a person who carries on a commercial air transport enterprise that involves offering or operating scheduled or chartered air services.

**airport** means an airport in Australia.

**airport capacity declaration** has the meaning given by section 195.

**airport lease:**

- (a) means a lease of the whole or a part of an airport site, where the Commonwealth is the lessor; and
- (b) when used in relation to an airport—means a lease of the whole or a part of the airport site of the airport, where the Commonwealth is the lessor.

**airport-lessee company** means a company that holds an airport lease.

**airport-management agreement** has the meaning given by section 33.

**airport-management company** means a company that is a party to an airport-management agreement with an airport-lessee company.

**airport-operator company** means an airport-lessee company or an airport-management company.

**airport plan** for Sydney West Airport means a plan under Division 4A of Part 5.

**airport site** means a place that is:

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

Note: The boundaries of an airport site are ascertained in accordance with the regulations.

## Section 5

---

***Airside Vehicle Control Handbook*** for an airport has the meaning given by subsection 172(2).

***ancillary development*** has the meaning given by section 96L.

***approved auditor*** has the meaning given by section 144.

***associated site for Sydney West Airport*** has the meaning given by section 96L.

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian Noise Exposure Forecast***, for an airport, means an Australian Noise Exposure Forecast endorsed in the manner approved by the Minister.

***building activities*** has the meaning given by subsection 98(1).

***business day***, in relation to an airport, means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in:
  - (i) the place where the airport is situated; or
  - (ii) the Australian Capital Territory; or
- (d) 27, 28, 29, 30 or 31 December.

***Commonwealth place*** means:

- (a) a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*; or
- (b) a place in a Territory, where the place is owned by the Commonwealth.

***company*** means a body corporate.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***constructing*** has the meaning given by subsection 89(2A).

**core regulated airport** has the meaning given by section 7.

**declared capacity**, in relation to an airport, has the meaning given by section 195.

**Defence Department** means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

**demand management scheme** has the meaning given by section 201.

**draft master plan** means a draft master plan under Division 3 of Part 5.

**engage in conduct** means:

- (a) do an act; or
- (b) omit to perform an act.

**Environment Minister** means the Minister who administers the *Environment Protection and Biodiversity Conservation Act 1999*.

**environment strategy** means an environment strategy in a draft or final master plan.

**Federal Court** means the Federal Court of Australia.

**final master plan** means a final master plan under Division 3 of Part 5.

**Infrastructure Minister** means the Minister who administers this Act.

**interest**, in relation to an airport lease, means a right or interest, whether legal or equitable, in the airport lease, by whatever term called, and includes an option to acquire such a right or interest in the airport lease, but to avoid doubt, does not include, and is taken never to have included:

- (a) a sublease; or
- (b) a licence; or

## Section 5

---

- (c) an easement or other incorporeal hereditament; or
- (d) a restrictive covenant.

***international air transport*** means air transport between a place in Australia and a place outside Australia.

***interstate air transport*** includes air transport between a State and a Territory or between 2 Territories.

***joint-user airport*** has the meaning given by section 7B.

***lender***, in relation to a loan security, means the person who is entitled to enforce the security.

***lending money*** includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

***loan security*** means a security held solely for the purposes of a moneylending agreement.

***major airport development*** has the meaning given by section 89.

***major development plan*** means a major development plan under Division 4 of Part 5.

***moneylending agreement*** means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

***pair of airport-operator companies*** has the meaning given by section 49.

***qualified company*** means a company that:

- (a) is a constitutional corporation; and
- (b) is incorporated, or taken to be incorporated, under the *Corporations Act 2001*; and
- (c) has a share capital.



**quality of service matter** has the meaning given by subsection 156(7).

**scheme** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**sensitive development** has the meaning given in section 71A.

**significant ANEF levels** means a noise above 30 ANEF levels.

**State** includes:

- (a) the Australian Capital Territory; and
- (b) the Northern Territory.

**Sydney West Airport completion day** has the meaning given by section 112B.

**this Act** includes the regulations.

**unacceptable airline-ownership situation** has the meaning given by section 44.

**unacceptable cross-ownership situation** has the meaning given by section 50.

**unacceptable foreign-ownership situation** has the meaning given by section 40.

Note: The Schedule sets out definitions of expressions used in Part 3 (which deals with ownership restrictions).

**vehicle** has the meaning given by subsection 172(2).

- (2) For the purposes of paragraph (a) of the definition of **airport site**, if the identification number for a certificate of title for a place is changed, without the boundaries of the place being changed, a

## Section 6

---

reference in this Act or the regulations to the identification number includes a reference to the identification number as changed.

### 6 Sydney West Airport

For the purposes of this Act, Sydney West Airport is taken to be an airport at a particular time even if, at that time, it is:

- (a) merely intended to be developed for use as an airport; or
- (b) being developed for use as an airport.

### 7 Meaning of *core regulated airport*

- (1) For the purposes of this Act, each of the following airports is a *core regulated airport*:
  - (a) Sydney (Kingsford-Smith) Airport;
  - (b) Sydney West Airport;
  - (c) Melbourne (Tullamarine) Airport;
  - (d) Brisbane Airport;
  - (e) Perth Airport;
  - (f) Adelaide Airport;
  - (g) Gold Coast Airport;
  - (h) Hobart International Airport;
  - (i) Launceston Airport;
  - (j) Alice Springs Airport;
  - (k) Canberra Airport;
  - (l) Darwin International Airport;
  - (m) Townsville Airport;
  - (n) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of paragraph (1)(n), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

**7A Transfers and acquisitions by way of the enforcement of a loan security**

- (1) A reference in this Act to a transfer by way of the enforcement of a loan security is a reference to a transfer to the lender by way of the enforcement of the loan security.
- (2) A reference in this Act to an acquisition by way of the enforcement of a loan security is a reference to the acquisition by the lender by way of the enforcement of the loan security.
- (3) This section is enacted for the avoidance of doubt.

**7B Meaning of *joint-user airport***

- (1) For the purposes of this Act, each of the following airports is a ***joint-user airport***:
  - (a) Darwin International Airport;
  - (b) Townsville Airport;
  - (c) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of this Act, Canberra Airport is a ***joint-user airport***. However, the regulations may declare that, for the purposes of this Act, Canberra Airport ceases to be a joint-user airport at a specified time.
- (3) For the purposes of paragraph (1)(c), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

**7C Giving information and the Electronic Transactions Act**

To avoid doubt, a reference in section 9 of the *Electronic Transactions Act 1999* to giving information includes, for the purposes of this Act, a reference to giving:

- (a) a draft master plan or a draft major development plan; or
- (b) a draft variation of a final master plan or a major development plan.

## Section 8

---

### 8 Crown to be bound

- (1) This Act binds the Crown in the right of the Commonwealth and of each of the States.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

### 9 External Territories

This Act extends to all the external Territories.

### 10 Extra-territorial operation

This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

#### 10A Application of the *Criminal Code*

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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

### **Division 1—Simplified outline**

#### **11 Simplified outline**

The following is a simplified outline of this Part:

- Airport leases are subject to the following key rules:
  - (a) the lessee must be a company;
  - (b) the term of the lease must not be longer than 50 years (with or without an option to renew for up to 49 years);
  - (c) the lease must provide for access by interstate and/or international air transport;
  - (d) a company can only lease one airport.
- The airport-lessee companies for Sydney (Kingsford-Smith) Airport and Sydney West Airport may be wholly-owned subsidiaries of the same company.
- Airport leases can only be transferred with the Minister's approval.
- The beneficial and legal interests in an airport lease cannot be separated except in the case of the enforcement of a loan security.

**Section 11**

---

- If a lender acquires a lease, or enters into possession of an airport site, by way of the enforcement of a loan security, the lender must:
  - (a) notify the Minister; and
  - (b) transfer the lease to another company.
- An airport-lessee company has a statutory obligation to use the airport site as an airport.
- An airport-lessee company's sole business will be to run the airport.
- An airport-lessee company can contract out the management of the airport to another company. The other company is called an *airport-management company*. An airport-management company must be approved by the Minister.
- The regulations may prohibit certain subleases and licences relating to airport sites.
- The regulations may deal with the terms of subleases and licences relating to airport sites.
- The regulations may provide that the beneficial and legal interests in subleases and licences relating to airport sites cannot be separated except in the case of the enforcement of a loan security.

## **Division 2—Scope of Part**

### **12 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport; and
  - (b) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of paragraph (1)(b), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

## **Division 3—Grant of airport leases**

### **13 Commonwealth may grant airport lease**

The Commonwealth may grant an airport lease under this section.

### **14 Rules about airport leases**

#### *Grant*

- (1) The Commonwealth must not grant an airport lease unless the lease complies with subsection (5).

#### *Variation*

- (2) An airport lease must not be varied unless the varied lease complies with subsection (5).

#### *Transfer*

- (3) The Minister must not approve the transfer of an airport lease unless the transferred lease complies with subsection (5).

#### *Contravention*

- (4) If a purported grant, variation or approval contravenes this section, it is of no effect.

#### *Rules about airport leases*

- (5) An airport lease complies with this subsection if:
  - (a) there is a single lessee; and
  - (b) the lessee is a qualified company; and
  - (c) the term of the lease is not longer than 50 years (with or without an option to renew the lease for up to 49 years); and
  - (d) if the airport is neither a joint-user airport nor Sydney West Airport—the lease provides for the use of the site as an



- airport (whether or not the lease also provides for other uses);  
and
- (e) if the airport is a joint-user airport—the lease provides for the use of the leased area for purposes in connection with the airport (whether or not the lease also provides for other uses);  
and
  - (f) if the airport is Sydney West Airport—the lease provides for the development of the site as an airport or the use of the site as an airport, or both (whether or not the lease also provides for other developments or other uses); and
  - (g) the lease provides for access to the airport by interstate air transport or international air transport, or both (whether or not the lease also provides for other access).

### **15 Termination of airport lease if lessee ceases to be a qualified company**

- (1) This section applies to an airport lease if the lessee is a qualified company.
- (2) If, at a particular time, the lessee ceases to be a qualified company, the lease terminates at that time.

### **16 Person may acquire airport leases for only one airport site**

- (1) The Commonwealth must not grant a lease of the whole or a part of an airport site to a person who already holds an airport lease or an interest in an airport lease, unless each of those leases relates to the same airport site.
- (2) The Minister must not approve the transfer of a lease of the whole or a part of an airport site to a person who already holds an airport lease or an interest in an airport lease, unless each of those leases relates to the same airport site.
- (3) If a purported grant or approval contravenes this section, it is of no effect.

Section 17

---

**17 Simultaneous grant of leases to the same person must relate to the same airport**

- (1) The Commonwealth must not simultaneously grant to the same person 2 or more airport leases, unless those leases relate to the same airport site.
- (2) If purported grants contravene this section, they are of no effect.

**18 Sydney (Kingsford-Smith) Airport and Sydney West Airport may be under common ownership**

- (1) The airport-lessee company for Sydney (Kingsford-Smith) Airport and the airport-lessee company for Sydney West Airport may be subsidiaries of the same company.

*Subsidiaries*

- (7) For the purposes of this section, a company (the **subsidiary company**) is taken to be a **subsidiary** of another company (the **holding company**) if, and only if, all the shares in the subsidiary company are beneficially owned by the holding company.

**19 Only one person to hold airport leases for an airport site**

- (1) The Commonwealth must not grant a lease of the whole or a part of an airport site to a person if another person already holds an airport lease for the airport.
- (1A) If there are 2 or more airport leases for the same airport site, the Minister must not approve the transfer of any of those leases unless the Minister is satisfied that, immediately after the transfer of that lease, all of those leases will be held by the same person.
- (2) If a purported grant or approval contravenes this section, it is of no effect.

**20 Simultaneous grant of leases relating to the same airport site to be to the same person**

- (1) The Commonwealth must not simultaneously grant 2 or more leases relating to different parts of the same airport site, unless those grants are to the same person.
- (2) If purported grants contravene this section, they are of no effect.

**20A Airport leases for an airport site to expire on the same day**

If there are, or are to be, 2 or more airport leases for the same airport site, the Commonwealth must ensure that the term of each of those leases expires on the same day.

**21 No grant of lease if Part 3 contravened**

- (1) The Commonwealth must not grant an airport lease to a company if the Minister is satisfied that:
  - (a) an unacceptable foreign-ownership situation in relation to the company would come into existence in the event of the grant; or
  - (b) an unacceptable airline-ownership situation in relation to the company would come into existence in the event of the grant; or
  - (c) both:
    - (i) the company would become a member of a pair of airport-operator companies in the event of the grant; and
    - (ii) an unacceptable cross-ownership situation in relation to the pair would come into existence in the event of the grant.
- (2) If a purported grant contravenes this section, it is of no effect.

**22 Airport lease granted subject to existing interests in the land**

- (1) An airport lease is granted under section 13 subject to all existing leases in relation to the land concerned.

**Section 22**

---

- (2) The following provisions have effect:
- (a) all obligations and benefits of the Commonwealth under, or connected with, such an existing lease:
    - (i) pass to the airport-lessee company; and
    - (ii) cease to be enforceable by or against the Commonwealth;whether or not the obligations or benefits touch and concern the land;
  - (b) an instrument relating to such an obligation or benefit continues to have effect after the grant of the airport lease as if a reference in the instrument to the Commonwealth or the Federal Airports Corporation were a reference to the company;
  - (c) the company becomes the Commonwealth's successor in law, in relation to such an obligation or benefit, immediately after the grant of the airport lease.

Note 1: The lessees of existing leases become lessees of the airport-lessee company.

Note 2: Subsections (1) and (2) relate to the obligations and benefits of the Commonwealth as lessor. Section 17 of the *Airports (Transitional) Act 1996* deals with a case where the Commonwealth is the lessee under an existing lease.

- (3) An airport lease is granted under section 13 subject to all other existing interests in the land concerned.
- (4) Paragraph (2)(b) does not modify any register kept by a land registration official under a law of a State.
- (5) In this section:
- instrument*** includes a document.

## **Division 4—Restrictions on acquisition and transfer of airport leases**

### **23 Restriction on acquisition of airport lease**

- (1) A person must not acquire an airport lease, or an interest in an airport lease, unless:
  - (a) the person is a qualified company; or
  - (b) the acquisition is by way of the enforcement of a loan security and the person is a constitutional corporation.
- (2) If a purported acquisition contravenes this section, it is of no effect.

### **24 No transfer of airport lease without approval of Minister**

- (1) An airport lease must not be transferred without the written approval of the Minister.
- (2) If a purported transfer contravenes this section, it is of no effect.
- (3) The Minister may only refuse to approve the transfer of an airport lease:
  - (a) on a ground specified in the regulations; or
  - (b) on the grounds set out in subsection 14(3); or
  - (c) the grounds set out in subsection 16(2); or
  - (da) on the grounds set out in subsection 19(1A); or
  - (e) on the grounds set out in section 25.
- (4) This section does not apply to a transfer by way of the enforcement of a loan security.

### **25 No transfer of lease if Part 3 contravened**

The Minister must not approve the transfer of an airport lease to a company if the Minister is satisfied that:

**Section 26**

---

- (a) an unacceptable foreign-ownership situation in relation to the company would come into existence in the event of the transfer; or
- (b) an unacceptable airline-ownership situation in relation to the company would come into existence in the event of the transfer; or
- (c) both:
  - (i) the company would become a member of a pair of airport-operator companies in the event of the transfer; and
  - (ii) an unacceptable cross-ownership situation in relation to the pair would come into existence in the event of the transfer.

**26 No declaration of trust in respect of airport lease**

- (1) The lessee of an airport lease must not dispose of the lease by way of declaration of trust.
- (2) If a purported disposal contravenes this section, it is of no effect.

**27 Beneficial interest in airport lease must not be transferred independently of legal interest**

- (1) A beneficial interest in an airport lease must not be transferred independently of the legal interest in the lease.
- (2) If a purported transfer contravenes this section, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

**28 Notification of acquisition of lease or of entry into possession—  
enforcement of loan security**

- (1) If:
  - (a) a person acquires an airport lease; and

- (b) the acquisition is by way of the enforcement of a loan security;

the person must, within 7 days after acquiring the lease, give the Minister written notice of the acquisition.

Penalty: 100 penalty units.

- (2) If:

- (a) an airport lease is subject to a loan security; and
- (b) the lender enters into possession of the land to which the lease relates; and
- (c) the entry into possession is by way of the enforcement of the loan security;

the lender must, within 7 days after entering into possession, give the Minister written notice of the entry into possession.

Penalty: 100 penalty units.

## **29 Re-transfer of lease—enforcement of loan security**

### *Re-transfer*

- (1) If:

- (a) a person acquires an airport lease; and
- (b) the acquisition is by way of the enforcement of a loan security;

the person must transfer the lease to a qualified company:

- (c) within 90 days after acquiring the lease; or
- (d) if a longer period is specified in a written notice given to the person by the Minister—within that longer period.

### *Entry into possession*

- (1A) If:

- (a) an airport lease is subject to a loan security; and
- (b) the lender enters into possession of the land to which the lease relates; and

**Section 29**

---

- (c) the entry into possession is by way of the enforcement of the loan security;

the lender must cause the lease to be transferred to a qualified company:

- (d) within 90 days after the lender entered into possession; or
- (e) if a longer period is specified in a written notice given to the lender by the Minister—within that longer period.

*Offence*

- (2) A person commits an offence if:
  - (a) the person is subject to a requirement to transfer a lease under subsection (1) or (1A); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

*Strict liability*

- (2A) Strict liability applies to paragraph (2)(a).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

*Court orders*

- (3) If:
  - (a) a person contravenes subsection (1) or (1A) in relation to an airport lease; and
  - (b) the Minister applies to the Federal Court for an order terminating the lease;the court may make such orders as the court considers appropriate for the purpose of terminating the lease.

*Criteria for making order*

- (4) In deciding whether to make such an order, the court must have regard to:



- (a) whether the person made reasonable efforts to obtain the Minister's approval for the transfer of the lease to another person; and
- (b) the reasonableness of the Minister's decisions under paragraph (1)(d) or (1A)(e) in relation to the lease; and
- (c) such other matters (if any) as the court considers relevant.

### **30 Termination of airport lease otherwise than under this Act**

This Act does not, by implication, prevent an airport lease from being terminated otherwise than under a provision of this Act.

## **Division 5—Obligation to use airport site as an airport**

### **31 Obligation to use airport site as an airport**

- (1) This section has effect for the purposes of determining whether:
- (a) an airport-operator company for an airport; or
  - (b) a person acting on behalf of an airport-operator company for an airport;
- has a defence to, or an immunity from:
- (c) an action or proceeding in court (whether civil or criminal); or
  - (d) an administrative proceeding; or
  - (e) a proceeding in a tribunal.

#### *Airports other than joint-user airports*

- (2) In the case of an airport other than a joint-user airport, the company has, by force of this subsection, an obligation to use the airport site concerned as an airport.

#### *Joint-user airports*

- (3) In the case of a joint-user airport, the company has, by force of this subsection, an obligation to use the airport site for purposes in connection with the airport.

#### *Licences*

- (4) This section does not free a person from a requirement to hold a licence or permit (however described) under a law of the Commonwealth. For this purpose, ***law of the Commonwealth*** does not include an applied provision within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.

## **Division 6—Restrictions on lessees**

### **Subdivision A—Airport-operator company must not carry on non-airport business**

#### **32 Airport-operator company must not carry on non-airport business**

##### *Airports other than joint-user airports*

- (1) An airport-operator company for an airport (other than a joint-user airport) must not carry on substantial trading or financial activities other than:
  - (a) activities relating to the operation and/or development of the airport; or
  - (b) activities incidental to the operation and/or development of the airport; or
  - (c) activities that, under the regulations, are treated as activities incidental to the operation and/or development of the airport; or
  - (d) activities that are consistent with the airport lease for the airport and the final master plan for the airport.

##### *Joint-user airports*

- (2) An airport-operator company for a joint-user airport must not carry on substantial trading or financial activities other than:
  - (a) activities connected with the airport; or
  - (b) activities incidental to activities connected with the airport; or
  - (c) activities that, under the regulations, are treated as activities incidental to activities connected with the airport; or
  - (d) activities that are consistent with the airport lease for the airport and the final master plan for the airport.

## Section 33

---

### *Offence*

- (3) A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1) or (2); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 2,000 penalty units.

### *Strict liability*

- (3A) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### *Loan securities*

- (4) Subsections (1) and (2) do not apply to an airport-lessee company for an airport if the company acquired its airport lease or airport leases by way of the enforcement of a loan security.

### *Validity of transactions*

- (5) A contravention of this section does not affect the validity of any transaction.

## **Subdivision B—Airport-management agreements**

### **33 Airport-management agreements**

#### *Approval of airport-management company*

- (1) The airport-lessee company for an airport must not enter into an airport-management agreement in relation to the airport unless the other party to the agreement is both:
- (a) approved in writing by the Minister; and
  - (b) a qualified company.

Note: *Airport-management agreement* is defined by subsection (7).

*Contravention*

- (2) If a purported agreement contravenes subsection (1), it is of no effect.

*Breach of ownership restrictions*

- (3) The Minister must not approve a company under subsection (1) if the Minister is satisfied that:
- (a) an unacceptable foreign-ownership situation in relation to the company would come into existence in the event that the agreement was entered into; or
  - (b) an unacceptable airline-ownership situation in relation to the company would come into existence in the event that the agreement was entered into; or
  - (c) both:
    - (i) the company would become a member of a pair of airport-operator companies in the event that the agreement was entered into; and
    - (ii) an unacceptable cross-ownership situation in relation to the pair would come into existence in the event that the agreement was entered into.

*Other grounds for refusing approval*

- (4) If subsection (3) does not apply to the approval of a company under subsection (1), the Minister may only refuse to approve the company on a ground specified in the regulations.

*Approval of agreement*

- (4A) The airport-lessee company for an airport must not enter into an airport-management agreement in relation to the airport unless the agreement is approved in writing by the Minister.

Note: *Airport-management agreement* is defined by subsection (7).

**Section 33**

---

*Contravention*

- (4B) If a purported agreement contravenes subsection (4A), it is of no effect.

*Criteria for approval*

- (4C) In making a decision under subsection (4A), the Minister must have regard to:
- (a) the matters specified in the regulations; and
  - (b) such other matters (if any) as the Minister considers relevant.

*Approval of variation*

- (4D) An airport-management agreement in relation to the airport must not be varied unless the variation is approved in writing by the Minister.

Note: *Airport-management agreement* is defined by subsection (7).

*Contravention*

- (4E) If a purported variation contravenes subsection (4D), it is of no effect.

*Criteria for approval*

- (4F) In making a decision under subsection (4D), the Minister must have regard to:
- (a) the matters specified in the regulations; and
  - (b) such other matters (if any) as the Minister considers relevant.

*Termination of agreement if contractor ceases to be a qualified company*

- (5) If:
- (a) a qualified company (the **contractor**) enters into an airport-management agreement in relation to an airport; and
  - (b) at a particular time, the contractor ceases to be a qualified company;

the agreement terminates at that time.

*Other means of termination*

- (6) This section does not, by implication, prevent an agreement from being terminated otherwise than under subsection (5).

*Airport-management agreement*

- (7) For the purposes of this Act, an **airport-management agreement**, in relation to an airport, is an agreement (other than a contract of employment or a prescribed kind of agreement) between:
- (a) the airport-lessee company for the airport; and
  - (b) another person;
- under which the other person (either alone or together with the company and/or one or more other persons) is in a position to exercise control over either or both of the following:
- (c) the operation of the whole or a substantial part of the airport;
  - (d) the direction to be taken in relation to the development of the whole or a substantial part of the airport.

*Economic and commercial substance of agreement*

- (8) In determining whether an agreement is an airport-management agreement, regard must be had to the economic and commercial substance of the agreement.
- (9) Subsection (8) does not, by implication, limit subsection (7).

**Subdivision C—Subleases and licences**

**34 Regulations may prohibit subleases of airport leases**

- (1) The regulations may prohibit specified kinds of subleases of an airport lease.
- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.

Section 34A

---

- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the ***imposition time***) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the sublease:
  - (a) the prohibition does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the sublease contravenes the prohibition—the sublease is terminated immediately after the end of that period.

**34A Regulations may prohibit terms from being included in sublease of airport lease**

- (1) The regulations may prohibit specified kinds of terms from being included in subleases of an airport lease.
- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the ***imposition time***) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the sublease:
  - (a) the prohibition does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the sublease contravenes the prohibition—the sublease is terminated immediately after the end of that period.
- (5) In this section:  
***terms*** includes conditions.



**34B Regulations may require terms to be included in sublease of airport lease**

- (1) The regulations may require that specified kinds of terms must be included in subleases of an airport lease.
- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a requirement in relation to the sublease:
  - (a) the requirement does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the sublease contravenes the requirement—the sublease is terminated immediately after the end of that period.
- (5) In this section:  
*terms* includes conditions.

**34C Regulations may prohibit declaration of trust in respect of sublease of airport lease**

- (1) The regulations may provide that the sublessee of an airport lease must not dispose of the sublease by way of declaration of trust.
- (2) If a purported disposal contravenes those regulations, it is of no effect.

Section 34D

---

**34D Regulations may provide that a beneficial interest in a sublease of airport lease must not be transferred independently of the legal interest**

- (1) The regulations may provide that a beneficial interest in a sublease of an airport lease must not be transferred independently of the legal interest in the sublease.
- (2) If a purported transfer contravenes those regulations, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

**35 Regulations may prohibit licences relating to airport leases**

- (1) The regulations may prohibit specified kinds of licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the licence:
  - (a) the prohibition does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the licence contravenes the prohibition—the licence is terminated immediately after the end of that period.

Section 35A

---

**35A Regulations may prohibit terms from being included in licence relating to airport lease**

- (1) The regulations may prohibit specified kinds of terms from being included in licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the licence:
  - (a) the prohibition does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the licence contravenes the prohibition—the licence is terminated immediately after the end of that period.
- (5) In this section:  
*terms* includes conditions.

**35B Regulations may require terms to be included in licence relating to airport lease**

- (1) The regulations may require that specified kinds of terms must be included in licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.

Section 35C

---

- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a requirement in relation to the licence:
  - (a) the requirement does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the licence contravenes the requirement—the licence is terminated immediately after the end of that period.
- (5) In this section:  
*terms* includes conditions.

**35C Regulations may prohibit declaration of trust in respect of licence relating to airport lease**

- (1) The regulations may provide that the holder of a licence relating to an airport lease must not dispose of the licence by way of declaration of trust.
- (2) If a purported disposal contravenes those regulations, it is of no effect.

**35D Regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest**

- (1) The regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest in the licence.
- (2) If a purported transfer contravenes those regulations, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

**35E Termination of sublease or licence otherwise than under this Subdivision**

This Subdivision does not, by implication, prevent a sublease or licence from being terminated otherwise than under this Subdivision.

**35F Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of this Subdivision would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

Section 36

---

**Division 7—Lands Acquisition Act 1989 not to apply to  
anything done under this Part**

**36 *Lands Acquisition Act 1989* not to apply to anything done under  
this Part**

The *Lands Acquisition Act 1989* does not apply to anything done  
under this Part.

## **Division 8—Entries in title registers**

### **37 Entries in title registers**

- (1) This section applies if an airport lease is granted under section 13.
- (2) The relevant land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for the purposes of drawing the attention of persons to the existence of this Act. For this purpose, the relevant ***land registration official*** is the Registrar of Titles or other proper officer of the State in which the airport is situated.

## **Part 3—Restrictions on ownership of airport-operator companies**

### **Division 1—Simplified outline**

#### **38 Simplified outline**

The following is a simplified outline of this Part:

- Airport-operator companies are subject to the following ownership restrictions:
  - (a) a 49% limit on foreign ownership;
  - (b) a 5% limit on airline ownership for certain airports;
  - (c) a 15% limit on cross-ownership for Sydney (Kingsford-Smith)/Melbourne, Sydney (Kingsford-Smith)/Brisbane and Sydney (Kingsford-Smith)/Perth airports.
- Those limits relate to a person's *stake* in a company.
- A person's stake includes the interests of the person's associates.
- There are 4 different types of stake. The main types are:
  - (a) percentage of total paid-up share capital; and
  - (b) percentage of voting power.
- The ownership restrictions will be breached if any type of stake goes over the relevant limit.



Section 38

---

- **Stake** and other technical expressions used in this Part are defined by the Schedule.
- The central management and control of an airport-operator company must be exercised at a place in Australia.
- A majority of the directors of an airport-operator company must be Australian citizens and/or Australian residents.
- The regulations may require records to be kept, and information to be given, for purposes relating to the ownership restrictions.

## **Division 2—Definitions in Schedule**

### **39 Definitions in Schedule**

The Schedule sets out definitions of expressions used in this Part.

## **Division 3—49% limit on foreign ownership**

### **40 Meaning of *unacceptable foreign-ownership situation***

For the purposes of this Act, an ***unacceptable foreign-ownership situation*** exists in relation to an airport-operator company if there is a group of foreign persons who hold, in total, a particular type of stake in the company of more than 49%.

Note 1: A ***group*** can consist of a single foreign person—see the Schedule.

Note 2: A person's ***stake*** includes the interests of the person's associates—see the Schedule.

### **41 Acquisitions of shares**

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to an airport-operator company, that:
  - (i) an unacceptable foreign-ownership situation comes into existence in relation to the company; or
  - (ii) if an unacceptable foreign-ownership situation already exists in relation to the company—there is an increase in the total of any type of stake held by any group of foreign persons in the company; and
- (c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;

the person or persons mentioned in paragraph (a) commit an offence punishable on conviction by a fine not exceeding 400 penalty units.

## Section 42

---

### **42 Compliance by airport-operator company**

- (1) An airport-operator company must take all reasonable steps to ensure that an unacceptable foreign-ownership situation does not exist in relation to the company.
- (2) A company commits an offence if:
  - (a) the company is required to take steps under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 500 penalty units.

### **43 Remedial orders**

- (1) If an unacceptable foreign-ownership situation exists in relation to an airport-operator company, the Federal Court may, on application by the Minister or the company, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The Federal Court's orders include:
  - (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order

directing any person to do or refrain from doing a specified act; and

- (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Division 4—5% limit on ownership by airlines of airport-operator companies for certain airports**

### **44 Meaning of *unacceptable airline-ownership situation***

- (1) For the purposes of this Act, an ***unacceptable airline-ownership situation*** exists in relation to an airport-operator company for an airport and in relation to a particular airline if the airline holds a particular type of stake in the company of more than 5%.

Note: A person's ***stake*** includes the interests of the person's associates—see the Schedule.

- (2) The regulations may specify that subsection (1) does not apply to:
- (a) specified airports (not being core regulated airports); or
  - (b) specified airports (not being core regulated airports) in specified circumstances.

### **45 Acquisitions of shares**

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to an airport-operator company, that:
  - (i) an unacceptable airline-ownership situation comes into existence in relation to the company and in relation to an airline; or
  - (ii) if an unacceptable airline-ownership situation already exists in relation to the company and in relation to an airline—there is an increase in any type of stake held by the airline in the company; and
- (c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;

the person or persons mentioned in paragraph (a) commit an offence punishable on conviction by a fine not exceeding 400 penalty units.

#### **46 Compliance by airport-operator company**

- (1) An airport-operator company must take all reasonable steps to ensure that an unacceptable airline-ownership situation does not exist in relation to the company.
- (2) A company commits an offence if:
  - (a) the company is required to take steps under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 500 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **47 Remedial orders**

- (1) If an unacceptable airline-ownership situation exists in relation to an airport-operator company, the Federal Court may, on application by the Minister or the company, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The Federal Court's orders include:
  - (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.

**Part 3** Restrictions on ownership of airport-operator companies

**Division 4** 5% limit on ownership by airlines of airport-operator companies for certain airports

**Section 47**

---

- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.



## **Division 5—Limits on cross-ownership of pairs of airport-operator companies**

### **Subdivision A—Simplified outline**

#### **48 Simplified outline**

The following is a simplified outline of this Division:

- Airport-operator companies for Sydney (Kingsford-Smith) and Melbourne form a *pair*.
- Airport-operator companies for Sydney (Kingsford-Smith) and Brisbane form a *pair*.
- Airport-operator companies for Sydney (Kingsford-Smith) and Perth form a *pair*.
- There is a 15% limit on the cross-ownership of paired companies.
- The Minister may declare a person to have *practical control* of an airport-operator company.
- If the person covered by the declaration has practical control of, or a stake of more than 15% in, each of the members of a pair, the person must take steps to ensure that there is at least one member of the pair where the person does not have:
  - (a) a stake of more than 15%; or
  - (b) practical control.

Section 49

**Subdivision B—Pairs of airport-operator companies**

**49 Pairs of airport-operator companies**

For the purposes of this Act, a group of 2 airport-operator companies constitute a *pair of airport-operator companies* if:

- (a) one of the companies is mentioned in a box in the left-hand column of the following table; and
- (b) the other company is mentioned in the corresponding box in the right-hand column of the table.

For the purposes of this Act, the *members* of that pair are those companies.

<b>This company ...</b>	<b>forms a pair with this company ...</b>
the airport-lessee company for Melbourne (Tullamarine) Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
an airport-management company for Melbourne (Tullamarine) Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Melbourne (Tullamarine) Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
an airport-management company for Melbourne (Tullamarine) Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Brisbane Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
an airport-management company for Brisbane Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Brisbane Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
an airport-management company for Brisbane Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Perth Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
an airport-management company for Perth Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Perth	an airport-management company for

---

<b>This company ...</b>	<b>forms a pair with this company ...</b>
Airport	Sydney (Kingsford-Smith) Airport
an airport-management company for Perth Airport	an airport-management company for Sydney (Kingsford-Smith) Airport

---

## **Subdivision C—15% limit on cross-ownership**

### **50 Meaning of *unacceptable cross-ownership situation***

For the purposes of this Act, an *unacceptable cross-ownership situation* exists in relation to a pair of airport-operator companies (the *first company* and the *second company*) and in relation to a particular person if:

- (a) the person holds a particular type of stake in the first company of more than 15%; and
- (b) the person holds any type of stake in the second company of more than 15%.

Note: A person's *stake* includes the interests of the person's associates—see the Schedule.

### **51 Acquisitions of shares**

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to a particular pair of airport-operator companies (the *first company* and the *second company*), that:
  - (i) an unacceptable cross-ownership situation comes into existence in relation to the pair and in relation to a person; or
  - (ii) if an unacceptable cross-ownership situation already exists in relation to the pair and in relation to a particular person—there is an increase in any type of stake held by the person in either the first company or the second company; and

## Section 52

---

- (c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;

the person or persons mentioned in paragraph (a) commit an offence punishable on conviction by a fine not exceeding 400 penalty units.

## 52 Compliance by airport-operator companies

- (1) A member of a pair of airport-operator companies must take all reasonable steps to ensure that an unacceptable cross-ownership situation does not exist in relation to that pair.
- (2) A company commits an offence if:
  - (a) the company is required to take steps under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 500 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 53 Remedial orders

- (1) If an unacceptable cross-ownership situation exists in relation to a pair of airport-operator companies, the Federal Court may, on application by the Minister or a member of the pair, make such orders as the court considers appropriate for the purpose of ensuring that the situation ceases to exist.
- (2) The Federal Court's orders include:
  - (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or

- (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Subdivision D—Practical control**

### **54 Meaning of *control***

In this Subdivision:

***control*** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

Section 55

---

**55 Minister may declare person to have practical control of an airport-operator company**

*Declaration*

- (1) If:
- (a) the Minister is satisfied that:
    - (i) the directors of an airport-operator company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates); or
    - (ii) a person (either alone or together with associates) is in a position to exercise control over an airport-operator company; and
  - (b) the Minister is satisfied that:
    - (i) the person does not have any type of stake in the company; or
    - (ii) if the person has one or more types of stake in the company—each of those stakes is not more than 15%;
- the Minister may declare that the person has ***practical control*** of the airport-operator company for the purposes of this Act.

*Declaration has effect*

- (2) A declaration under this section has effect accordingly.

*Revocation of declaration*

- (3) If:
- (a) a declaration is in force under this section; and
  - (b) the Minister ceases to be satisfied of the matters referred to in paragraphs (1)(a) and (b);
- the Minister must revoke the declaration.

*Gazettal and notification of declaration*

- (4) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation:
- (a) to be published in the *Gazette*; and
  - (b) to be given to the airport-operator company and the person concerned.

**56 Requirement to relinquish practical control or reduce stake**

- (1) If a person:
- (a) has practical control of a particular airport-operator company (the ***first company***); and
  - (b) the first company is a member of a pair of airport-operator companies; and
  - (c) either of the following subparagraphs applies to the other member of the pair:
    - (i) the person has practical control of the other member;
    - (ii) the person has a particular type of stake in the other member of more than 15%;

the person must take such steps as are necessary to ensure that there is at least one member of the pair where both of the following paragraphs apply:

- (d) both:
  - (i) the directors of the company are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
  - (ii) the person (either alone or together with associates) is not in a position to exercise control over the company;
- (e) either:
  - (i) the person does not have any type of stake in the company; or
  - (ii) if the person has one or more types of stake in the company—each of those stakes is not more than 15%.

## Section 57

---

The person must take those steps:

- (f) within 90 days after receiving the copy of the most recent declaration under section 55 relating to the practical control of the first company or the other member of the pair; or
- (g) if the Minister, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.

Note: **Practical control** has the meaning given by section 55.

- (2) A person commits an offence if:
- (a) the person is required to take steps under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

## 57 Remedial orders

- (1) If a person:
- (a) has practical control of a particular airport-operator company (the **first company**); and
  - (b) the first company is a member of a pair of airport-operator companies; and
  - (c) either of the following subparagraphs applies to the other member of the pair:
    - (i) the person has practical control of the other member;
    - (ii) the person has a particular type of stake in the other member of more than 15%;

the Federal Court may, on application by the Minister, make such orders as the court considers appropriate to ensure that there is at least one member of the pair where both of the following paragraphs apply:

- (d) both:



- (i) the directors of the company are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
- (ii) the person (either alone or together with associates) is not in a position to exercise control over the company;
- (e) either:
  - (i) the person does not have any type of stake in the company; or
  - (ii) if the person has one or more types of stake in the company—each of those stakes is not more than 15%.

Note: **Practical control** has the meaning given by section 55.

- (2) The Federal Court's orders include:
  - (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the Minister's application be given to such

**Part 3** Restrictions on ownership of airport-operator companies

**Division 5** Limits on cross-ownership of pairs of airport-operator companies

**Section 57**

---

persons as it thinks fit or be published in such manner as it thinks fit, or both.

- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Division 6—Head office of airport-operator company and citizenship/residency of directors of airport-operator company**

### **58 Head office to be in Australia**

- (1) An airport-operator company must ensure that the central management and control of the company is ordinarily exercised at a place in Australia.
- (2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Part 15.
- (3) A contravention of subsection (1) does not affect the validity of any transaction.

### **59 Majority of directors must be Australian citizens or Australian residents**

- (1) An airport-operator company must ensure that a majority of its directors are:
  - (a) Australian citizens; or
  - (b) foreign citizens ordinarily resident in Australia.
- (2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Part 15.
- (3) A contravention of subsection (1) does not affect the validity of any transaction.

## **Division 7—Record-keeping and giving of information**

### **60 Record-keeping and giving of information**

- (1) The regulations may make provision for and in relation to requiring a person:
- (a) to keep and retain records, where the records are relevant to an ownership matter; and
  - (b) to give information to the Minister that is relevant to:
    - (i) an ownership matter; or
    - (ii) ascertaining whether Division 6 has been or is being complied with; and
  - (c) to give information to an airport-operator company, where the information is relevant to an ownership matter that concerns the company.

Note: **Ownership matter** is defined by subsection (6).

#### *Statutory declarations*

- (2) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b) or (c) must be verified by statutory declaration.

#### *No self-incrimination*

- (3) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b) or (c) if the information might tend to incriminate the individual or expose the individual to a penalty.

#### *Offence*

- (4) A person commits an offence if:
- (a) the person is required to keep and retain records and to give information under subsection (1); and
  - (b) the person engages in conduct; and

(c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

(4A) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the Minister*

(5) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the Minister. For example, the regulations could provide that the Minister may, by written notice given to an airport-operator company for an airport, require the company to give the Minister, within the period and in the manner specified in the notice, specified information about an ownership matter relating to the company.

*Definition*

- (6) For the purposes of this section, each of the following matters is an **ownership matter**:
- (a) whether a person holds a particular type of stake in an airport-operator company and, if so, the level of that stake;
  - (b) whether the directors of an airport-operator company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates);
  - (c) whether a person (either alone or together with associates) is in a position to exercise control over an airport-operator company.

For this purpose, **control** has the same meaning as in section 54.

## **Division 8—Concurrent operation of State laws**

### **61 Concurrent operation of State laws**

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State to the extent that that law is capable of operating concurrently with this Part.

**Division 9—Validity of acts done in contravention of this  
Part**

**62 Validity of acts done in contravention of this Part**

An act is not invalidated by the fact that it constitutes an offence  
against this Part.

## **Division 10—Acquisition of property**

### **63 Acquisition of property**

- (1) The Federal Court must not make an order under this Part if:
- (a) the order would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.

- (2) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.



## Part 4—Anti-avoidance

### 64 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with schemes designed to avoid:
  - (a) the rules about the leasing and management of airports; and
  - (b) the ownership restrictions that apply to airport-operator companies.

### 65 Anti-avoidance—assets etc.

#### *Acquisition of assets*

(1) If:

- (a) one or more persons enter into, begin to carry out or carry out a scheme; and
- (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 or 3 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
- (c) as a result of the scheme or a part of the scheme, a person (the **beneficiary**) acquires any of the following assets:
  - (i) an airport lease or an interest in an airport lease;
  - (ii) a sublease of an airport lease;
  - (iii) a licence relating to an airport lease;

the Minister may give the beneficiary a written direction to dispose of the asset within a specified time.

## Section 66

---

### *Acquisition of stake in airport-operator company*

- (2) If:
- (a) one or more persons enter into, begin to carry out or carry out a scheme; and
  - (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 or 3 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
  - (c) as a result of the scheme or a part of the scheme, a person (the **stakeholder**) increases the stakeholder's stake in an airport-operator company;
- the Minister may give the stakeholder a written direction to cease holding that stake within a specified time.

### *Offence*

- (3) A person who intentionally contravenes a direction under subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 400 penalty units.

### *Definitions*

- (4) In this section:

**increase**, in relation to a stake in a company, includes an increase from a starting point of nil.

**stake**, in relation to a company, has the same meaning as in the Schedule.

## **66 Anti-avoidance—airport-management agreements**

- (1) This section applies if:
- (a) one or more persons enter into, begin to carry out or carry out a scheme; and

Section 66

---

- (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 or 3 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
  - (c) as a result of the scheme or a part of the scheme, a person (the ***contractor***) enters into an airport-management agreement with the airport-lessee company for an airport.
- (2) The Minister may, by written notice given to the contractor and the company, terminate the agreement with effect from a specified time.

## **Part 5—Land use, planning and building controls**

### **Division 1—Simplified outline**

#### **67 Simplified outline**

The following is a simplified outline of this Part:

- For each airport, there is to be an airport master plan.
- Major development plans will be required for significant developments at airports.
- An airport plan may be determined for Sydney West Airport.
- Major development plans will not be required for a development at Sydney West Airport if the development is covered by an airport plan for the airport.
- Building activities on airport sites will require approval.
- Buildings and structures on airport sites must be certified as complying with the regulations.

## **Division 2—Scope of Part**

### **68 Airports to which Part applies**

- (1) This Part (other than Division 4A and the associated provisions) applies to:
  - (a) a core regulated airport, if there is an airport lease for the airport; and
  - (b) an airport prescribed in the regulations, if there is an airport lease for the airport.
- (1A) Division 4A and the associated provisions apply to Sydney West Airport, whether or not there is an airport lease for the airport.
- (2) For the purposes of subsections (1) and (1A), the boundaries of an airport are the boundaries of the airport site for the airport.
- (3) In this section:

***associated provisions*** means the provisions of Division 6, to the extent that they relate to Division 4A.

## Division 3—Airport master plans

### 69 Simplified outline

The following is a simplified outline of this Division:

- For each airport, there is to be a final master plan.
- A final master plan is a draft master plan that has been approved by the Minister.
- A draft master plan is prepared by an airport-lessee company after taking into account public comments.
- A final master plan is relevant to the approval of major developments at the airport.

### 70 Final master plans

- (1) For each airport, there is to be a final master plan.

Note: A **final master plan** is a draft master plan that has been approved by the Minister—see section 83.

- (2) The purposes of a final master plan for an airport are:
- (a) to establish the strategic direction for efficient and economic development at the airport over the planning period of the plan; and
  - (b) to provide for the development of additional uses of the airport site; and
  - (c) to indicate to the public the intended uses of the airport site; and
  - (d) to reduce potential conflicts between uses of the airport site, and to ensure that uses of the airport site are compatible with the areas surrounding the airport; and

- (e) to ensure that all operations at the airport are undertaken in accordance with relevant environmental legislation and standards; and
- (f) to establish a framework for assessing compliance at the airport with relevant environmental legislation and standards; and
- (g) to promote the continual improvement of environmental management at the airport.

## **71 Contents of draft or final master plan**

- (1) This section specifies the matters that must be set out in each draft or final master plan for an airport.

### *Airports other than joint-user airports*

- (2) In the case of an airport other than a joint-user airport, a draft or final master plan must specify:
  - (a) the airport-lessee company's development objectives for the airport; and
  - (b) the airport-lessee company's assessment of the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport; and
  - (c) the airport-lessee company's intentions for land use and related development of the airport site, where the uses and developments embrace airside, landside, surface access and land planning/zoning aspects; and
  - (d) an Australian Noise Exposure Forecast (in accordance with regulations, if any, made for the purpose of this paragraph) for the areas surrounding the airport; and
  - (da) flight paths (in accordance with regulations, if any, made for the purpose of this paragraph) at the airport; and
  - (e) the airport-lessee company's plans, developed following consultations with the airlines that use the airport and local government bodies in the vicinity of the airport, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and

**Section 71**

---

- (f) the airport-lessee company's assessment of environmental issues that might reasonably be expected to be associated with the implementation of the plan; and
- (g) the airport-lessee company's plans for dealing with the environmental issues mentioned in paragraph (f) (including plans for ameliorating or preventing environmental impacts); and
- (ga) in relation to the initial period (see subsection (3A)) of the master plan—a plan for a ground transport system on the landside of the airport that details:
  - (i) a road network plan; and
  - (ii) the facilities for moving people (employees, passengers and other airport users) and freight at the airport; and
  - (iii) the linkages between those facilities, the road network and public transport system at the airport and the road network and public transport system outside the airport; and
  - (iv) the arrangements for working with the State or local authorities or other bodies responsible for the road network and the public transport system; and
  - (v) the capacity of the ground transport system at the airport to support operations and other activities at the airport; and
  - (vi) the likely effect of the proposed developments in the master plan on the ground transport system and traffic flows at, and surrounding, the airport; and
- (gb) in relation to the initial period (see subsection (3A)) of the master plan—detailed information on the proposed developments in the master plan that are to be used for:
  - (i) commercial, community, office or retail purposes; or
  - (ii) for any other purpose that is not related to airport services; and
- (gc) in relation to the initial period (see subsection (3A)) of the master plan—the likely effect of the proposed developments in the master plan on:
  - (i) employment levels at the airport; and



- (ii) the local and regional economy and community, including an analysis of how the proposed developments fit within the planning schemes for commercial and retail development in the area that is adjacent to the airport; and
- (h) in relation to the initial period (see subsection (3A)) of the master plan—an environment strategy that details:
  - (i) the airport-lessee company's objectives for the environmental management of the airport; and
  - (ii) the areas (if any) within the airport site which the airport-lessee company, in consultation with State and Federal conservation bodies, identifies as environmentally significant; and
  - (iii) the sources of environmental impact associated with airport operations; and
  - (iv) the studies, reviews and monitoring to be carried out by the airport-lessee company in connection with the environmental impact associated with airport operations; and
  - (v) the time frames for completion of those studies and reviews and for reporting on that monitoring; and
  - (vi) the specific measures to be carried out by the airport-lessee company for the purposes of preventing, controlling or reducing the environmental impact associated with airport operations; and
  - (vii) the time frames for completion of those specific measures; and
  - (viii) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations); and
  - (ix) any other matters that are prescribed in the regulations; and
- (j) such other matters (if any) as are specified in the regulations.

**Section 71**

---

Paragraphs (a) to (h) do not, by implication, limit paragraph (j).

Note 1: **Airside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public does not have free access.

Note 2: **Landside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public has free access.

*Joint-user airports*

- (3) In the case of a joint-user airport, a draft or final master plan must specify:
- (a) the airport-lessee company's development objectives for civil use of the airport; and
  - (b) the airport-lessee company's assessment of the future needs of civil aviation users of the airport, and other civil users of the airport, for services and facilities relating to the area of the airport site leased to the company; and
  - (c) the airport-lessee company's intentions for land use and related development of the area of the airport site leased to the company, where the uses and developments embrace:
    - (i) in all cases—landside, surface access and land planning/zoning aspects; and
    - (ii) if the leased area includes one or more runways or taxiways—airside aspects; and
  - (d) an Australian Noise Exposure Forecast (in accordance with regulations, if any, made for the purpose of this paragraph) for the areas surrounding the airport; and
  - (da) flight paths (in accordance with regulations, if any, made for the purpose of this paragraph) at the airport; and
  - (e) the airport-lessee company's plans, developed following consultations with the airlines that use the airport, local government bodies in the vicinity of the airport and the Defence Department, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and

- (f) the airport-lessee company's assessment of environmental issues that might reasonably be expected to be associated with the implementation of the plan; and
- (g) the airport-lessee company's plans for dealing with the environmental issues mentioned in paragraph (f) (including plans for ameliorating or preventing environmental impacts); and
- (ga) in relation to the initial period (see subsection (3A)) of the master plan—a plan for a ground transport system on the landside of the airport that details:
  - (i) a road network plan; and
  - (ii) the facilities for moving people (employees, passengers and other airport users) and freight at the airport; and
  - (iii) the linkages between those facilities, the road network and public transport system at the airport and the road network and public transport system outside the airport; and
  - (iv) the arrangements for working with the State or local authorities or other bodies responsible for the road network and the public transport system; and
  - (v) the capacity of the ground transport system at the airport to support operations and other activities at the airport; and
  - (vi) the likely effect of the proposed developments in the master plan on the ground transport system and traffic flows at, and surrounding, the airport; and
- (gb) in relation to the initial period (see subsection (3A)) of the master plan—detailed information on the proposed developments in the master plan that are to be used for:
  - (i) commercial, community, office or retail purposes; or
  - (ii) for any other purpose that is not related to airport services; and
- (gc) in relation to the initial period (see subsection (3A)) of the master plan—the likely effect of the proposed developments in the master plan on:
  - (i) employment levels at the airport; and

**Section 71**

---

- (ii) the local and regional economy and community, including an analysis of how the proposed developments fit within the planning schemes for commercial and retail development in the area that is adjacent to the airport; and
  - (h) in relation to the initial period (see subsection (3A)) of the master plan—an environment strategy that details:
    - (i) the airport-lessee company’s objectives for the environmental management of the airport; and
    - (ii) the areas (if any) within the airport site which the airport-lessee company, in consultation with State and Federal conservation bodies, identifies as environmentally significant; and
    - (iii) the sources of environmental impact associated with civil aviation operations at the airport; and
    - (iv) the studies, reviews and monitoring to be carried out by the airport-lessee company in connection with the environmental impact associated with civil aviation operations at the airport; and
    - (v) the time frames for completion of those studies and reviews and for reporting on that monitoring; and
    - (vi) the specific measures to be carried out by the airport-lessee company for the purposes of preventing, controlling or reducing the environmental impact associated with civil aviation operations at the airport; and
    - (vii) the time frames for completion of those specific measures; and
    - (viii) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations); and
    - (ix) any other matters that are prescribed in the regulations; and
  - (j) such other matters (if any) as are specified in the regulations.
- Paragraphs (a) to (h) do not, by implication, limit paragraph (j).

Note 1: **Airside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public does not have free access.

Note 2: **Landside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public has free access.

*Initial period of the master plan*

(3A) The **initial period** of the master plan is:

- (a) in the case of Sydney (Kingsford-Smith) Airport, Sydney West Airport, Melbourne (Tullamarine) Airport, Brisbane Airport or Perth Airport—the first 5 years of the plan; or
- (b) in the case of any other airport—the first 8 years of the plan.

Note: See section 68 for the airports to which this Part applies.

*Matters provided by regulations*

(4) The regulations may provide that the objectives, assessments, proposals, forecasts and other matters covered by subsection (2) or (3) may relate to one or more of the following:

- (a) the whole of the planning period of the plan;
- (b) one or more specified periods that are included in the planning period of the plan;
- (c) subject to any specified conditions, a specified period that is longer than the planning period of the plan.

Note: **Planning period** is defined by section 72.

(5) The regulations may provide that, in specifying a particular objective, assessment, proposal, forecast or other matter covered by subsection (2) or (3), a draft or final master plan must address such things as are specified in the regulations.

(6) In specifying a particular objective or proposal covered by paragraph (2)(a), (c), (ga), (gb) or (gc) or (3)(a), (c), (ga), (gb) or (gc), a draft or final master plan must address:

- (a) the extent (if any) of consistency with planning schemes in force under a law of the State in which the airport is located; and

## Section 71A

---

- (b) if the draft or final master plan is not consistent with those planning schemes—the justification for the inconsistencies.
- (7) Subsection (6) does not, by implication, limit subsection (5).
- Company to have regard to Australian Standard*
- (8) In developing plans referred to in paragraph (2)(e) and (3)(e), an airport-lessee company must have regard to Australian Standard AS 2021—2000 (“Acoustics—Aircraft noise intrusion—Building siting and construction”) as in force or existing at that time.
- (9) Subsection (8) does not, by implication, limit the matters to which regard may be had.
- (10) In this section:

***airport service*** means a service provided at an airport, if the service is necessary for the purposes of operating or maintaining civil aviation services at the airport, and includes the use of facilities at the airport for those purposes.

### 71A Draft or final master plan must identify proposed sensitive developments

- (1) A draft or final master plan must identify any proposed sensitive development in the plan.
- (2) A ***sensitive development*** is the development of, or a redevelopment that increases the capacity of, any of the following:
  - (a) a residential dwelling;
  - (b) a community care facility;
  - (c) a pre-school;
  - (d) a primary, secondary, tertiary or other educational institution;
  - (e) a hospital.
- (2A) A ***sensitive development*** does not include the following:
  - (a) an aviation educational facility;

- (b) accommodation for students studying at an aviation educational facility at the airport;
- (c) a facility with the primary purpose of providing emergency medical treatment and which does not have in-patient facilities;
- (d) a facility with the primary purpose of providing in-house training to staff of an organisation conducting operations at the airport.

(3) In this section:

***aviation educational facility*** means any of the following:

- (a) a flying training school;
- (b) an aircraft maintenance training school;
- (c) a facility that provides training in relation to air traffic control;
- (d) a facility that provides training for cabin crew;
- (e) any other facility with the primary purpose of providing training in relation to aviation related activities.

***community care facility*** includes the following:

- (a) a facility that provides aged care within the meaning given by the *Aged Care Act 1997*;
- (c) a retirement village within the meaning given by the *Social Security Act 1991*;
- (d) a facility that provides respite care within the meaning given by the *Aged Care Act 1997*.

## **72 Planning period**

A draft or final master plan must relate to a period of 20 years.  
This period is called the ***planning period***.

## **73 Assumption of continuity of lease**

For the purposes of the application of this Division to a draft or final master plan for an airport, it is to be assumed that the airport

**Section 74**

---

lease or airport leases held by the airport-lessee company will continue in force for the duration of the planning period of the plan or, if regulations made for the purposes of paragraph 71(4)(c) provide that a matter specified in the plan may relate to a longer period, the duration of that longer period.

**74 Plan does not lapse when lease transferred**

A draft or final master plan for an airport does not cease to be in force if the airport lease or airport leases are transferred. In that event, the transferee is taken to have adopted the plan as its own.

**75 Draft master plan to be given to Minister after acquisition or grant of airport lease**

(1) If:

- (a) a company acquires or is granted an airport lease; and
- (b) a final master plan for the airport is not in force at the time of the acquisition or grant; and
- (ba) in the case of a grant—subsection (1A) does not apply to the grant;

the company must give the Minister, in writing, a draft master plan for the airport:

- (c) within 12 months after the acquisition or grant; or
- (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

(1A) If:

- (a) a company is granted an airport lease for Sydney West Airport; and
- (b) the lease is the first airport lease granted for the airport;

the company must give the Minister, in writing, a draft master plan for the airport:

- (c) within 5 years after the grant; or
- (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.



- (2) A company commits an offence if:
- (a) the company is required to give the Minister a draft master plan under subsection (1) or (1A); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **76 New draft master plan to be submitted before expiry of old plan**

- (1) If a final master plan (the *original plan*) is in force for an airport, the airport-lessee company must give the Minister, in writing, a draft master plan for the airport:
- (a) no later than:
    - (i) in the case of Sydney (Kingsford-Smith) Airport, Sydney West Airport, Melbourne (Tullamarine) Airport, Brisbane Airport or Perth Airport—5 years after the original plan came into force; or
    - (ii) in the case of any other airport—8 years after the original plan came into force; or
  - (b) within a longer period that the Minister specifies in a written notice to the airport-lessee company.

The planning period for the draft master plan must begin immediately after the expiry of the original plan.

Note: See section 68 for the airports to which this Part applies.

- (1A) In connection with the airport-lessee company giving the Minister a draft master plan under subsection (1), the company:
- (a) must obtain a new Australian Noise Exposure Forecast; and
  - (b) specify that new Australian Noise Exposure Forecast in that plan.

The new Australian Noise Exposure Forecast must have been endorsed in the last 180 days of the period applicable under paragraph (1)(a) or (b).

## Section 77

---

- (2) A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1) or (1A); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) For the purposes of the prosecution of an offence under subsection (2), it is irrelevant that, because of subsection 77(1), the original plan remains in force for longer than the period referred to in subsection 77(1).

### 77 Duration of final master plan

- (1) A final master plan for an airport remains in force for:
- (a) in the case of Sydney (Kingsford-Smith) Airport, Sydney West Airport, Melbourne (Tullamarine) Airport, Brisbane Airport or Perth Airport—5 years; or
  - (b) in the case of any other airport—8 years.

However, if, at the end of that period, a fresh final master plan does not come into force, the original plan remains in force until a fresh plan comes into force.

Note: See section 68 for the airports to which this Part applies.

- (2) Subsection (1) has effect subject to section 78 (which deals with replacement of plans).

### 78 Replacement of final master plan

- (1) If a final master plan (the *original plan*) for an airport is in force, the airport-lessee company for the airport may give the Minister, in writing, a draft master plan that is expressed to replace the original plan. When the draft plan becomes a final master plan, the original plan ceases to be in force.

- (2) If a final master plan (the ***original plan***) for an airport is in force, the Minister may, by written notice given to the airport-lessee company for the airport, direct the company to give the Minister, in writing, a draft master plan that is expressed to replace the original plan. The company must comply with the direction:
- (a) within 180 days after the day on which the notice was given; or
  - (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

When the draft plan becomes a final master plan, the original plan ceases to be in force.

- (2A) If a final master plan (the ***original plan***) for an airport is in force, and a more recent Australian Noise Exposure Forecast for the airport is endorsed in the manner approved by the Minister, the airport-lessee company for the airport must give the Minister, in writing, a draft master plan that is expressed to replace the original plan. The company must give the Minister the draft master plan:
- (a) within 180 days of the more recent Australian Noise Exposure Forecast being endorsed; or
  - (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

- (2B) Subsection (2A) does not apply to an Australian Noise Exposure Forecast that is obtained for the purposes of complying with subsection 76(1A).

- (3) A company commits an offence if:
- (a) the company is required to give the Minister a draft master plan under subsection (2) or (2A); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (4) Strict liability applies to paragraph (3)(a).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

**Section 79**

---

- (5) For the purposes of the prosecution of an offence under subsection (3), it is irrelevant that, because of subsection 77(1), the original plan remains in force for longer than the period referred to in subsection 77(1).

**79 Public comment and advice to State etc.**

*Advice to State etc.*

- (1A) Before giving the Minister a draft master plan for an airport under section 75, 76 or 78, the airport-lessee company for the airport must advise, in writing, the following persons of its intention to give the Minister the draft master plan:
- (a) the Minister, of the State in which the airport is situated, with responsibility for town planning or use of land;
  - (b) the authority of that State with responsibility for town planning or use of land;
  - (c) each local government body with responsibility for an area surrounding the airport.
- (1B) The draft plan submitted to the Minister must be accompanied by:
- (a) a copy of the advice given under subsection (1A); and
  - (b) a written certificate signed on behalf of the company listing the names of those to whom the advice was given.

*Public comment*

- (1) After giving the advice under subsection (1A), but before giving the Minister the draft master plan, the company must also:
- (a) cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
    - (i) stating that the company has prepared a preliminary version of the draft plan; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period

- of 60 business days after the publication of the notice;  
and
- (iii) specifying the place or places where the copies will be available for inspection and purchase; and
- (iiia) in the case of a notice published in a newspaper—stating that copies of the preliminary version will be available free of charge to members of the public on the airport’s website throughout the period of 60 business days after the publication of the notice; and
- (iiib) in the case of a notice published in a newspaper—specifying the address of the airport’s website; and
- (iv) in any case—inviting members of the public to give written comments about the preliminary version to the company within 60 business days after the publication of the notice; and
- (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice; and
- (c) make copies of the preliminary version available free of charge to members of the public on the airport’s website:
  - (i) in a readily accessible format that is acceptable to the Minister; and
  - (ii) in accordance with the notice.
- (2) If members of the public (including persons covered by subsection (1A)) have given written comments about the preliminary version in accordance with the notice, the draft plan submitted to the Minister must be accompanied by:
  - (a) copies of those comments; and
  - (b) a written certificate signed on behalf of the company:
    - (i) listing the names of those members of the public; and
    - (ii) summarising those comments; and
    - (iii) demonstrating that the company has had due regard to those comments in preparing the draft plan; and
    - (iv) setting out such other information (if any) about those comments as is specified in the regulations.

**Section 80**

---

- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

**80 Consultations**

- (1) This section applies if:
- (a) an airport-lessee company gives the Minister a draft master plan under section 75, 76 or 78; and
  - (b) before the publication under section 79 of a notice about the plan, the company consulted (other than by giving an advice under subsection 79(1A)) a person covered by any of the following subparagraphs:
    - (i) a State government;
    - (ii) an authority of a State;
    - (iii) a local government body;
    - (iv) an airline or other user of the airport concerned;
    - (v) any other person.
- (2) The draft plan submitted to the Minister must be accompanied by a written statement signed on behalf of the company:
- (a) listing the names of the persons consulted; and
  - (b) summarising the views expressed by the persons consulted.

**80A Minister may request more material for making decision**

- (1) This section applies if an airport-lessee company gives the Minister a draft master plan or a draft variation of a final master plan.
- (2) If the Minister believes on reasonable grounds that he or she does not have enough material to make a proper decision under subsection 81(2) or 84(2), as applicable, the Minister may request the airport-lessee company to provide specified material relevant to making the decision.

*Time does not run while further material being sought*

- (3) If the Minister has requested more material under subsection (2) for the purposes of making a decision, a day is not to be counted as

a business day for the purposes of subsection 81(5) or 84(3), as applicable, if it is:

- (a) on or after the day the Minister requested the material; and
- (b) on or before the day on which the Minister receives the last of the material requested.

## **81 Approval of draft by Minister**

- (1) This section applies if an airport-lessee company gives the Minister, in writing, a draft master plan.
- (2) The Minister must:
  - (a) approve the plan; or
  - (b) refuse to approve the plan.
- (3) In deciding whether to approve the plan, the Minister must have regard to the following matters:
  - (aa) the extent to which the plan achieves the purposes of a final master plan (see subsection 70(2));
  - (a) the extent to which carrying out the plan would meet present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport concerned;
  - (b) the effect that carrying out the plan would be likely to have on the use of land:
    - (i) within the airport site concerned; and
    - (ii) in areas surrounding the airport;
  - (c) the consultations undertaken in preparing the plan (including the outcome of the consultations);
  - (d) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.
- (5) If the Minister neither approves, nor refuses to approve, the plan before the end of:

**Section 81**

---

- (a) the period of 50 business days after the day on which the Minister received the draft plan; or
    - (b) a longer period (of no more than an extra 10 business days) that the Minister specifies in a written notice to the airport-lessee company;the Minister is taken, at the end of that period, to have approved the plan under subsection (2).
  - (5A) A notice made under paragraph (5)(b) is not a legislative instrument.
  - (6) As soon as practicable after deciding whether to approve the plan, the Minister must notify the company in writing of the decision.
  - (7) If the Minister refuses to approve the plan, the Minister must notify the company in writing of the Minister's reasons for the refusal.
  - (8) If the Minister refuses to approve the plan, the Minister may, by written notice given to the company, direct the company to give the Minister, in writing, a fresh draft master plan. The fresh draft master plan must be given to the Minister:
    - (a) within 180 days after the day on which the direction was given; or
    - (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
  - (9) A company commits an offence if:
    - (a) the company is subject to a direction under subsection (8); and
    - (b) the company engages in conduct; and
    - (c) the company's conduct contravenes the direction.
- Penalty: 250 penalty units.
- (10) The Minister's approval of a draft master plan that contains a sensitive development does not stop the Minister from refusing to approve, under Division 4, a major development plan for the sensitive development.



**81A Approval of final master plan—Sydney West Airport**

- (1) If:
- (a) an airport-lessee company gives the Minister, in writing, a draft master plan for Sydney West Airport; and
  - (b) an airport plan for the airport is in force;
- the Minister may refuse to approve the draft master plan if the Minister is satisfied that the draft master plan is inconsistent with the airport plan.
- (2) If:
- (a) before the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft master plan for Sydney West Airport; and
  - (b) an airport plan for the airport is in force; and
  - (c) the draft master plan is accompanied by an application to vary the airport plan; and
  - (d) the Minister is satisfied that, if:
    - (i) the airport plan were to be so varied; and
    - (ii) the draft master plan were to be approved;the draft master plan as so approved would be consistent with the airport plan;
- the Minister may approve the draft master plan even if it is inconsistent with the airport plan.
- (3) If:
- (a) on or after the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft master plan for Sydney West Airport; and
  - (b) an airport plan for the airport is in force;
- the Minister may approve the draft master plan even if it is inconsistent with Part 3 of the airport plan.
- (4) For the purposes of subsection (1), if a draft master plan is not expressed to replace a final master plan, then, in determining

## Section 82

---

whether the draft master plan is inconsistent with the airport plan, disregard section 96E.

- (5) This section does not, by implication, limit the powers conferred on the Minister by section 81.

### **82 Transfer of airport lease during approval process**

- (1) This section applies if:
- (a) an airport lease is transferred; and
  - (b) before the transfer, a draft master plan had been submitted by the transferor to the Minister; and
  - (c) immediately before the transfer, the Minister had not made a decision whether to approve the draft plan.
- (2) The transferee is taken:
- (a) to have given the draft plan to the Minister immediately after the transfer; and
  - (b) to have adopted the draft plan as its own;
- unless, within 60 days after the transfer, the transferee gives the Minister a written undertaking to give the Minister an alternative draft plan.

### **83 Effect of approval**

- (1) If the Minister approves a draft master plan, the plan becomes a final master plan. The final master plan comes into force at the time of the approval.

*Final master plans not legislative instruments*

- (2) A final master plan is not a legislative instrument.

### **83A Compliance with environment strategy in final master plan**

- (1) This section applies if a final master plan is in force for an airport.

- (2) The airport-lessee company for the airport must take all reasonable steps to ensure that the environment strategy in the master plan is complied with.
- (3) A person (other than the airport-lessee company for the airport) who carries on activities at the airport must take all reasonable steps to ensure that the environment strategy in the master plan is complied with.
- (4) A contravention of subsection (2) or (3) is not an offence.
- (5) However, a contravention of subsection (2) or (3) is a ground for obtaining an injunction under Part 15.
- (6) Also, a contravention of subsection (2) or (3) does not affect the validity of any transaction.
- (7) In addition to its effect apart from this subsection, subsection (3) also has the effect it would have if its application were, by express provision, confined to constitutional corporations.

#### **84 Minor variation of final master plan**

- (1) This section applies if:
  - (a) a final master plan for an airport is in force; and
  - (b) the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the plan; and
  - (c) the variation is of a minor nature.
- (2) The Minister must:
  - (a) approve the variation; or
  - (b) refuse to approve the variation.
- (3) If the Minister neither approves, nor refuses to approve, the variation before the end of:
  - (a) the period of 50 business days after the day on which the Minister received the draft variation; or

**Section 84AA**

---

- (b) a longer period (of no more than an extra 10 business days) that the Minister specifies in a written notice to the airport-lessee company;
- the Minister is taken, at the end of that period, to have approved the variation under subsection (2).
- (3A) A notice made under paragraph (3)(b) is not a legislative instrument.
- (4) As soon as practicable after deciding whether to approve the variation, the Minister must notify the company in writing of the decision.
- (5) If the Minister refuses to approve the variation, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (6) If the Minister approves the variation, the plan is varied accordingly.

**84AA Minor variation of final master plan—Sydney West Airport**

- (1) If:
  - (a) a final master plan for Sydney West Airport is in force; and
  - (b) the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the final master plan; and
  - (c) an airport plan for the airport is in force;the Minister may refuse to approve the draft variation if the Minister is satisfied that, if the variation were to be made, the varied final master plan would be inconsistent with the airport plan.
- (2) If:
  - (a) a final master plan for Sydney West Airport is in force; and
  - (b) before the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the final master plan; and
  - (c) an airport plan for the airport is in force; and

---

Section 84A

---

- (d) the draft variation of the final master plan is accompanied by an application to vary the airport plan; and
  - (e) the Minister is satisfied that, if:
    - (i) the airport plan were to be so varied; and
    - (ii) the draft variation of the final master plan were to be approved;the varied final master plan would be consistent with the airport plan;
- the Minister may approve the draft variation of the final master plan even if the Minister is satisfied that, if the draft variation of the final master plan were to be approved, the varied final master plan would be inconsistent with the airport plan.
- (3) If:
- (a) a final master plan for Sydney West Airport is in force; and
  - (b) on or after the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the final master plan; and
  - (c) an airport plan for the airport is in force;
- the Minister may approve the draft variation even if the Minister is satisfied that, if the draft variation were to be approved, the varied final master plan would be inconsistent with the airport plan.
- (4) This section does not, by implication, limit the powers conferred on the Minister by section 84.

**84A Public comment and advice to State etc.—minor variation**

- (1A) Before giving the Minister a draft variation of a final master plan for an airport under subsection 84(1), the airport-lessee company for the airport must advise, in writing, the following persons of its intention to give the Minister the draft variation:
- (a) the Minister, of the State in which the airport is situated, with responsibility for town planning or use of land;
  - (b) the authority of that State with responsibility for town planning or use of land;

**Section 84A**

---

- (c) each local government body with responsibility for an area surrounding the airport.
- (1B) The draft variation submitted to the Minister must be accompanied by:
  - (a) a copy of the advice given under subsection (1A); and
  - (b) a written certificate signed on behalf of the company listing the names of those to whom the advice was given.

*Public comment*

- (1) After giving the advice under subsection (1A), but before giving the Minister the draft variation, the company must also:
  - (a) cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
    - (i) stating that the company has prepared a preliminary version of the draft variation; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 15 business days after the publication of the notice; and
    - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
  - (iia) in the case of a notice published in a newspaper—stating that copies of the preliminary version will be available free of charge to members of the public on the airport's website throughout the period of 15 business days after the publication of the notice; and
  - (iib) in the case of a notice published in a newspaper—specifying the address of the airport's website; and
  - (iv) in any case—inviting members of the public to give written comments about the preliminary version to the company within 15 business days after the publication of the notice; and

- (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice; and
- (c) make copies of the preliminary version available free of charge to members of the public on the airport's website:
  - (i) in a readily accessible format that is acceptable to the Minister; and
  - (ii) in accordance with the notice.
- (2) If members of the public (including persons covered by subsection (1A)) have given written comments about the preliminary version in accordance with the notice, the draft variation submitted to the Minister must be accompanied by:
  - (a) copies of those comments; and
  - (b) a written certificate signed on behalf of the company:
    - (i) listing the names of those members of the public; and
    - (ii) summarising those comments; and
    - (iii) demonstrating that the company has had due regard to those comments in preparing the draft variation; and
    - (iv) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

## **85 Notification of matters that may affect the achievement of final master plan**

- (1) If:
  - (a) a final master plan for an airport is in force; and
  - (b) the airport-lessee company for the airport becomes aware that a particular matter may significantly affect the achievement of the plan;the company must, within 60 days after it becomes aware of that matter, give the Minister a written notice:
  - (c) setting out particulars of the matter; and

**Section 86**

---

(d) explaining the effect of the matter on the achievement of the plan.

(2) A company commits an offence if:

- (a) the company is required to give a written notice under subsection (1); and
- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

(3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**86 Publication of final master plan or variation of final master plan**

(1) This section applies if:

- (a) the Minister approves a draft master plan for an airport; or
- (b) the Minister approves a draft variation of a final master plan for an airport.

(2) The airport-lessee company for the airport must:

- (a) cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
  - (i) stating that the plan or variation has been approved; and
  - (ii) stating that copies of the plan or variation will be available for inspection and purchase by members of the public during normal office hours while the plan remains in force; and
- (iii) specifying the place or places where the copies will be available for inspection and purchase; and
- (iv) in the case of a notice published in a newspaper—stating that copies of the plan or variation will be available free of charge to members of the public on the airport's website while the plan remains in force; and



- (v) in the case of a notice published in a newspaper—  
specifying the address of the airport’s website; and
- (b) make copies of the plan or variation available for inspection  
and purchase by members of the public in accordance with  
the notice; and
- (ba) make copies of the plan or variation available free of charge  
to members of the public on the airport’s website:
  - (i) in a readily accessible format that is acceptable to the  
Minister; and
  - (ii) in accordance with the notice.

The company must comply with this subsection:

- (c) within 50 business days after the approval of the plan or  
variation, as the case requires; or
  - (d) if the Minister, by written notice given to the company,  
allows a longer period—within that longer period.
- (3) A company commits an offence if:
- (a) the company is subject to a requirement to publish a notice  
and make copies of a plan or variation available under  
subsection (2); and
  - (b) the company engages in conduct; and
  - (c) the company’s conduct contravenes the requirement.

Penalty: 250 penalty units.

- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **87 Transitional—adoption of FAC documents**

- (1) A draft or final master plan for an airport may make provision for  
or in relation to a matter by applying, adopting or incorporating  
(with or without modification) any matter contained in a document  
that:
- (a) relates to the airport; and
  - (b) was prepared for or by the Federal Airports Corporation  
when the airport was a Federal airport, or a Federal airport

**Section 87**

---

development site, within the meaning of the *Federal Airports Corporation Act 1986*.

Note: All draft and final master plans must comply with the content rules set out in sections 71 and 72.

- (2) If subsection (1) applies to a draft master plan, the plan must be accompanied by the document when:
  - (a) the plan is given to the Minister under this Division; or
  - (b) a preliminary version of the plan is made available for inspection and purchase under section 79.
- (3) If subsection (1) applies to a final master plan, the plan must be accompanied by the document when the plan is made available for inspection and purchase under section 86.

## **Division 4—Major development plans**

### **Subdivision A—Introduction**

#### **88 Simplified outline**

The following is a simplified outline of this Division:

- A major development plan is required for each major development at an airport.
- A major development plan is prepared by the airport-lessee company taking into account public comments.
- Sensitive developments are prohibited, except in exceptional circumstances.

#### **89 Meaning of *major airport development***

- (1) For the purposes of this Act, a ***major airport development*** is a development that is carried out at an airport site and that consists of:
- (a) constructing a new runway; or
  - (b) extending the length of a runway; or
  - (ba) altering a runway (other than in the course of maintenance works) in any way that significantly changes:
    - (i) flight paths; or
    - (ii) the patterns or levels of aircraft noise; or
  - (c) constructing a new building wholly or principally for use as a passenger terminal, where the building's gross floor space is greater than 500 square metres; or
  - (d) extending a building that is wholly or principally for use as a passenger terminal, where the extension increases the building's gross floor space by more than 10%; or

**Section 89**

---

- (e) constructing a new building, where:
  - (i) the building is not wholly or principally for use as a passenger terminal; and
  - (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
- (f) constructing a new taxiway, where:
  - (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
- (g) extending a taxiway, where:
  - (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
- (h) constructing a new road or new vehicular access facility, where:
  - (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
- (j) extending a road or vehicular access facility, where:
  - (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
- (k) constructing a new railway or new rail handling facility, where:
  - (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and

- (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
  - (l) extending a railway or rail handling facility, where:
    - (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
    - (ii) the cost of construction exceeds the threshold amount (see subsections (7) and (9)); or
  - (m) a development of a kind that is likely to have significant environmental or ecological impact; or
  - (n) a development which affects an area identified as environmentally significant in the environment strategy; or
  - (na) a development of a kind that is likely to have a significant impact on the local or regional community; or
  - (nb) a development in relation to which the Minister has given an approval under section 89A; or
  - (o) a development of a kind specified in the regulations.
- (2) Paragraphs (1)(a) to (nb) do not, by implication, limit paragraph (1)(o).
- (2A) For the purposes of this Act, **constructing** a thing includes carrying out all associated building activities.
- (3) For the purposes of subsection (1), if:
- (a) the parties to a transaction do not deal with each other at arm's length in relation to the transaction; and
  - (b) a cost arising out of that transaction is less than is reasonable; the amount of that cost is taken to be the amount of the cost that would have arisen if the parties had dealt with each other at arm's length.
- (4) For the purposes of this Act, the Minister may determine in writing that specified developments that are proposed to be carried out at an airport site together constitute a **major airport development** if:
- (a) each individual development is:

**Section 89**

---

- (i) covered by subparagraph (1)(e)(i), (f)(i), (g)(i), (h)(i), (j)(i), (k)(i) or (l)(i); but
- (ii) not covered by subparagraph (1)(e)(ii), (f)(ii), (g)(ii), (h)(ii), (j)(ii), (k)(ii) or (l)(ii); and
- (b) the developments are:
  - (i) consecutive or concurrent projects; or
  - (ii) extensions to existing buildings.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (5) The Minister may determine in writing that a specified development of a type described in paragraph (1)(c), (d), (f) or (g) does not constitute a **major airport development** if:
  - (a) an airport-lessee company applies to the Minister in writing to consider whether the development constitutes a major airport development (and so requires a major development plan); and
  - (b) the Minister is satisfied, on reasonable grounds, that the development will not:
    - (ii) change the flight paths; or
    - (iii) change the patterns or levels of aircraft noise; or
    - (iv) unduly increase the noise heard by, or unduly cause a nuisance to, the community adjacent to the airport.
- (6) A determination made under subsection (4) or (5) is not a legislative instrument.

*Cost of construction*

- (7) For the purposes of subparagraphs (1)(e)(ii), (f)(ii), (g)(ii), (h)(ii), (j)(ii), (k)(ii) and (l)(ii), the **cost of construction**:
  - (a) includes the costs determined in an instrument under subsection (8) for the purposes of this paragraph; and
  - (b) does not include the costs determined in the instrument for the purposes of this paragraph.

- (8) The Minister may, by legislative instrument:
- (a) determine costs for the purposes of paragraph (7)(a); and
  - (b) determine costs for the purposes of paragraph (7)(b).

*Threshold amount*

- (9) For the purposes of this section, the **threshold amount** is:
- (a) \$25 million; or
  - (b) if an amount is determined in an instrument under subsection (10) and is in effect in accordance with subsection (11)—that amount.
- (10) Before each third anniversary of this subsection commencing, the Minister may, by legislative instrument, determine an amount for the purposes of paragraph (9)(b). The amount determined must be higher than the amount applicable under subsection (9) on the day the determination is made.
- (11) An amount determined in an instrument under subsection (10) takes effect on that third anniversary concerned.
- (12) Before determining an amount in an instrument under subsection (10), the Minister must take into account changes in construction activity costs since:
- (a) for the first determination—the commencement of this subsection; or
  - (b) otherwise—the last determination made by the Minister.
- (13) Without limiting subsection (12), the Minister may comply with that subsection by taking into account changes in an index of construction activity costs published by the Australian Statistician.
- (14) Subsection (12) does not limit the matters the Minister may take into account.

Section 89A

---

**Subdivision B—Sensitive developments**

**89A Sensitive development prohibited except in exceptional circumstances**

- (1) A person must not:
- (a) carry out a sensitive development relating to an airport; or
  - (b) cause or permit to be carried out a sensitive development relating to an airport;

unless the Minister gives an approval under this section for the preparation of a draft major development plan for the sensitive development at the airport.

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

Note 1: If an airport-lessee company is convicted of the offence, a court may impose a fine not more than 5 times this penalty (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: A defendant bears an evidential burden in relation to the approval of the Minister mentioned in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Strict liability applies to paragraph (2)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) If an airport-lessee company wants to prepare a draft major development plan for a sensitive development, the company must apply in writing to the Minister, before the company gives its advice under subsection 92(1A), for approval to prepare a draft major development plan for the development.
- (5) The application must detail the exceptional circumstances that the airport-lessee company claims will support the preparation of a



draft major development plan for the sensitive development at the airport.

- (6) The Minister may give the approval only if the Minister is satisfied that there are exceptional circumstances that support the preparation of a draft major development plan for the sensitive development at the airport.
- (7) The Minister must give the airport-lessee company written notice of the Minister's decision and the reasons for the decision.
- (8) If the Minister does give the approval for the preparation of a draft major development plan, it does not stop the Minister from refusing to approve a major development plan for the sensitive development.

### **Subdivision C—Approval process**

#### **90 Major airport development must not be carried out except in accordance with an approved major development plan etc.**

- (1) An airport-lessee company for an airport must not:
  - (a) carry out a major airport development relating to the airport;  
or
  - (b) cause or permit to be carried out a major airport development relating to the airport;unless:
  - (c) in any case—the carrying out of the development is in accordance with a major development plan approved under this Division; or
  - (ca) if:
    - (i) the airport is Sydney West Airport; and
    - (ii) the development is covered by Part 3 of an airport plan for the airport;the carrying out of the development is in accordance with Part 3 of the airport plan; or

**Section 90**

---

(d) in any case—the development is of a kind declared by the regulations to be exempt from this Division.

(2) If:

(a) a major airport development plan in relation to an airport is approved under this Division; and

(b) the approval is subject to a condition that applies to the airport-lessee company for the airport;

the company must comply with the condition.

(3) A company commits an offence if:

(a) the company is subject to a requirement under subsection (1) or (2); and

(b) the company engages in conduct; and

(c) the company's conduct contravenes the requirement.

Penalty: 2,000 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

(3A) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(4) A person (other than an airport-lessee company) must not:

(a) carry out a major airport development relating to an airport; or

(b) cause or permit to be carried out a major airport development relating to an airport;

unless:

(c) in any case—the carrying out of the development is in accordance with a major development plan approved under this Division; or

(ca) if:

(i) the airport is Sydney West Airport; and

(ii) the development is covered by Part 3 of an airport plan for the airport;

the carrying out of the development is in accordance with Part 3 of the airport plan; or

- (d) in any case—the development is of a kind declared by the regulations to be exempt from this Division.

(5) If:

- (a) a major airport development plan in relation to an airport is approved under this Division; and
  - (b) the approval is subject to a condition that applies to a person (other than the airport-lessee company for the airport);
- the person must comply with the condition.

(6) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (4) or (5); and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (4)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

(7) Strict liability applies to paragraph (6)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 91 Contents of major development plan

(1A) The purpose of a major development plan in relation to an airport is to establish the details of a major airport development that:

- (a) relates to the airport; and
- (b) is consistent with the airport lease for the airport and the final master plan for the airport.

(1) A major development plan, or a draft of such a plan, must set out:

- (a) the airport-lessee company's objectives for the development; and

**Section 91**

---

- (b) the airport-lessee company's assessment of the extent to which the future needs of civil aviation users of the airport, and other users of the airport, will be met by the development; and
- (c) a detailed outline of the development; and
- (ca) whether or not the development is consistent with the airport lease for the airport; and
- (d) if a final master plan for the airport is in force—whether or not the development is consistent with the final master plan; and
- (e) if the development could affect noise exposure levels at the airport—the effect that the development would be likely to have on those levels; and
- (ea) if the development could affect flight paths at the airport—the effect that the development would be likely to have on those flight paths; and
- (f) the airport-lessee company's plans, developed following consultations with the airlines that use the airport, local government bodies in the vicinity of the airport and—if the airport is a joint user airport—the Defence Department, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and
- (g) an outline of the approvals that the airport-lessee company, or any other person, has sought, is seeking or proposes to seek under Division 5 or Part 12 in respect of elements of the development; and
- (ga) the likely effect of the proposed developments that are set out in the major development plan, or the draft of the major development plan, on:
  - (i) traffic flows at the airport and surrounding the airport; and
  - (ii) employment levels at the airport; and
  - (iii) the local and regional economy and community, including an analysis of how the proposed developments fit within the local planning schemes for

- commercial and retail development in the adjacent area;  
and
- (h) the airport-lessee company's assessment of the environmental impacts that might reasonably be expected to be associated with the development; and
  - (j) the airport-lessee company's plans for dealing with the environmental impacts mentioned in paragraph (h) (including plans for ameliorating or preventing environmental impacts); and
  - (k) if the plan relates to a sensitive development—the exceptional circumstances that the airport-lessee company claims will justify the development of the sensitive development at the airport; and
  - (l) such other matters (if any) as are specified in the regulations.
- (2) Paragraphs (1)(a) to (k) (inclusive) do not, by implication, limit paragraph (1)(l).
  - (3) The regulations may provide that, in specifying a particular objective, assessment, outline or other matter covered by subsection (1), a major development plan, or a draft of such a plan, must address such things as are specified in the regulations.
  - (4) In specifying a particular objective or proposal covered by paragraph (1)(a), (c) or (ga), a major development plan, or a draft of a major development plan, must address:
    - (a) the extent (if any) of consistency with planning schemes in force under a law of the State in which the airport is located; and
    - (b) if the major development plan is not consistent with those planning schemes—the justification for the inconsistencies.
  - (5) Subsection (4) does not, by implication, limit subsection (3).
  - (6) In developing plans referred to in paragraph (1)(f), an airport-lessee company must have regard to Australian Standard AS 2021—2000 (“Acoustics—Aircraft noise intrusion—Building siting and construction”) as in force or existing at that time.

**Section 92**

---

- (7) Subsection (6) does not, by implication, limit the matters to which regard may be had.

**92 Public comment and advice to State etc.**

*Advice to State etc.*

- (1A) Before giving the Minister a draft major development plan, the airport-lessee company concerned must advise, in writing, the following persons of its intention to give the Minister the draft major development plan:
- (a) the Minister, of the State in which the airport is situated, with responsibility for town planning or use of land;
  - (b) the authority of that State with responsibility for town planning or use of land;
  - (c) each local government body with responsibility for an area surrounding the airport.
- (1B) The draft plan submitted to the Minister must be accompanied by:
- (a) a copy of the advice given under subsection (1A); and
  - (b) a written certificate signed on behalf of the company listing the names of those to whom the advice was given.

*Public comment*

- (1) After giving the advice under subsection (1A), but before giving the Minister the draft major development plan, the company must also:
- (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated, and on the airport's website, a notice:
    - (i) stating that the company has prepared a draft version of the plan; and
    - (ia) specifying the consultation period under subsection (2A); and
    - (ii) stating that copies of the draft version will be available for inspection and purchase by members of the public

- during normal office hours throughout the consultation period specified in the notice; and
- (iii) specifying the place or places where the copies will be available for inspection and purchase; and
  - (iiia) in the case of a notice published in a newspaper—stating that copies of the draft version will be available free of charge to members of the public on the airport’s website throughout the consultation period specified in the notice; and
  - (iiib) in the case of a notice published in a newspaper—specifying the address of the airport’s website; and
  - (iv) in any case—inviting members of the public to give written comments about the draft version to the company within the consultation period specified in the notice; and
- (b) make copies of the draft version available for inspection and purchase by members of the public in accordance with the notice; and
  - (c) make copies of the draft version available free of charge to members of the public on the airport’s website:
    - (i) in a readily accessible format that is acceptable to the Minister; and
    - (ii) in accordance with the notice.
- (2A) The **consultation period** is:
- (a) a period of 60 business days after the publication of the notice; or
  - (b) a shorter period (of not less than 15 business days after the publication of the notice) that is approved by the Minister.
- (2B) The Minister may, by written notice, approve the shortening of the consultation period if the Minister:
- (a) is requested in writing to do so by:
    - (i) the airport-lessee company; or
    - (ii) another person with the written consent of the airport-lessee company; and

**Section 92**

---

- (b) is satisfied that:
  - (i) the proposed development is consistent with the final master plan; and
  - (ii) the proposed development does not raise any issues that have a significant impact on the local or regional community.
- (2BA) If:
  - (a) a request for a particular shorter period is made under subsection (2B); and
  - (b) the Minister does not make a decision on the request before the end of the period of 15 business days after the day on which the Minister received the request;then, at the end of the period referred to in paragraph (b), the request is taken to have been refused.
- (2C) A notice made under subsection (2B) is not a legislative instrument.
- (2) If members of the public (including persons covered by subsection (1A)) have given written comments about the draft version in accordance with the notice, the draft plan submitted to the Minister must be accompanied by:
  - (a) copies of those comments; and
  - (b) a written certificate signed on behalf of the company:
    - (i) listing the names of those members of the public; and
    - (ii) summarising those comments; and
    - (iii) demonstrating that the company has had due regard to those comments in preparing the draft plan; and
    - (iv) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.



### **93 Consultations**

- (1) This section applies if:
  - (a) an airport-lessee company gives the Minister a draft major development plan; and
  - (b) before the publication under section 92 of a notice about the plan, the company consulted (other than by giving an advice under subsection 92(1A)) a person covered by any of the following subparagraphs:
    - (i) a State government;
    - (ii) an authority of a State;
    - (iii) a local government body;
    - (iv) an airline or other user of the airport concerned;
    - (v) any other person.
- (2) The draft major development plan submitted to the Minister must be accompanied by a written statement signed on behalf of the company:
  - (a) listing the names of the persons consulted; and
  - (b) summarising the views expressed by the persons consulted.

#### **93A Minister may request more material for making decision**

- (1) This section applies if an airport-lessee company gives the Minister a draft major development plan or a draft variation of a major development plan.
- (2) If the Minister believes on reasonable grounds that he or she does not have enough material to make a proper decision under subsection 94(2) or 95(2), as applicable, the Minister may request the airport-lessee company to provide specified material relevant to making the decision.

*Time does not run while further material being sought*

- (3) If the Minister has requested more material under subsection (2) for the purposes of making a decision, a day is not to be counted as

**Section 94**

---

a business day for the purposes of subsection 94(6) or 95(3), as applicable, if it is:

- (a) on or after the day the Minister requested the material; and
- (b) on or before the day on which the Minister receives the last of the material requested.

**94 Approval of major development plan by Minister**

- (1) This section applies if an airport-lessee company gives the Minister, in writing, a draft major development plan.
- (2) The Minister must:
  - (a) approve the plan; or
  - (b) refuse to approve the plan.
- (3) In deciding whether to approve the plan, the Minister must have regard to the following matters:
  - (aa) the extent to which the plan achieves the purpose of a major development plan (see subsection 91(1A));
  - (a) the extent to which carrying out the plan would meet the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport;
  - (b) the effect that carrying out the plan would be likely to have on the future operating capacity of the airport;
  - (c) the impact that carrying out the plan would be likely to have on the environment;
  - (d) the consultations undertaken in preparing the plan (including the outcome of the consultations);
  - (e) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan;
  - (f) if the plan relates to a sensitive development:
    - (i) whether the exceptional circumstances that the airport-lessee company claims will justify the development of the sensitive development at the airport; and

- (ii) the likely effect of the sensitive development on the future use of the airport site for aviation related purposes; and
  - (iii) the likely effect of the sensitive development on the ground transport system at, and adjacent to, the airport.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.
- (5) If a final master plan is in force for the airport, the Minister must not approve the draft major development plan unless it is consistent with the final master plan.
- (6) If the Minister neither approves, nor refuses to approve, the draft major development plan before the end of:
  - (a) the period of 50 business days after the day on which the Minister received the draft plan; or
  - (b) a longer period (of no more than an extra 10 business days) that the Minister specifies in a written notice to the airport-lessee company;the Minister is taken, at the end of that period, to have approved the plan under subsection (2).
- (6AA) A notice made under subsection (6)(b) is not a legislative instrument.
- (6A) However, if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft plan, subsection (6) applies as if it referred to the day on which the Minister received the advice, instead of the day the draft plan was received.
- (7) The Minister may approve the draft major development plan subject to one or more conditions.

Note: For examples of conditions imposed under this subsection, see section 94A.

**Section 94AA**

---

- (7A) Unless an approval by the Minister states otherwise, the approval is subject to a condition that the development be substantially completed before the end of a specified period ending no later than 5 years after the approval.
- (7B) The Minister may extend, or further extend, that period by up to 2 years. The Minister may do so only if that period, or that period as last extended, has not yet ended. The Minister may extend, or further extend, that period subject to one or more conditions.
- (8) As soon as practicable after deciding whether to approve the draft major development plan, the Minister must notify the company in writing of the decision.
- (9) If the Minister refuses to approve the draft major development plan, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (10) The regulations may provide for fees to be payable in respect of the lodgment of a draft plan under subsection (1).

*Major development plans are not legislative instruments*

- (11) A major development plan is not a legislative instrument.

**94AA Approval of major development plan—Sydney West Airport**

- (1) If:
  - (a) an airport-lessee company gives the Minister, in writing, a draft major development plan for Sydney West Airport; and
  - (b) an airport plan for the airport is in force;the Minister may refuse to approve the draft major development plan if the Minister is satisfied that the draft major development plan is inconsistent with the airport plan.
- (2) If:
  - (a) before the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the

Section 94A

---

- Minister, in writing, a draft major development plan for the airport; and
- (b) an airport plan for the airport is in force; and
  - (c) the draft major development plan is accompanied by an application to vary the airport plan; and
  - (d) the Minister is satisfied that, if:
    - (i) the airport plan were to be so varied; and
    - (ii) the draft major development plan were to be approved; the draft major development plan as so approved would be consistent with the airport plan;
- the Minister may approve the draft major development plan even if it is inconsistent with the airport plan.
- (3) If:
- (a) on or after the Sydney West Airport completion day, the airport-lessee company for Sydney West Airport gives the Minister, in writing, a draft major development plan for the airport; and
  - (b) an airport plan for the airport is in force;
- the Minister may approve the draft major development plan even if it is inconsistent with the airport plan.
- (4) This section does not, by implication, limit the powers conferred on the Minister by section 94.

### 94A Examples of conditions

Without limiting subsection 94(7), the following conditions may be imposed under that subsection:

- (a) a condition relating to the ongoing operation of a development to which a major development plan relates;
- (b) a condition requiring the preparation, submission for approval by a specified person, and implementation, of a plan for managing the impact, on an airport and an area surrounding an airport, of a development to which a major development plan relates.

Section 95

---

**95 Minor variation of major development plan**

- (1) This section applies if:
  - (a) a major development plan for an airport has been approved by the Minister; and
  - (b) the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the plan; and
  - (c) the variation is of a minor nature.
- (2) The Minister must:
  - (a) approve the variation; or
  - (b) refuse to approve the variation; or
  - (c) if:
    - (i) the Minister has not previously required the variation to be subject to public comment under section 95A; and
    - (ii) in the Minister's opinion, it would be in the public interest to do so;require the variation to be subject to public comment under section 95A.
- (3) If the Minister does not make a decision under subsection (2) before the end of:
  - (a) the period of 50 business days after the day on which the Minister received the draft variation; or
  - (b) a longer period (of no more than an extra 10 business days) that the Minister specifies in a written notice to the airport-lessee company;the Minister is taken, at the end of that period, to have approved the variation under subsection (2).
- (3AA) A notice made under paragraph (3)(b) is not a legislative instrument.
- (3A) However, if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft variation, subsection (3) applies as if it referred

Section 95AA

---

to the day on which the Minister received the advice, instead of the day the draft variation was received.

- (4) As soon as practicable after making a decision under subsection (2), the Minister must notify the company in writing of the decision.
- (5) If the Minister refuses to approve the variation, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (6) If the Minister approves the variation, the plan is varied accordingly.

**95AA Minor variation of major development plan—Sydney West Airport**

- (1) If:
  - (a) a major development plan for Sydney West Airport has been approved by the Minister; and
  - (b) the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the major development plan; and
  - (c) an airport plan for the airport is in force;the Minister may refuse to approve the draft variation if the Minister is satisfied that, if the variation were to be made, the varied major development plan would be inconsistent with the airport plan.
- (2) If:
  - (a) a major development plan for Sydney West Airport has been approved by the Minister; and
  - (b) before the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the major development plan; and
  - (c) an airport plan for the airport is in force; and
  - (d) the draft variation of the major development plan is accompanied by an application to vary the airport plan; and

**Section 95A**

---

- (e) the Minister is satisfied that, if:
  - (i) the airport plan were to be so varied; and
  - (ii) the draft variation of the major development plan were to be approved;the varied major development plan would be consistent with the airport plan;

the Minister may approve the draft variation of the major development plan even if the Minister is satisfied that, if the draft variation of the major development plan were to be approved, the varied major development plan would be inconsistent with the airport plan.

- (3) If:
  - (a) a major development plan for Sydney West Airport has been approved by the Minister; and
  - (b) on or after the Sydney West Airport completion day, the airport-lessee company for the airport gives the Minister, in writing, a draft variation of the major development plan; and
  - (c) an airport plan for the airport is in force;the Minister may approve the draft variation even if the Minister is satisfied that, if the draft variation were to be approved, the varied major development plan would be inconsistent with the airport plan.
- (4) This section does not, by implication, limit the powers conferred on the Minister by section 95.

**95A Public comment and advice to State etc.—minor variation**

*Application of section*

- (1A) This section applies if the Minister has, under paragraph 95(2)(c), required a draft variation of a major development plan for an airport to be subject to public comment under this section.



*Advice to State etc.*

- (1B) Before resubmitting the draft variation to the Minister, the airport-lessee company for the airport must advise, in writing, the following persons of its intention to resubmit the draft variation to the Minister:
- (a) the Minister, of the State in which the airport is situated, with responsibility for town planning or use of land;
  - (b) the authority of that State with responsibility for town planning or use of land;
  - (c) each local government body with responsibility for an area surrounding the airport.
- (1C) The draft variation resubmitted to the Minister must be accompanied by:
- (a) a copy of the advice given under subsection (1B); and
  - (b) a written certificate signed on behalf of the company listing the names of those covered by subsection (1B) to whom the advice was given.

*Public comment*

- (1) After giving the advice under subsection (1B), but before resubmitting the draft variation to the Minister, the company must also:
- (a) cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
    - (i) stating that the company has prepared a preliminary version of the draft variation; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 15 business days after the publication of the notice; and
  - (iii) specifying the place or places where the copies will be available for inspection and purchase; and

**Section 95A**

---

- (iiia) in the case of a notice published in a newspaper—stating that copies of the preliminary version will be available free of charge to members of the public on the airport’s website throughout the period of 15 business days after the publication of the notice; and
    - (iiib) in the case of a notice published in a newspaper—specifying the address of the airport’s website; and
    - (iv) in any case—inviting members of the public to give written comments about the preliminary version to the company within 15 business days after the publication of the notice; and
  - (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice; and
  - (c) make copies of the preliminary version available free of charge to members of the public on the airport’s website:
    - (i) in a readily accessible format that is acceptable to the Minister; and
    - (ii) in accordance with the notice.
- (2) If members of the public (including persons covered by subsection (1B)) have given written comments about the preliminary version in accordance with the notice, the draft variation resubmitted to the Minister must be accompanied by:
  - (a) copies of those comments; and
  - (b) a written certificate signed on behalf of the company:
    - (i) listing the names of those members of the public; and
    - (ii) summarising those comments; and
    - (iii) demonstrating that the company has had due regard to those comments in preparing the draft variation; and
    - (iv) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

**96 Publication of major development plan or variation of major development plan**

- (1) This section applies if:
- (a) the Minister approves a draft major development plan for an airport; or
  - (b) the Minister approves a draft variation of a major development plan for an airport.
- (2) The airport-lessee company for the airport must:
- (a) cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
    - (i) stating that the plan or variation has been approved; and
    - (ii) stating that copies of the plan or variation will be available for inspection and purchase by members of the public during normal office hours for 180 days after the publication of the notice; and
    - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
    - (iv) in the case of a notice published in a newspaper—stating that copies of the plan or variation will be available free of charge to members of the public on the airport's website throughout the period of 180 days after the publication of the notice; and
    - (v) in the case of a notice published in a newspaper—specifying the address of the airport's website; and
  - (b) make copies of the plan or variation available for inspection and purchase by members of the public in accordance with the notice; and
  - (ba) make copies of the plan or variation available free of charge to members of the public on the airport's website:
    - (i) in a readily accessible format that is acceptable to the Minister; and
    - (ii) in accordance with the notice.

The company must comply with this subsection:

**Section 96AA**

---

- (c) within 50 business days after the approval of the plan or variation, as the case may be; or
    - (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
  - (3) A company commits an offence if:
    - (a) the company is required to publish a notice and make copies of a plan or variation available under subsection (2); and
    - (b) the company engages in conduct; and
    - (c) the company's conduct contravenes the requirement.
- Penalty: 250 penalty units.
- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**96AA Cessation of approval of major development plan in exceptional circumstances**

- (1) If:
  - (a) a major development plan for an airport has been approved by the Minister; and
  - (b) there is not in force an approval, under the regulations made for the purposes of Subdivision C of Division 5, of a building activity that is an element of the major airport development covered by the plan; and
  - (c) the airport-lessee company for the airport considers that exceptional circumstances beyond its control have made proceeding with the major airport development unviable;the airport-lessee company may, at least 50 business days before the end of the period worked out in accordance with subsections 94(7A) and (7B), give the Minister a written notice (the *withdrawal notice*) of its intention not to proceed with the major airport development.
- (2) The airport-lessee company must detail those exceptional circumstances in the withdrawal notice.

*Minister's acknowledgement*

- (3) If the Minister receives a withdrawal notice from the airport-lessee company that is in accordance with subsections (1) and (2), the Minister must, by written notice given to the company, acknowledge receipt of the withdrawal notice.

*When approval ceases to be in force*

- (4) The approval of the major development plan ceases to be in force on the day after the Minister gives the airport-lessee company the notice under subsection (3).

*Public notice*

- (5) The airport-lessee company for the airport must cause to be published in a newspaper circulating generally in the State in which the airport is situated, and on the airport's website, a notice:
- (a) giving details of the major airport development; and
  - (b) giving details of the exceptional circumstances beyond its control that have made proceeding with the major airport development unviable.

The company must comply with this subsection within 20 business days after receiving the notice under subsection (3).

- (6) A company commits an offence if:
- (a) the company is required to publish a notice under subsection (5); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty for contravention of this subsection: 250 penalty units.

## **Division 4A—Airport plan for Sydney West Airport**

### **96A Simplified outline of this Division**

- The Infrastructure Minister may determine an airport plan for Sydney West Airport.
- The airport plan is to have the following Parts:
  - (a) Part 1—Title;
  - (b) Part 2—Concept design;
  - (c) Part 3—Specific developments.
- Part 2 of the airport plan ceases to have effect when a final master plan for the airport comes into force.
- Part 3 of the airport plan authorises the carrying out of a specific development.
- The Infrastructure Minister may vary an airport plan for Sydney West Airport.
- Part 3 of the airport plan must not be varied after the Sydney West Airport completion day so as to specify an additional development.

Note: The Infrastructure Minister may declare under section 112B that a specified day is the Sydney West Airport completion day.

### **96B Determination of airport plan for Sydney West Airport**

- (1) The Infrastructure Minister may, by writing, determine an airport plan for Sydney West Airport.

*Environment Minister to consider draft airport plan etc.*

- (2) Before determining an airport plan for Sydney West Airport, the Infrastructure Minister must give a draft of the airport plan to the Environment Minister.
- (3) If the Infrastructure Minister gives the Environment Minister a draft airport plan for Sydney West Airport, the Environment Minister must:
  - (a) give the Infrastructure Minister:
    - (i) a notice stating that the Environment Minister considers that the airport plan should not be determined; or
    - (ii) a notice stating that the Environment Minister considers that one or more specified conditions or provisions should be included in the airport plan for the purpose of protecting the environment; or
    - (iii) a notice stating that the Environment Minister is satisfied with the airport plan; and
  - (b) do so within 30 business days after receiving the draft airport plan.
- (4) A condition or provision must not be specified in a notice under subparagraph (3)(a)(ii) unless the condition or provision relates to a development covered by Part 3 of the draft airport plan.
- (5) In exercising the power conferred by subsection (3), the Environment Minister must have regard to:
  - (a) the Sydney West Airport environmental impact statement finalised under section 104 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) such other matters (if any) relating to the environment as the Environment Minister considers relevant.
- (6) For the purposes of subsections (3) and (5), **environment** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.
- (7) An airport plan for Sydney West Airport must not be determined before:

**Section 96B**

---

- (a) the Sydney West Airport environmental impact statement is finalised under section 104 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
  - (b) the Environment Minister has given the Infrastructure Minister a notice under subsection (3) in response to a draft of the airport plan.
- (8) If:
- (a) the Infrastructure Minister has given the Environment Minister a draft airport plan for Sydney West Airport; and
  - (b) the Environment Minister has given the Infrastructure Minister a notice under subparagraph (3)(a)(i) in response to the draft airport plan;
- the Infrastructure Minister must not determine an airport plan for Sydney West Airport, unless:
- (c) the Infrastructure Minister gives the Environment Minister another draft airport plan for Sydney West Airport; and
  - (d) the Environment Minister gives the Infrastructure Minister a notice under subparagraph (3)(a)(ii) or (iii) in response to the other draft airport plan.
- The other draft airport plan may be in the same or different terms as the draft airport plan mentioned in paragraph (a) of this subsection.
- (9) If:
- (a) the Infrastructure Minister has given the Environment Minister a draft airport plan for Sydney West Airport; and
  - (b) the Environment Minister has given the Infrastructure Minister a notice under subparagraph (3)(a)(ii) in response to the draft airport plan;
- the Infrastructure Minister must not determine an airport plan for Sydney West Airport, unless:
- (c) the conditions or provisions specified in the notice are included in the plan; or
  - (d) all of the following conditions are satisfied:



- (i) the Infrastructure Minister gives the Environment Minister another draft airport plan for Sydney West Airport;
- (ii) the Environment Minister gives the Infrastructure Minister a notice under subparagraph (3)(a)(ii) (the ***subsequent notice***) in response to the other draft airport plan;
- (iii) the conditions or provisions specified in the subsequent notice are included in the plan; or
- (e) both of the following conditions are satisfied:
  - (i) the Infrastructure Minister gives the Environment Minister another draft airport plan for Sydney West Airport;
  - (ii) the Environment Minister gives the Infrastructure Minister a notice under subparagraph (3)(a)(iii) in response to the other draft airport plan.

The other draft airport plan mentioned in paragraph (d) or (e) of this subsection may be in the same or different terms as the draft airport plan mentioned in paragraph (a) of this subsection.

*Criteria*

- (10) In determining an airport plan for Sydney West Airport, the Infrastructure Minister may have regard to such matters as the Infrastructure Minister considers relevant.

*Plan is not a legislative instrument*

- (11) An airport plan for Sydney West Airport is not a legislative instrument.

*Sydney West Airport environmental impact statement*

- (12) For the purposes of this section, if:
  - (a) in December 2014, proposed action consisted of the construction and operation of a Western Sydney Airport at Badgerys Creek, New South Wales; and

**Section 96C**

---

- (b) the proposed action was referred to the Environment Minister; and
  - (c) the Environment Minister decided under section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* that the relevant impacts of the action must be assessed by an environmental impact statement under Division 6 of Part 8 of that Act;
- the environmental impact statement is the *Sydney West Airport environmental impact statement*.
- (13) For the purposes of paragraph (12)(b), it is immaterial whether the referral occurred before, at or after the commencement of this section.
  - (14) For the purposes of paragraph (12)(c), it is immaterial whether the decision was made before, at or after the commencement of this section.

**96C Contents of airport plan**

- (1) An airport plan for Sydney West Airport must be divided into the following Parts:
  - (a) Part 1—Title;
  - (b) Part 2—Concept design;
  - (c) Part 3—Specific developments.

Note: The plan may contain material outside those Parts (see subsection (9)).

*Part 2 of the plan—concept design*

- (2) Part 2 of an airport plan for Sydney West Airport may specify:
  - (a) development objectives for the airport; and
  - (b) proposals for land use and related development of the airport site; and
  - (c) a map showing contours of projected aircraft noise for the areas surrounding the airport; and
  - (d) indicative flight paths at the airport; and
  - (e) such other matters (if any) as are specified in the regulations.

Note: Part 2 may contain other material (see subsection (9)).

*Part 3 of the plan—specific developments*

- (3) Part 3 of an airport plan for Sydney West Airport:
- (a) may set out the details of one or more developments that:
    - (i) may be carried out on the airport site for Sydney West Airport; and
    - (ii) are consistent with Part 2 of the airport plan; and
  - (b) subject to this Act, authorises the carrying out of those developments.

Note: Part 3 may contain other material (see subsection (9)).

- (4) Part 3 of an airport plan for Sydney West Airport:
- (a) may set out the details of one or more ancillary developments that may be carried out on an associated site for Sydney West Airport; and
  - (b) subject to this Act, authorises the carrying out of those developments.
- (5) Part 3 of an airport plan for Sydney West Airport may set out conditions to be complied with in relation to a development covered by that Part.
- (6) Without limiting subsection (5), the following conditions may be set out under that subsection:
- (a) a condition relating to the ongoing operation of a development covered by Part 3 of the airport plan;
  - (b) a condition requiring:
    - (i) the preparation; and
    - (ii) the submission for approval by a specified person; and
    - (iii) the implementation;of a plan for managing the impact, on Sydney West Airport and an area surrounding Sydney West Airport, of a development covered by Part 3 of the airport plan;
  - (c) a condition relating to the manner in which a development is carried out.

**Section 96C**

---

- (7) A condition may be expressed to apply to the airport-lessee company for Sydney West Airport even if, at the time the condition is set out, there is no airport lease for Sydney West Airport.
- (8) If an airport plan for Sydney West Airport includes a condition or provision required by subsection 96B(9), any other condition or provision of the airport plan is of no effect to the extent that the other condition or provision is inconsistent with the required condition or provision. However, this rule does not apply if the inconsistency is the result of a variation agreed to by the Environment Minister under subsection 96D(3).

*Other content of the plan*

- (9) An airport plan for Sydney West Airport may set out any other matters or contain any other material (whether in Part 1, 2 or 3 or otherwise).

*Future sites*

- (10) If an area of land:
  - (a) is not part of the airport site for Sydney West Airport; and
  - (b) is intended to become part of the airport site for Sydney West Airport; and
  - (c) is not an associated site for Sydney West Airport;this section has effect as if the area were part of the airport site for Sydney West Airport.
- (11) If:
  - (a) an area of land is neither:
    - (i) part of the airport site for Sydney West Airport; nor
    - (ii) an associated site for Sydney West Airport; and
  - (b) the area is intended to become either:
    - (i) part of the airport site for Sydney West Airport; or
    - (ii) an associated site for Sydney West Airport; and
  - (c) subsection (10) does not apply in relation to the area;this section has effect as if the area were both:

- (d) part of the airport site for Sydney West Airport; and
  - (e) an associated site for Sydney West Airport.
- (12) An airport plan for Sydney West Airport does not authorise the carrying out of a development on an area mentioned in subsection (10) or (11) until the area becomes:
  - (a) part of the airport site for Sydney West Airport; or
  - (b) an associated site for Sydney West Airport.

### **96D Variation of airport plan**

- (1) If an airport plan for Sydney West Airport is in force, the Infrastructure Minister may, by writing, vary the plan.
- (2) A power conferred by subsection (1) may be exercised:
  - (a) if there is no airport lease for Sydney West Airport—on the Infrastructure Minister’s own initiative; or
  - (b) if there is an airport lease for Sydney West Airport—on the application of the airport-lessee company for the airport.
- (3) If an airport plan for Sydney West Airport includes a condition or provision required by subsection 96B(9), the Infrastructure Minister must not make a variation under subsection (1) of this section that is inconsistent with the required condition or provision, unless the Environment Minister agrees to the variation.

#### *Variation is not a legislative instrument*

- (4) A variation under subsection (1) is not a legislative instrument.

#### *Agreement about applications for variations*

- (5) The Commonwealth and the airport-lessee company for Sydney West Airport may enter into an agreement that:
  - (a) restricts or limits the circumstances in which the company may make an application under subsection (2); or
  - (b) requires the company to make an application under subsection (2).

Section 96E

---

- (6) A restriction or limitation may require the airport-lessee company to obtain the approval of the Infrastructure Minister before making an application under subsection (2).

*Effect of the Environment Protection and Biodiversity  
Conservation Act 1999*

- (7) The *Environment Protection and Biodiversity Conservation Act 1999* has effect as if a variation of an airport plan for Sydney West Airport were an authorisation of an action described in subsection 160(2) of that Act.

*Termination of power to vary airport plan to include additional  
developments*

- (8) If an airport plan for Sydney West Airport is in force, Part 3 of the airport plan must not be varied under subsection (1) after the Sydney West Airport completion day so as to:
- (a) set out the details of an additional development to be carried out on the airport site for the airport; or
  - (b) set out the details of an additional ancillary development to be carried out on an associated site for the airport.

**96E Automatic variation of airport plan etc.**

*Omission of Part 2*

- (1) If:
- (a) an airport plan for Sydney West Airport is in force; and
  - (b) a final master plan for the airport comes into force;
- then:
- (c) the airport plan is varied by omitting Part 2; and
  - (d) this Act has effect, in relation to the airport plan, as if the following provisions had not been enacted:
    - (i) paragraph 96C(1)(b);
    - (ii) subsection 96C(2);
    - (iii) subparagraph 96C(3)(a)(ii).

*Notice of variation*

- (2) If an airport plan for Sydney West Airport is varied under subsection (1), the airport-lessee company for Sydney West Airport must cause a notice of the variation to be published on the company's website.

**96F Publication of airport plan etc.**

- (1) If:
- (a) either:
    - (i) the Infrastructure Minister has determined an airport plan for Sydney West Airport; or
    - (ii) an airport plan for Sydney West Airport has been varied under section 96D; and
  - (b) there is no airport-lessee company for Sydney West Airport; the Infrastructure Minister must cause a copy of the plan or variation to be published on the Department's website.
- (2) If:
- (a) an airport plan for Sydney West Airport has been varied on one or more occasions; and
  - (b) there is no airport-lessee company for Sydney West Airport; the Infrastructure Minister must cause an up-to-date copy of the airport plan to be published on the Department's website.
- (3) If:
- (a) either:
    - (i) the Infrastructure Minister has determined an airport plan for Sydney West Airport; or
    - (ii) an airport plan for Sydney West Airport has been varied under section 96D; and
  - (b) there is an airport-lessee company for Sydney West Airport; the company must cause a copy of the plan or variation to be published on the company's website.
- (4) If:

Section 96G

---

- (a) an airport plan for Sydney West Airport has been varied on one or more occasions; and
- (b) there is an airport-lessee company for Sydney West Airport; the company must cause an up-to-date copy of the airport plan to be published on the company's website.

**96G Exemption from Parts 3 and 9 of the *Environment Protection and Biodiversity Conservation Act 1999***

Parts 3 and 9 of the *Environment Protection and Biodiversity Conservation Act 1999* do not apply to the determination, variation or implementation of an airport plan for Sydney West Airport.

**96H Major development plan**

This Division does not, by implication, prevent the approval of a draft major development plan that relates to a major airport development that is not covered by Part 3 of an airport plan for Sydney West Airport.

**96J Compliance with condition set out in airport plan**

- (1) If:
  - (a) an airport plan for Sydney West Airport is in force; and
  - (b) Part 3 of the airport plan sets out a condition to be complied with in relation to a development covered by that Part; and
  - (c) the condition applies to the airport-lessee company for the airport;the company must comply with the condition.
- (2) A company commits an offence if:
  - (a) the company is subject to a requirement under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 2,000 penalty units.



(3) Strict liability applies to paragraph (2)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) If:

- (a) an airport plan for Sydney West Airport is in force; and
- (b) Part 3 of the airport plan sets out a condition to be complied with in relation to a development covered by that Part; and
- (c) the condition applies to a person (other than the airport-lessee company for the airport);

the person must comply with the condition.

(5) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (4); and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

(6) Strict liability applies to paragraph (5)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **96K Implementation of airport plan**

To avoid doubt, the Commonwealth may:

- (a) take steps to implement an airport plan for Sydney West Airport; or
- (b) authorise another person to take steps to implement an airport plan for Sydney West Airport;

even if there is no airport lease for Sydney West Airport.

## **96L Ancillary developments on associated sites**

If:

- (a) an area of land is outside the airport site for Sydney West Airport; and
- (b) the Commonwealth has:

**Section 96M**

---

- (i) the right to carry out; or
  - (ii) the right to allow another person to carry out;
- on the area of land, a development that may reasonably be regarded as ancillary or incidental to Sydney West Airport; and
- (c) the right:
    - (i) is a result of the Commonwealth holding an estate or interest in the area of land; or
    - (ii) arises under a contract;
- then:
- (d) for the purposes of this Act, the area of land is an ***associated site for Sydney West Airport***; and
  - (e) for the purposes of the application of this Act to the associated site, the development is an ***ancillary development***.

**96M Meaning of *development***

For the purposes of this Division, ***development*** includes (but is not limited to) the following:

- (a) a major airport development;
- (b) a building activity;
- (c) an activity of a kind prescribed in the regulations.

## **Division 5—Building control**

### **Subdivision A—Simplified outline**

#### **97 Simplified outline**

The following is a simplified outline of this Division:

- Building activities on airport sites require approval. Approvals are given under the regulations.
- Buildings and structures on airport sites must be certified as complying with the regulations. Certificates are issued under the regulations.

### **Subdivision B—Interpretation**

#### **98 Interpretation**

##### *Building activities*

- (1) For the purposes of this Act, the following activities are ***building activities***:
- (a) constructing buildings or other structures;
  - (b) altering the structure of buildings or other structures;
  - (c) undertaking, constructing or altering earthworks (whether or not in relation to buildings or other structures);
  - (d) undertaking, constructing or altering engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures);
  - (e) demolishing, destroying, dismantling or removing:
    - (i) buildings or other structures; or
    - (ii) earthworks; or
    - (iii) engineering works; or

**Section 99**

---

- (iv) electrical works; or
- (v) hydraulic works;
- (f) undertaking land clearing;
- (g) an activity of a kind prescribed in the regulations.

*Structures*

- (2) For the purposes of this Division, the following are taken to be **structures**:
- (a) bridges;
  - (b) fences;
  - (c) towers and pylons;
  - (d) tents and other temporary structures.

*Earthworks or engineering works*

- (3) For the purposes of this Division, the following are taken to be **earthworks or engineering works**:
- (a) runways, taxiways and aprons;
  - (b) surface car parks;
  - (c) retaining walls;
  - (d) dams;
  - (e) roads;
  - (f) railways;
  - (g) pipelines;
  - (h) tunnels.

**Subdivision C—Building approvals**

**99 Building activities not to be carried out without approval**

*Contravention by an airport-lessee company*

- (1) An airport-lessee company for an airport must not:
- (a) carry out a building activity on the airport site; or

- (b) cause or permit to be carried out on the airport site a building activity;

unless:

- (c) carrying out the activity is in accordance with an approval granted under regulations made for the purposes of this Subdivision; or
- (d) in the case of a building activity on the airport site for an airport other than Sydney West Airport—all of the following conditions are satisfied:
- (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (iii) in a case where the building activity is an element of a major airport development—the activity is consistent with a major development plan approved under Division 4 for the development; or
- (e) in the case of a building activity on the airport site for Sydney West Airport—all of the following conditions are satisfied:
- (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (iii) in a case where Part 2 of an airport plan for the airport is in force—the activity is consistent with Part 2 of the airport plan;
  - (iv) in a case where the building activity is an element of a major airport development—the activity is consistent with a designated SWA instrument that covers the development;
  - (v) in a case where the building activity wholly or partly occurs before the Sydney West Airport completion day, and the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the

**Section 99**

---

airport—the activity is consistent with Part 3 of the airport plan.

Note: For *designated SWA instrument*, see section 103A.

*Offence*

- (2) A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Contravention by a person other than an airport-lessee company*

- (3) A person other than an airport-lessee company must not:
- (a) carry out a building activity on an airport site; or
  - (b) cause or permit to be carried out on an airport site a building activity;
- unless:
- (c) carrying out the activity is in accordance with an approval granted under regulations made for the purposes of this Subdivision; or
  - (d) in the case of a building activity on the airport site for an airport other than Sydney West Airport—all of the following conditions are satisfied:
    - (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
    - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;

- (iii) in a case where the building activity is an element of a major airport development—the activity is consistent with a major development plan approved under Division 4 for the development; or
- (e) in the case of a building activity on the airport site for Sydney West Airport—all of the following conditions are satisfied:
  - (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (iii) in a case where Part 2 of an airport plan for the airport is in force—the activity is consistent with Part 2 of the airport plan;
  - (iv) in a case where the building activity is an element of a major airport development—the activity is consistent with a designated SWA instrument that covers the development;
  - (v) in a case where the building activity wholly or partly occurs before the Sydney West Airport completion day, and the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport—the activity is consistent with Part 3 of the airport plan.

Note: For *designated SWA instrument*, see section 103A.

### *Offence*

- (4) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

**Section 100**

---

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (3)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**100 Regulations about building approvals**

- (1) The regulations may make provision for and in relation to the following:
- (a) the grant of approvals authorising building activities to be carried out on airport sites;
  - (b) conditions of such approvals;
  - (c) revocation, variation or surrender of such approvals;
  - (d) fees in respect of applications for such approvals;
  - (e) in a case where an airport lease is transferred—the transfer of such an approval to the transferee.
- (2) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in:
- (a) the Building Code of Australia; or
  - (b) the Building Code of Australia as it applies in a particular State; or
  - (c) a law of a State; or
  - (d) a standard proposed or approved by Standards Australia; or
  - (e) a standard made by, or by an authority of, the United States of America; or
  - (f) a standard made by, or by an authority of, a member state of the European Union;
- as in force or existing from time to time.
- (3) A condition prescribed under paragraph (1)(b) may relate to the carrying out of one or more inspections.



- (4) Subsection (3) does not, by implication, limit the operation of paragraph (1)(b).
- (5) The regulations may provide that approvals must not be granted in respect of particular kinds of building activity.

**101 Building approval to be consistent with final master plan and major development plan etc.**

- (1) This section applies to an approval of a building activity, where the approval is granted under regulations made for the purposes of this Subdivision.
- (2) If a final master plan is in force for the airport concerned, the approval must not be granted unless it is consistent with the plan.
- (3) If the building activity is an element of a major airport development, the approval must not be granted unless:
  - (a) in the case of a building activity on an airport site for an airport other than Sydney West Airport—the activity is consistent with a major development plan approved under Division 4 for the development; and
  - (b) in the case of a building activity on the airport site for Sydney West Airport—the activity is consistent with a designated SWA instrument that covers the development.

Note: For *designated SWA instrument*, see section 103A.

- (4) If:
  - (a) the building activity is carried out on the airport site for Sydney West Airport; and
  - (b) Part 2 of an airport plan for the airport is in force;the approval must not be granted unless the activity is consistent with Part 2 of the airport plan.
- (5) If:
  - (a) the building activity is carried out on the airport site for Sydney West Airport; and

Section 102

---

- (b) the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport; and
- (c) the building activity wholly or partly occurs before the Sydney West Airport completion day;

the approval must not be granted unless the activity is consistent with Part 3 of the airport plan.

**102 Offence of contravening conditions**

- (1) A person commits an offence if:
  - (a) the person has been granted approval under the regulations for the purposes of this Subdivision; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a condition of the approval.

Penalty: 50 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**103 Remedial directions**

- (1) If:
  - (a) a building activity is carried out on an airport site; and
  - (b) subsections (4) and (4A) do not apply to the activity; and
  - (c) either:
    - (i) the activity was not authorised by an approval granted under the regulations; or
    - (ii) if such an approval was granted in relation to the activity—a condition of the approval was contravened;an authorised person may give another person a written direction requiring the other person:
  - (d) to stop work on; or
  - (e) to carry out remedial work on; or
  - (f) to demolish, dismantle or remove;

Section 103

---

the building, structure, earthworks, engineering works, electrical works or hydraulic works concerned.

- (2) An authorised person must not give another person a direction under this section unless the other person is:
- (a) an airport-operator company for the airport concerned; or
  - (b) a person who carried out the building activity concerned; or
  - (c) a person who arranged for the carrying out of the building activity concerned.
- (3) A person commits an offence if:
- (a) the person is subject to a direction under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (4) This subsection applies to a building activity on the airport site for an airport other than Sydney West Airport if all of the following conditions are satisfied:
- (a) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (b) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (c) in a case where the building activity is an element of a major airport development—the activity is consistent with a major development plan approved under Division 4 for the development.
- (4A) This subsection applies to a building activity on the airport site for Sydney West Airport if all of the following conditions are satisfied:
- (a) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (b) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (c) in a case where Part 2 of an airport plan for the airport is in force—the activity is consistent with Part 2 of the airport plan;

**Section 103A**

---

- (d) in a case where the building activity is an element of a major airport development—the activity is consistent with a designated SWA instrument that covers the development;
- (e) in a case where the building activity wholly or partly occurs before the Sydney West Airport completion day, and the building activity is not an element of a major airport development, but is, or comprises part of, a development covered by Part 3 of an airport plan for the airport—the activity is consistent with Part 3 of the airport plan.

Note: For *designated SWA instrument*, see section 103A.

- (5) In this section:

*authorised person* means:

- (a) the Secretary of the Department; or
- (b) a person authorised in writing by the Secretary of the Department for the purposes of this section.

**103A Designated SWA instrument**

For the purposes of the application of this Subdivision to a building activity that is an element of a major airport development on the airport site for Sydney West Airport:

- (a) if:
  - (i) an airport plan for the airport is in force; and
  - (ii) the major airport development is covered by Part 3 of the airport plan; and
  - (iii) the building activity wholly or partly occurs before the Sydney West Airport completion day;Part 3 of the airport plan is a *designated SWA instrument* that covers the development; and
- (b) if there is a major development plan approved under Division 4 for the major airport development—the major development plan is a *designated SWA instrument* that covers the development.

**103B Building activities on associated sites for Sydney West Airport**

For the purposes of this Act, if:

- (a) a building activity is, or comprises part of, an ancillary development on an associated site for Sydney West Airport; and
- (b) the ancillary development is covered by Part 3 of an airport plan for the airport;

the activity is taken to be a building activity on the airport site for the airport.

**Subdivision D—Certificates of compliance****104 Certificates of compliance**

In this Subdivision:

*certificate of compliance* has the meaning given by section 107.

**105 Eligible alterations**

For the purposes of this Subdivision, the following are *eligible alterations*:

- (a) alterations of the structure of a building or other structure;
- (b) alterations of earthworks, engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures).

**106 Requirement for certificate of compliance**

- (1) An airport-lessee company for an airport must not:
  - (a) occupy or use a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site; or
  - (b) cause or permit a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site to be occupied or used;

Section 106

---

unless:

- (c) a certificate of compliance for the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is in force under regulations made for the purposes of this Subdivision; or
  - (d) if the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case may be, was completed before the time when an airport lease for the airport was granted under the *Airports (Transitional) Act 1996*—a certificate of fitness for occupancy or use or a similar document was issued before that time in respect of the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, by:
    - (i) the Commonwealth or a State; or
    - (ii) an authority of the Commonwealth or a State; or
    - (iii) a local government body; or
  - (e) the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is of a kind declared by the regulations to be exempt from this Subdivision.
- (2) Paragraphs (1)(c) and (d) do not, by implication, limit paragraph (1)(e).
- (3) A company that contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 250 penalty units.
- Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c), (d) and (e) (see subsection 13.3(3) of the *Criminal Code*).
- (4) A person who is the sub-lessee of an airport lease for an airport must not:
- (a) occupy or use a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site; or

- (b) cause or permit a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site to be occupied or used;
- unless:
- (c) a certificate of compliance for the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is in force under regulations made for the purposes of this Subdivision; or
  - (d) if the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case may be, was completed before the time when an airport lease for the airport was granted under the *Airports (Transitional) Act 1996*—a certificate of fitness for occupancy or use or a similar document was issued before that time in respect of the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, by:
    - (i) the Commonwealth or a State; or
    - (ii) an authority of the Commonwealth or a State; or
    - (iii) a local government body; or
  - (e) the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is of a kind declared by the regulations to be exempt from this Subdivision.
- (5) Paragraphs (4)(c) and (d) do not, by implication, limit paragraph (4)(e).
- (6) A person who contravenes subsection (4) commits an offence punishable on conviction by a fine not exceeding 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (4)(c), (d) and (e) (see subsection 13.3(3) of the *Criminal Code*).

Section 107

---

**107 Regulations about certificates of compliance**

- (1) The regulations may make provision for and in relation to the following:
  - (a) the issue of certificates (to be known as ***certificates of compliance***) stating that a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration is to be treated as complying with the regulations;
  - (b) conditions of certificates of compliance;
  - (c) revocation, variation or surrender of certificates of compliance;
  - (d) fees in respect of applications for certificates of compliance;
  - (e) in a case where an airport lease is transferred—the transfer of a certificate of compliance to the transferee.
- (2) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in:
  - (a) the Building Code of Australia; or
  - (b) the Building Code of Australia as it applies in a particular State; or
  - (c) a law of a State; or
  - (d) a standard proposed or approved by Standards Australia; or
  - (e) a standard made by, or by an authority of, the United States of America; or
  - (f) a standard made by, or by an authority of, a member state of the European Union;as in force or existing from time to time.
- (3) A condition prescribed under paragraph (1)(b) may relate to the carrying out of one or more inspections.
- (4) Subsection (3) does not, by implication, limit the operation of paragraph (1)(b).



- (5) The regulations may provide that certificates of compliance must not be issued for particular kinds of buildings, structures, earthworks, engineering works, electrical works, hydraulic works or eligible alterations.

### **108 Offence of contravening conditions**

A person commits an offence if:

- (a) the person has been issued with a certificate of compliance under regulations made for the purposes of this Subdivision; and
- (b) the person engages in conduct, whether before or after the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned is first occupied or used; and
- (c) the person's conduct contravenes a condition of the certificate.

Penalty: 50 penalty units.

### **109 Remedial directions**

- (1) If:
- (a) a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration at an airport site is occupied or used; and
  - (b) the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration is not of a kind declared by the regulations to be exempt from this Subdivision; and
  - (c) either:
    - (i) a certificate of compliance issued under regulations made for the purposes of this Subdivision is not in force in relation to the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires; or

**Section 109**

---

- (ii) if such a certificate is in force in relation to the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires—a condition of the certificate is contravened;

an authorised person may give another person a written direction requiring the other person:

  - (d) to cease to occupy or use; or
  - (e) to carry out remedial work on; or
  - (f) to demolish, dismantle or remove;

the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned.
- (2) An authorised person must not give another person a direction under this section unless the other person is:
  - (a) an airport-operator company for the airport concerned; or
  - (b) a person who is occupying or using, or is proposing to occupy or use, the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned; or
  - (c) a person who has caused or permitted, or is proposing to cause or permit, the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned to be occupied or used.
- (3) A person commits an offence if:
  - (a) the person is subject to a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.
- (4) In this section:

***authorised person*** means:

  - (a) the Secretary of the Department; or
  - (b) a person authorised in writing by the Secretary of the Department for the purposes of this section.

**110 Transitional—buildings and structures in existence when  
airport lease first granted**

- (1) This section applies to a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on an airport site that was completed before the time when an airport lease for the airport was granted under the *Airports (Transitional) Act 1996*.
- (2) Sections 106, 108 and 109 do not apply in relation to the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, throughout the 180-day period beginning when the lease is granted.

## Division 6—Miscellaneous

### 111 Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against this Part to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

### 112 Exclusion of State laws

- (1) It is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State.
- (2) In particular, it is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State relating to:
  - (a) land use planning; or
  - (b) the regulation of building activities.

### 112A Exclusion of Part III of Australian Capital Territory (Planning and Land Management) Act

- (1) Part III of the *Australian Capital Territory (Planning and Land Management) Act 1988* does not apply in relation to Canberra Airport.
- (2) In particular, despite section 10 of that Act, Canberra Airport is not a Designated Area for the purposes of that Act.

### 112B Sydney West Airport completion day

- (1) The Minister may, by writing, declare that a specified day is the *Sydney West Airport completion day* for the purposes of this Act.
- (2) In making a declaration under subsection (1), the Minister must have regard to:

Section 112B

---

- (a) progress in relation to the completion of the developments covered by Part 3 of an airport plan for Sydney West Airport; and
  - (b) any agreement between:
    - (i) the Commonwealth; and
    - (ii) the airport-lessee company for Sydney West Airport; that relates to one or more of the developments covered by Part 3 of an airport plan for Sydney West Airport; and
  - (c) such other matters (if any) as the Minister considers relevant.
- (3) The Minister must cause a copy of a declaration under subsection (1) to be published on the Department's website.
- (4) A declaration under subsection (1) is not a legislative instrument.
- (5) For the purposes of this section, **development** has the same meaning as in Division 4A.

## **Part 6—Environmental management**

### **Division 1—Simplified outline**

#### **113 Simplified outline**

The following is a simplified outline of this Part:

- It is an offence to cause environmental harm at an airport site.
- The regulations may deal with environmental standards at airport sites.

## **Division 3—Environmental standards at airports**

### **131A Airports to which Division applies**

- (1) This Division applies to:
  - (a) a core regulated airport, if there is an airport lease for the airport; and
  - (b) an airport prescribed in the regulations, if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

### **131B Offence resulting in serious environmental harm**

- (1) A person commits an offence if the person engages in conduct that directly or indirectly results in environmental pollution that affects an area that consists of, or is included in, an airport site if the pollution harms, or has the potential to harm, the environment and:
  - (a) both:
    - (i) an environment strategy is in force for the airport concerned; and
    - (ii) the area is identified in the strategy as environmentally significant; or
  - (b) the effect of the pollution is, or has the potential to be:
    - (i) of high impact; and
    - (ii) irreversible; or
  - (c) the pollution results, or has the potential to result, in substantial harm to public health or to public safety; or
  - (d) the pollution results, or has the potential to result, in substantial damage to property.

Penalty: 500 penalty units.

- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.

## Section 131C

---

- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to ***environmental pollution*** includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

### **131C Offence resulting in material environmental harm**

- (1) A person commits an offence if the person engages in conduct that directly or indirectly results in environmental pollution that affects an area that consists of, or is included in, an airport site if the pollution harms, or has the potential to harm, the environment and:
  - (a) the effect of the pollution is, or has the potential to be, of significant impact; or
  - (b) the pollution results, or has the potential to result, in harm to public health or to public safety; or
  - (c) the pollution results, or has the potential to result, in damage to property (other than minor damage).

Penalty: 200 penalty units.

- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to ***environmental pollution*** includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

### **131D Offence resulting in environmental nuisance**

- (1) A person commits an offence if the person engages in conduct that directly or indirectly results in environmental pollution that affects an area that consists of, or is included in, an airport site and:
  - (a) the pollution takes the form of smoke, dust or odour; or
  - (b) the effect of the pollution is:
    - (i) of low impact; and
    - (ii) transient; or



---

Section 131E

---

- (c) the effect of the pollution interferes unreasonably, or has the potential to interfere unreasonably, with the enjoyment of the area by a person occupying, or lawfully using, the area.

Penalty: 50 penalty units.

- (3) Subsection (1) applies to conduct of a person, even if the conduct was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to **environmental pollution** includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

**131E Alternative verdicts—offence against section 131B or 131C**

- (1) If a court acquits a person of an offence against section 131B but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of an offence against section 131C or 131D, the court may convict the person of the offence against section 131C or 131D.
- (2) If a court acquits a person of an offence against section 131C but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of an offence against section 131D, the court may convict the person of the offence against section 131D.

**132 Regulations about environmental standards at airports**

- (1) The regulations may make standards and impose requirements that are to be complied with in relation to, or in relation to the prevention or minimisation of:
  - (a) environmental pollution (including air, water or soil pollution) generated at airport sites; or
  - (b) impacts on biota or habitat; or
  - (c) interference with sites of heritage value; or
  - (d) interference with sites of significance to Aboriginal or Torres Strait Islander people; or

## Section 133

---

- (e) the emission of noise generated at airport sites (other than noise generated by aircraft in flight); or
  - (f) the disposal or storage of waste at airport sites.
- (2) If a person contravenes a particular provision of regulations made for the purposes of subsection (1), the person commits an offence punishable on conviction by a fine not exceeding the number of penalty units (not exceeding 250 penalty units) that is declared by those regulations to be the maximum number of penalty units for a contravention of that provision.
- (2A) Strict liability applies to the element of an offence against subsection (2) that regulations were made for the purposes of subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by conferring a power on the Minister.
- (3A) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a standard proposed or approved by Standards Australia, being a standard as in force or existing from time to time.
- (3B) Regulations made for the purposes of subsection (1) may make provision for or in relation to fees in respect of applications made in relation to any matter under the regulations.
- (4) Section 133 does not, by implication, limit subsection (1) of this section.

### **133 Regulations about monitoring, and remedying breaches of, environmental standards at airports**

- (1) The regulations may make provision for and in relation to:

Section 133

---

- (a) monitoring, cleaning up, remedying or rectifying environmental pollution (including air, water or soil pollution) generated at airport sites; or
  - (aa) monitoring, mitigating, remedying or rectifying contraventions of section 131B, 131C or 131D; or
  - (b) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to impacts on biota or habitat; or
  - (c) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to interference with sites of heritage value; or
  - (d) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to interference with sites of significance to indigenous people; or
  - (e) monitoring, mitigating, remedying or rectifying the emission of noise generated at airport sites (other than noise generated by aircraft in flight); or
  - (f) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to the disposal or storage of waste at airport sites.
- (2) Regulations made for the purposes of subsection (1) may prescribe penalties not exceeding 50 penalty units for offences against those regulations.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by conferring a power on the Minister.
- (3A) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a standard proposed or approved by Standards Australia, being a standard as in force or existing from time to time.
- (3B) To avoid doubt, regulations made for the purposes of paragraph (1)(a) may make provision for and in relation to the
-

## Section 134

---

monitoring, cleaning up, remedying or rectifying, after the regulations take effect, of environmental pollution, even if the environmental pollution was generated:

- (a) before the commencement of this subsection; or
  - (b) before the regulations took effect.
- (3C) Regulations made for the purposes of subsection (1) may make provision for or in relation to fees in respect of applications made in relation to any matter under the regulations.
- (4) Section 132 does not, by implication, limit subsection (1) of this section.

### **134 Remediating breaches of environmental standards—recovery of expenses by airport-operator company**

- (1) If:
- (a) a person has contravened:
    - (i) section 131B, 131C or 131D; or
    - (ii) regulations made for the purposes of section 132 or 133;and
  - (b) an airport-operator company for the airport has incurred expenses or other liabilities in relation to cleaning up, remedying or rectifying the act or omission constituting the contravention;
- the person is liable to pay to the company an amount equal to so much of those expenses or liabilities as is reasonable.
- (2) An amount payable under subsection (1) may be recovered, as a debt due to the company by the person, by action in a court of competent jurisdiction.
- (3) An action under subsection (1) must be instituted within 3 years after the act or omission occurred or within such longer period as the court allows.

Section 135

---

- (4) Subsection (1) does not limit, restrict or otherwise affect any right or remedy the company would have if this section had not been enacted.

**135 Remediating breaches of environmental standards—recovery of expenses by the Commonwealth**

- (1) If:
- (a) a person has contravened:
    - (i) section 131B, 131C or 131D; or
    - (ii) regulations made for the purposes of section 132 or 133; and
  - (b) the Commonwealth has incurred expenses or other liabilities in relation to cleaning up, remediating or rectifying the act or omission constituting the contravention;
- the person is liable to pay to the Commonwealth an amount equal to so much of those expenses or liabilities as is reasonable.
- (2) An amount payable under subsection (1) may be recovered, as a debt due to the Commonwealth by the person, by action in a court of competent jurisdiction.
- (3) An action under subsection (1) must be instituted within 3 years after the act or omission occurred or within such longer period as the court allows.
- (4) Subsection (1) does not limit, restrict or otherwise affect any right or remedy the Commonwealth would have if this section had not been enacted.

**136 Operation of State laws**

- (1) Subject to this section, it is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State to the extent that that law is capable of operating concurrently with this Division.

## Section 137

---

- (2) The regulations may declare that a specified law of a State has no effect in relation to a specified airport to the extent to which the law makes provision for and in relation to a matter referred to in section 131B, 131C or 131D or paragraph 132(1)(a), (b), (c), (d), (e) or (f) or 133(1)(a), (aa), (b), (c), (d), (e) or (f).

Note: A law may be specified by name, by inclusion in a specified class or in any other way.

### **137 Severability**

- (1) This section applies to the following provisions:
- (a) section 131B, 131C or 131D;
  - (b) regulations made for the purposes of section 132 or 133.
- (2) In addition to their effect apart from this section, those provisions also have the effect they would have if their application was, by express provision, confined to acts or omissions of constitutional corporations.

## **Division 4—Infringement notices**

### **138 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against:
  - (a) this Part; or
  - (b) regulations made for the purposes of section 133;to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

## **Part 7—Accounts and reports of airport-operator companies**

### **Division 1—Simplified outline**

#### **139 Simplified outline**

The following is a simplified outline of this Part:

- An airport-operator company may be required to prepare audited accounts and give those accounts to the ACCC.
- The regulations may require an airport-operator company for an airport to give the ACCC written reports about the airport.
- The regulations may require an airport-operator company to keep records relating to the preparation of those accounts and reports.



## **Division 2—Scope of Part**

### **140 Airports to which Part applies**

- (1) This Part applies to an airport-operator company for an airport if:
  - (a) the airport is specified in the regulations; and
  - (b) there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

## Division 3—Accounts

### 141 Preparation and retention of accounts

- (1) This section applies to a company if the company was an airport-operator company throughout the whole or a part of a financial year.

#### *Preparation of accounts*

- (2) The company must, in respect of the whole or part, as the case may be, of the financial year, prepare such accounts and statements as are specified in, or ascertained in accordance with, the regulations. However, this rule does not apply if the regulations declare that the company is exempt from this section.

#### *Regulations may deal with the preparation of accounts*

- (3) The regulations may make provision for and in relation to the preparation of accounts and statements covered by subsection (2). If the regulations make such provision, the accounts and statements covered by subsection (2) must be prepared in accordance with the regulations. This subsection does not, by implication, limit subsection (2).

#### *Accounts to be signed*

- (4) The accounts and statements prepared in accordance with subsection (2) must be signed by at least 2 directors of the company.

#### *Retention of accounts for 5 years*

- (5) The company must retain the accounts and statements prepared in accordance with subsection (2) for 5 years after the end of the period to which they relate.

*Offence*

- (6) A company commits an offence if:
- (a) the company is subject to a requirement under this section; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

*Strict liability*

- (6A) Strict liability applies to paragraph (6)(a).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

*Incorporation of AASB accounting standards*

- (7) Regulations made for the purposes of this section may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in an AASB accounting standard as in force or existing from time to time. For this purpose, an **AASB accounting standard** is an accounting standard made by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001*.

**142 Audit of accounts**

- (1) This section applies if a company prepares accounts and statements in respect of a period (the **accounting period**) in accordance with this Division.

*Audit by approved auditor*

- (2) The accounts and statements must be audited by an approved auditor.

Note: **Approved auditor** is defined by section 144.

**Section 142**

---

*Company to arrange for audit*

- (3) The company must make such arrangements as are necessary to enable the audit of those accounts and statements in accordance with this Division.

*Offence*

- (4) A company commits an offence if:
- (a) the company is required to make arrangements under subsection (3); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

*Strict liability*

- (4A) Strict liability applies to paragraph (4)(a).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

*Auditor's certificate*

- (5) The auditor must, for the purposes of this Division, give the company a certificate relating to the accounts and statements. The certificate must be given within the prescribed period after the accounting period. The certificate must be in the prescribed form.

*Offence*

- (6) A person commits an offence if:
- (a) the person is required to give a company a certificate under subsection (5); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

---

Section 143

---

*Strict liability*

- (7) Strict liability applies to paragraph (6)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**143 Lodgment of accounts with the ACCC**

- (1) This section applies if a company prepares accounts and statements in respect of a period (the *accounting period*) in accordance with this Division.
- (2) The company must, within the prescribed period after the accounting period, give the ACCC:
- (a) those accounts and statements; and
  - (b) the certificate given to the company by an approved auditor under section 142 in respect of the accounting period.

Note: *Approved auditor* is defined by section 144.

*Offence*

- (3) A company commits an offence if:
- (a) the company is subject to a requirement under this section; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

*Strict liability*

- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**143A Publication of accounts and statements**

- (1) The ACCC may publish accounts and statements given to the ACCC under section 143.

**Section 144**

---

- (2) The ACCC may charge fees for the supply of accounts and statements published under subsection (1).

**144 Approved auditor**

For the purposes of this Act, an *approved auditor* is:

- (a) a person registered as an auditor under Part 9.2 of the *Corporations Act 2001*; or
- (b) a company registered as an authorised audit company under Part 9.2A of the *Corporations Act 2001*.

**Division 4—Airport reports****145 Airport reports**

- (1) The regulations may make provision for and in relation to requiring an airport-operator company for an airport to give the ACCC written reports about the airport.

*Offence*

- (2) A company commits an offence if:
- (a) the company is subject to a requirement under the regulations to give the ACCC written reports about the airport; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 50 penalty units.

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the ACCC*

- (3) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the ACCC. For example, the regulations could provide that the ACCC may, by written notice given to an airport-operator company for an airport, require the company to give the ACCC, within the period and in the manner specified in the notice, a written report about specified matters relating to the airport.

**145A Publication of airport reports**

- (1) The ACCC may publish reports given to the ACCC in accordance with a requirement covered by subsection 145(1).
- (2) The ACCC may charge fees for the supply of reports published under subsection (1).

## Division 5—Record-keeping

### 146 Record-keeping

- (1) The regulations may make provision for and in relation to requiring a company to keep and retain records, where the records are relevant to the preparation of:
  - (a) the accounts and statements of the company mentioned in section 141; or
  - (b) the reports of the company mentioned in section 145.
- (2) A company commits an offence if:
  - (a) the company is subject to a requirement under the regulations to keep and retain records; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 50 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



## **Division 6—Protection of documents given to the ACCC**

### **147 Protection of documents given to the ACCC**

- (1) This section applies if a document is given to the ACCC:
  - (a) under section 143; or
  - (b) in accordance with a requirement covered by subsection 145(1).
- (2) Sections 95ZN and 95ZP of the *Competition and Consumer Act 2010* have effect as if the document had been given to the ACCC under section 95ZK of that Act.

Note: Sections 95ZN and 95ZP of the *Competition and Consumer Act 2010* protect the confidentiality of information given to the ACCC.

- (3) Section 95ZP of the *Competition and Consumer Act 2010* has effect as if the functions conferred on the ACCC by section 143A and 145A of this Act were conferred instead by a provision of that Act.

Note: This allows the ACCC to publish accounts and statements given to the ACCC under section 143 and to publish reports given to the ACCC in accordance with a requirement covered by subsection 145(1).

Section 148

---

**Division 7—Part supplements the Competition and  
Consumer Act 2010**

**148 Part supplements the *Competition and Consumer Act 2010***

This Part does not, by implication, limit the powers conferred on the ACCC by the *Competition and Consumer Act 2010*.

## **Division 8—Concurrent operation of State laws**

### **149 Concurrent operation of State laws**

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State to the extent that that law is capable of operating concurrently with this Part.

## **Part 8—Quality of service monitoring and reporting**

### **Division 1—Simplified outline**

#### **150 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may require the ACCC to monitor and evaluate the quality of certain aspects of airport services and facilities. The ACCC may also do so on its own initiative.
- The regulations may require information about quality of service matters to be given to the ACCC.
- The ACCC may publish reports about its monitoring and evaluation under this Part.

## **Division 2—Scope of Part**

### **151 Airports to which Part applies**

- (1) This Part applies to an airport if:
  - (a) the airport is specified in the regulations; and
  - (b) there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

### **152 Airport services and facilities**

This Part applies to an airport service or facility if the service or facility is provided:

- (a) by an airport-operator company; or
- (b) by a person other than an airport-operator company under an agreement with an airport-operator company.

## **Division 4—ACCC to monitor quality of services and facilities**

### **155 ACCC to monitor quality of services and facilities**

- (1) In addition to any functions conferred on the ACCC 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.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) The monitoring and evaluation of an aspect specified for the purposes of subsection (1) must be against the criteria determined by the ACCC in writing in relation to the aspect.
- (3) Before determining criteria under subsection (2), the ACCC must consult the Department and the Department administered by the Treasurer.

#### *Determinations*

- (4) The ACCC must give a free copy of a determination under subsection (2) to any person who asks for a copy.
- (5) A determination under subsection (2) is not a legislative instrument.

## **Division 5—Record-keeping and giving of information**

### **156 Record-keeping and giving of information**

- (1) The regulations may make provision for and in relation to requiring a person:
  - (a) to keep and retain records, where the records are relevant to a quality of service matter; and
  - (b) to give information to the ACCC that is relevant to a quality of service matter.

Note: *Quality of service matter* is defined by subsection (7).

#### *Limits on obligations*

- (2) Regulations made for the purposes of this section must not impose an obligation on a person unless:
  - (a) the person is an airport-operator company; or
  - (b) the person provides airport services or facilities under an agreement with an airport-operator company; or
  - (c) the person is an aircraft operator and uses airport services or facilities in connection with aircraft operations carried on by the person.

#### *Statutory declarations*

- (3) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b) must be verified by statutory declaration.

#### *No self-incrimination*

- (4) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b) if the information might tend to incriminate the individual or expose the individual to a penalty.

Section 156

---

*Offence*

- (5) A company commits an offence if:
- (a) the company is subject to a requirement under the regulations to keep and retain records and give information to the ACCC; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

- (5A) Strict liability applies to paragraph (5)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the ACCC*

- (6) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the ACCC. For example, the regulations could provide that the ACCC may, by written notice given to an airport-operator company, require the company to give the ACCC, within the period and in the manner specified in the notice, specified information that is relevant to a quality of service matter.
- (7) In this Act:
- quality of service matter*** means a matter that is relevant to monitoring or evaluating, under this Part, the quality of an aspect of airport services or facilities specified in regulations made for the purposes of subsection 155(1).



## **Division 6—ACCC may publish quality of service information**

### **157 Publication of quality of service information**

- (1) The ACCC may publish reports relating to the monitoring or evaluation of the quality of aspects of airport services and facilities specified in regulations made for the purposes of subsection 155(1).
- (2) The ACCC may charge fees for the supply of reports published under subsection (1).

Section 158

---

**Division 7—Protection of information given to the ACCC**

**158 Protection of information given to the ACCC**

- (1) This section applies if information is given to the ACCC in accordance with a requirement covered by paragraph 156(1)(b).
- (2) Sections 95ZN and 95ZP of the *Competition and Consumer Act 2010* have effect as if the information had been given in accordance with section 95ZK of that Act.

Note: Sections 95ZN and 95ZP of the *Competition and Consumer Act 2010* protect the confidentiality of information given to the ACCC.

- (3) Section 95ZP of the *Competition and Consumer Act 2010* has effect as if the functions conferred on the ACCC by section 157 of this Act were conferred instead by a provision of that Act.

Note: This allows the ACCC to publish section 157 reports.

**Division 8—Part supplements the Competition and  
Consumer Act 2010**

**159 Part supplements the *Competition and Consumer Act 2010***

This Part does not, by implication, limit the powers conferred on the ACCC by the *Competition and Consumer Act 2010*.

## **Part 9—Variation and closure of airport sites**

### **160 Simplified outline**

The following is a simplified outline of this Part:

- Airport-lessee companies must give written consent before airport sites are varied or closed.
- An airport-lessee company may surrender its airport lease to the Commonwealth, either unconditionally or on such terms and conditions as are agreed between the company and the Commonwealth.
- An airport lease may be varied by reducing the leased area.

### **161 Variation of airport sites—consent of lessee**

- (1) If there is an airport lease relating to an airport site for an airport, the Governor-General must not make any regulations varying the site unless the lessee has given written consent to the making of those regulations.

### **162 Closure of airport sites**

- (1) If there is an airport lease relating to an airport site, the Governor-General must not make any regulations repealing the declaration of the site as an airport site unless the lessee has given written consent to the making of those regulations.
- (2) If there is a lease of the whole or a part of an airport site, the Commonwealth must not take any action that would have the effect of creating an absolute prohibition of the use of the site as an airport unless the lessee has given written consent to the taking of that action.

**163 Surrender of airport leases**

- (1) If there is a lease of the whole or a part of an airport site, the lessee may surrender the lease to the Commonwealth.
- (2) The surrender may be:
  - (a) unconditional; or
  - (b) subject to such terms and conditions as are agreed between the lessee and the Commonwealth.
- (3) The terms and conditions may require the Commonwealth to grant the lessee a new airport lease relating to the same airport and require the lessee to pay or give the Commonwealth consideration for the new airport lease. The new lease may be expressed to take effect when regulations varying the airport site take effect.
- (4) Subsection (3) does not, by implication, limit subsection (2).

**163A Variation of airport lease—reducing leased area**

- (1) If the holder of an airport lease requests the Minister to vary the lease by reducing the leased area as specified in the request, the Minister may, by notice published in the *Gazette*, determine that the lease is varied in accordance with the request. The determination has effect accordingly.
- (2) This Act does not prevent the Commonwealth from paying consideration to the holder of the airport lease for the variation.
- (3) The relevant land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for drawing the attention of persons to the variation. For this purpose, the relevant **land registration official** is the Registrar of Titles or other proper officer of the State in which the airport is situated.
- (4) This section does not, by implication, prevent the variation of an airport lease otherwise than under this section.

**Section 163A**

---

- (5) This section does not, by implication, limit the operation of section 163.

## **Part 10—Implementation of international agreements relating to airports**

### **164 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may implement certain international agreements relating to airports.

### **165 Designated international agreements**

In this Part:

***another country*** includes a region:

- (a) that is part of a foreign country; or
- (b) that is under the protection of a foreign country; or
- (c) for whose international relations a foreign country is responsible.

***designated international agreement*** means:

- (a) the Convention on International Civil Aviation concluded at Chicago on 7 December 1944, as amended by the Protocols referred to in subsection 3A(2) of the *Air Navigation Act 1920*; or
- (b) an Annex to that Convention, where the Annex was adopted in accordance with that Convention; or
- (c) an agreement or arrangement between:
  - (i) Australia, or an entity or organisation nominated or otherwise similarly authorised by Australia to enter into the agreement or arrangement; and
  - (ii) another country;

## Section 166

---

under which the carriage by air of passengers or freight, or both passengers and freight, between Australia and the other country is permitted.

### 166 Regulations may give effect to designated international agreements

- (1) The regulations may provide for and in relation to requiring the operator of an airport to act in a manner consistent with Australia's obligations under:
  - (a) a designated international agreement; and
  - (b) an amendment of such an agreement;in so far as the agreement, or any part of the agreement, is intended to affect the operation of airports that are open to access by international air transport.
- (2) Regulations made for the purposes of this section must not come into operation before:
  - (a) the agreement enters into force, or comes into effect, for Australia; or
  - (b) the amendment enters into force, or comes into effect, for Australia;as the case requires.

### 167 Compliance by airport operators with regulations

- (1) An operator of an airport commits an offence if:
  - (a) the operator is subject to a requirement under the regulations made for the purposes of section 166 and the regulations declare that this section applies to that provision; and
  - (b) the operator engages in conduct; and
  - (c) the operator's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



## **Part 11—Control of certain on-airport activities**

### **168 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may deal with the control of the following matters at airports:
  - (a) liquor;
  - (b) commercial trading;
  - (c) vehicle movements;
  - (d) gambling;
  - (e) smoking.
- If no regulations are in force about a particular matter, the relevant State laws will generally apply.

### **169 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport, if there is an airport lease for the airport; and
  - (b) an airport prescribed in the regulations, if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

## Section 170

---

### 170 Control of liquor

- (1) The regulations may make provision for and in relation to prohibiting or regulating the sale, supply, disposal or possession of liquor at a specified airport.

- (2) In this section:

**liquor** means wine, spirits, ale, beer or any liquid containing alcohol ordinarily used, or fit for use, as a beverage.

### 171 Control of commercial trading

- (1) The regulations may make provision for and in relation to:
- (a) prohibiting or regulating the supply of goods or services at a specified airport; or
  - (b) authorising the supply of goods or services at a specified airport;

if the goods or services are acquired by an individual as a consumer (within the meaning of section 4B of the *Competition and Consumer Act 2010*).

- (2) In this section:

**goods** has the same meaning as in the *Competition and Consumer Act 2010*.

**services** has the same meaning as in the *Competition and Consumer Act 2010*, but does not include:

- (a) air transport services; or
- (b) services relating to aircraft.

**supply** has the same meaning as in the *Competition and Consumer Act 2010*.

### 172 Control of vehicle movements

- (1) The regulations may:

- (a) make provision for and in relation to prohibiting or regulating the parking or use of vehicles within a specified airport; and
  - (b) provide for signs and road markings for those purposes.
- (1A) Regulations made for the purposes of subsection (1) may apply, adopt or incorporate any matter contained in the Airside Vehicle Control Handbook for the airport as in force or existing from time to time.

- (2) In this Act:

***Airside Vehicle Control Handbook*** for an airport means the Airside Vehicle Control Handbook published by an airport-operator company for the airport.

***vehicle*** includes:

- (a) a trailer, caravan or portion of an articulated vehicle; or
- (b) an object that was designed or adapted for use as a vehicle but is incapable of being so used because:
  - (i) one or more parts have been removed from it; or
  - (ii) it is in a wrecked or damaged condition.

### **173 Control of gambling**

- (1) The regulations may make provision for and in relation to prohibiting or regulating gambling activities at a specified airport.
- (2) In this section:

***gambling activity*** includes the following:

- (a) a game of chance, a mixed game of chance and skill, or a lottery, (whether involving the use of a machine or otherwise);
- (b) such other matters (if any) as are specified in the regulations.

Section 174

---

**174 Control of smoking**

The regulations may make provision for and in relation to prohibiting or regulating smoking at a specified airport.

**175 Enforcement**

Regulations made for the purposes of this Part may prescribe penalties not exceeding 50 penalty units for offences against those regulations.

**176 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against regulations made for the purposes of this Part to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

**177 Operation of State laws**

- (1) Subject to this section, it is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State to the extent that that law is capable of operating concurrently with this Part.
- (2) The regulations may declare that a specified law of a State has no effect at a specified airport to the extent to which the law makes provision for and in relation to a matter referred to in section 170, 171, 172, 173 or 174.

Note: A law may be specified by name, by inclusion in a specified class or in any other way.

**178 Submissions**

- (1) This section applies to regulations made for the purposes of this Part.

Section 178

---

- (2) At least 30 days before regulations relating to a particular airport are made, the Minister must give each airport-operator company for the airport a notice:
  - (a) stating that there is a proposal to make those regulations; and
  - (b) inviting the company to give the Minister a submission about the proposed regulations within 30 days after receiving the notice.
- (3) If a company gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in dealing with the proposal.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.

## **Part 12—Protection of airspace around airports**

### **Division 1—Simplified outline**

#### **179 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may declare airspace to be ***prescribed airspace*** if it is in the interests of the safety, efficiency or regularity of air transport operations into or out of an airport for the airspace to be protected.
- Activities that result in intrusions into prescribed airspace are called ***controlled activities***.
- Controlled activities require approval.
- Approvals are given under the regulations.

## **Division 2—Scope of Part**

### **180 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport, where the site of the airport is a Commonwealth place; and
  - (b) an airport specified in the regulations, where the site of the airport is a Commonwealth place; and
  - (c) an airport specified in the regulations, where the site of the airport is not a Commonwealth place.
- (2) For the purposes of subsection (1), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

## Division 3—Prescribed airspace

### 181 Prescribed airspace

- (1) For the purposes of this Part, a *prescribed airspace* is an airspace specified in, or ascertained in accordance with, the regulations, where it is in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of an airport for the airspace to be protected under this Part.
- (2) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in the Aeronautical Information Publication as in force or existing from time to time.
- (3) A reference in this section to the *Aeronautical Information Publication* is a reference to the Aeronautical Information Publication published by Airservices Australia in accordance with the Air Services Regulations.



## **Division 4—Protection of prescribed airspace**

### **182 Controlled activities**

- (1) For the purposes of this Division, the following activities are *controlled activities* in relation to a prescribed airspace:
- (a) constructing a building, or other structure, that intrudes into the prescribed airspace;
  - (b) altering a building or other structure so as to cause the building or structure to intrude into the prescribed airspace;
  - (c) any other activity that causes a thing attached to, or in physical contact with, the ground to intrude into the prescribed airspace;
  - (d) operating a source of artificial light, where:
    - (i) the intensity of the light emitted exceeds the level ascertained in accordance with the regulations; and
    - (ii) the light is capable of blinding or confusing pilots of aircraft operating in the prescribed airspace;
  - (e) operating prescribed plant, or a prescribed facility, that reflects sunlight, where:
    - (i) the intensity of the reflected sunlight exceeds the level ascertained in accordance with the regulations; and
    - (ii) the reflected sunlight is capable of blinding pilots of aircraft operating in the prescribed airspace;
  - (f) an activity that results in air turbulence, where:
    - (i) the level of the turbulence exceeds the level ascertained in accordance with the regulations; and
    - (ii) the turbulence is capable of affecting the normal flight of aircraft operating in the prescribed airspace;
  - (g) an activity that results in the emission of smoke, dust or other particulate matter, where:
    - (i) the emission exceeds the level ascertained in accordance with the regulations; and

**Section 183**

---

- (ii) the smoke, dust or particulate matter is capable of affecting the ability of aircraft to operate in the prescribed airspace in accordance with Visual Flight Rules;
- (h) an activity that results in the emission of steam or other gas, where:
  - (i) the emission exceeds the level ascertained in accordance with the regulations; and
  - (ii) the steam or gas is capable of affecting the ability of aircraft to operate in the prescribed airspace in accordance with Visual Flight Rules.

Note: *Prescribed airspace* is defined by section 181.

- (2) Regulations must not be made for the purposes of paragraph (1)(d), (e), (f), (g) or (h) unless it is in the interests of the safety, efficiency or regularity of existing or future air transport operations to do so.
- (3) Paragraphs (1)(d), (e), (f), (g) and (h) do not apply to:
  - (a) an ordinary domestic or household activity; or
  - (b) anything arising out of the operation of an aircraft.
- (4) In this section:

**Chicago Convention** means the Convention on International Civil Aviation concluded at Chicago on 7 December 1944, as amended by the Protocols referred to in subsection 3A(2) of the *Air Navigation Act 1920*.

**Visual Flight Rules** means Visual Flight Rules set out in Annex 2 to the Chicago Convention.

**183 Controlled activities not to be carried out without approval**

- (1) A person must not:
  - (a) carry out a controlled activity in relation to prescribed airspace; or
  - (b) cause to be carried out a controlled activity in relation to prescribed airspace;

unless:

- (c) carrying out the activity is in accordance with an approval granted under regulations made for the purposes of this Division; or
- (d) the activity is declared by the regulations to be exempt from this Division.

Note: **Controlled activity** is defined by section 182.

- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 250 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Strict liability applies to paragraph (2)(a).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

## 184 Regulations about approvals

- (1) The regulations may make provision for and in relation to the following:
  - (a) the grant of approvals authorising controlled activities to be carried out in relation to prescribed airspace;
  - (b) conditions of such approvals;
  - (c) revocation, variation or surrender of such approvals;
  - (d) fees in respect of applications for such approvals.
- (2) The regulations may provide that approvals must not be granted in respect of particular kinds of controlled activities.

Section 185

---

**185 Offence of contravening conditions**

- (1) A person commits an offence if:
- (a) the person has been granted an approval under regulations made for the purposes of this Division; and
  - (b) the person engages in conduct, whether before or after completion of the controlled activity concerned; and
  - (c) the person's conduct contravenes a condition of the approval.

Penalty: 250 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**186 Notification of proposals to carry out controlled activities**

- (1) The regulations may make provision for and in relation to requiring a person to give information to the operator of an airport, where the information is relevant to a proposal to carry out a controlled activity in relation to prescribed airspace connected with the airport.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under the regulations to give information to the operator of an airport; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the Minister*

- (3) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the Minister. For example, the regulations could provide that the Minister may, by written notice given to a person, require the person to give to the airport-lessee company for an airport, within the period and in the manner specified in the notice, specified information about proposals to carry out controlled activities in relation to prescribed airspace connected with the airport.

## **187 Remedial orders**

*Unauthorised structures*

- (1) If:
- (a) a controlled activity referred to in paragraph 182(1)(a), (b) or (c) is carried out in relation to prescribed airspace; and
  - (b) the activity is not declared by the regulations to be exempt from this Division; and
  - (c) either:
    - (i) the activity was not authorised by an approval granted under the regulations; or
    - (ii) if such an approval was granted in relation to the activity—a condition of the approval was contravened;
- the Federal Court may, on application by the Minister, make an order requiring a person:
- (d) to carry out remedial work on; or
  - (e) to mark and/or light; or
  - (f) to reduce the height of; or
  - (g) to demolish, dismantle or remove;
- the building, structure or thing concerned.

Section 187

---

*Interference with safety, efficiency or regularity of air transport operations*

- (2) If the Federal Court is satisfied that it is in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of a particular airport to do so, the court may, on application by the Minister, make an order requiring a person:
- (a) to carry out remedial work on; or
  - (b) to mark and/or light; or
  - (c) to reduce the height of; or
  - (d) to demolish, dismantle or remove;
- a building, structure or object that intrudes into prescribed airspace.

*Ancillary orders*

- (3) In addition to the Federal Court's powers under subsections (1) and (2), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

*Notice of application*

- (4) The Federal Court may, before making an order under this section, direct that notice of the Minister's application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

*Variation etc.*

- (5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

*Definition*

- (6) In this section:

***object*** includes a tree or other natural obstacle.

**188 Compensation—constitutional safety-net**

- (1) If:

- (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**189 Severability**

In addition to its effect apart from this section, this Part also has the effect it would have if each reference in this Part to air transport operations were, by express provision, confined to:

- (a) interstate air transport operations; and
- (b) international air transport operations; and
- (c) air transport operations carried on by constitutional corporations; and

**Part 12** Protection of airspace around airports

**Division 4** Protection of prescribed airspace

Section 189

---

- (d) air transport operations carried on by the Commonwealth or by an authority or instrumentality of the Commonwealth; and
- (e) air transport operations carried on for a purpose related to the defence of Australia; and
- (f) air transport operations in a Territory; and
- (g) other air transport operations, where it is in the interests of the safety, efficiency or regularity of, or it is otherwise incidental to, air transport operations covered by paragraphs (a), (b), (c), (d), (e) and (f) for those other air transport operations to be within the scope of this Part.



**Division 5—Part supplements regulations under the Civil  
Aviation Act 1988**

**190 Part supplements regulations under the *Civil Aviation Act 1988***

This Part has effect in addition to, and not instead of, regulations  
under the *Civil Aviation Act 1988*.

## **Part 13—Access to airports and demand management at airports**

### **Division 1—Simplified outline**

#### **191 Simplified outline**

The following is a simplified outline of this Part:

- This Part enables the Minister to formulate a demand management scheme for an airport.
- The 3 main types of demand management schemes are:
  - (a) category exclusion schemes;
  - (b) slot allocation schemes;
  - (c) movement limitation schemes.
- A demand management scheme is a legislative instrument.
- Before formulating a demand management scheme, the Minister must declare that the airport is subject to statutory demand management.
- Before declaring that an airport is subject to statutory demand management, the Minister must make a declaration about the capacity of the airport to handle aircraft movements.
- A declaration subjecting an airport to statutory demand management is a legislative instrument.

**Division 2—Application of the access regime in Part IIIA  
of the Competition and Consumer Act 2010**

**193 Part IIIA of the *Competition and Consumer Act 2010* to be  
subject to the demand management provisions of this  
Part**

Part IIIA of the *Competition and Consumer Act 2010* has effect  
subject to Divisions 3 to 10 of this Part.

## **Division 3—Scope of demand management provisions**

### **194 Scope of demand management provisions**

- (1) Divisions 4 to 10 (inclusive) apply to:
- (a) a core regulated airport, other than Sydney (Kingsford-Smith) Airport, if there is an airport lease for the airport; and
  - (b) an airport prescribed in the regulations, if there is an airport lease for the airport.

Note: Demand management in relation to Sydney (Kingsford-Smith) Airport is dealt with in the *Sydney Airport Demand Management Act 1997*.

- (1A) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

*Aircraft movements within scope of demand management provisions*

- (2) Divisions 4 to 10 (inclusive) apply to an aircraft movement if the movement involves the use of a runway.

## **Division 4—Airport capacity declarations**

### **195 Airport capacity declarations**

- (1) The Minister may make a written declaration setting out the capacity (the *declared capacity*) that, in the Minister's opinion, represents a reasonable estimate of the capacity of a specified airport. The declaration is called an *airport capacity declaration*.
- (2) The declared capacity is to be expressed in terms of the maximum number of aircraft movements that the airport is capable of handling during one or more specified intervals of time (whether recurring or otherwise).
- (3) A copy of the declaration is to be published in the *Gazette*.

### **196 Public comment**

- (1) Before making an airport capacity declaration for an airport, the Minister must:
  - (a) cause to be published in a newspaper circulating generally in the State in which the airport is situated a notice:
    - (i) stating that the Minister has prepared a draft version of the declaration; and
    - (ii) stating that the draft version of the declaration was prepared on the basis of an assessment of the capacity of the airport; and
    - (iii) stating that copies of the draft version and of the assessment will be available for inspection and purchase by members of the public during normal office hours throughout the period of 45 days after the publication of the notice; and
    - (iv) specifying the place or places where the copies will be available for inspection and purchase; and
    - (v) inviting members of the public to give written comments about the draft version and the assessment to

Section 197

---

the Minister within 45 days after publication of the notice; and

- (b) make copies of the draft version and the assessment available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the draft version or the assessment in accordance with the notice, the Minister must have due regard to those comments in making the declaration.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If an airport capacity declaration is varied, the variation must be dealt with under this section in the same manner as an original declaration—see subsection 33(3) of the *Acts Interpretation Act 1901*.

**197 Submissions**

- (1) Before the publication of a notice under section 196 relating to an airport capacity declaration for an airport, the Minister must cause to be published in the *Gazette* a notice:
  - (a) stating that the Minister is considering making an airport capacity declaration for the airport; and
  - (b) inviting persons covered by any of the following subparagraphs to give the Minister a capacity submission within 30 days after the publication of the notice:
    - (i) an airport-operator company for the airport;
    - (ii) an aircraft operator who uses the airport;
    - (iii) Airservices Australia;
    - (iv) the Civil Aviation Safety Authority.For this purpose, a **capacity submission** is a submission about the capacity of the airport.
- (2) If a person gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in making the declaration.

- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If an airport capacity declaration is varied, the variation must be dealt with under this section in the same manner as an original declaration—see subsection 33(3) of the *Acts Interpretation Act 1901*.

## **Division 5—Declarations subjecting airports to statutory demand management**

### **198 Declarations subjecting airports to statutory demand management**

- (1) This section applies to an airport if an airport capacity declaration is in force for the airport.
- (2) The Minister may, by legislative instrument, declare that the airport is subject to statutory demand management under this Part.
- (2A) In addition to the requirement under the *Legislation Act 2003* for the declaration under subsection (2) to be registered, a copy of the declaration must be published in the *Gazette*.
- (3) If an airport capacity declaration for an airport is revoked, any declaration under this section that relates to the airport is taken to be revoked.

### **199 Criteria for making declaration**

- (1) In deciding whether to make a declaration under section 198 about an airport, the Minister must have regard to the following matters:
  - (a) whether demand for the handling of aircraft movements at the airport exceeds, or is likely to exceed, the declared capacity of the airport;
  - (b) the effectiveness of any existing or proposed arrangements for self-management or self-regulation of demand for the handling of aircraft movements at the airport;
  - (c) the impact of the airport-lessee company's existing or proposed pricing arrangements on demand for the handling of aircraft movements at the airport;
  - (d) the extent, or likely extent, of congestion at the airport;
  - (e) existing or proposed laws or other controls relating to environmental matters (including noise matters);
  - (f) Australia's international obligations.



- (2) Subsection (1) does not, by implication, limit the matters to which the Minister may have regard.

## 200 Submissions

- (1) Before making a declaration under section 198 about an airport, the Minister must cause to be published in the *Gazette* a notice:
- (a) stating that the Minister is considering making a declaration under section 198 about the airport; and
  - (b) inviting persons covered by any of the following subparagraphs to give the Minister a submission about the proposed declaration within 30 days after the publication of the notice:
    - (i) an airport-operator company for the airport;
    - (ii) a person specified in the regulations for the purposes of the application of this subparagraph to the airport, being a person who represents the interests of all of the aircraft operators who use the airport to operate scheduled air services;
    - (iii) Airservices Australia;
    - (iv) the Civil Aviation Safety Authority.
- (2) If a person gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in making the declaration.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If a declaration is varied, the variation must be dealt with under this section in the same manner as an original declaration—see subsection 33(3) of the *Acts Interpretation Act 1901*.

## Division 6—Demand management schemes

### 201 Demand management schemes

- (1) This section applies to an airport if a declaration under section 198 is in force for the airport.

Note: Under section 198, the Minister may declare that an airport is subject to statutory demand management.

- (2) The Minister may, by legislative instrument, formulate a scheme for the management of demand for the handling of aircraft movements at the airport. Such a scheme is to be known as a ***demand management scheme***.
- (3) If a declaration under section 198 relating to an airport is revoked, any instrument under this section that relates to the airport is taken to be revoked.

### 202 Submissions

- (1) Before making an instrument under section 201 relating to an airport, the Minister must cause to be published in the *Gazette* a notice:
- (a) stating that the Minister is considering making an instrument under section 201 relating to the airport; and
  - (b) inviting persons covered by any of the following subparagraphs to give the Minister a submission about the proposed instrument within 30 days after the publication of the notice:
    - (i) an airport-operator company for the airport;
    - (ii) a person specified in the regulations for the purposes of the application of this subparagraph to the airport, being a person who represents the interests of all of the aircraft operators who use the airport to operate scheduled air services;
    - (iii) Airservices Australia;
    - (iv) the Civil Aviation Safety Authority.

- (2) If a person gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in making the instrument.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If an instrument is varied, the variation must be dealt with under this section in the same manner as an original instrument—see subsection 33(3) of the *Acts Interpretation Act 1901*.

### 203 Types of schemes

For the purposes of this Part, there are 4 types of schemes for the management of demand for the handling of aircraft movements at an airport:

- (a) category exclusion schemes (see section 204);
- (b) slot allocation schemes (see section 205);
- (c) movement limitation schemes (see section 206);
- (d) schemes not covered by paragraph (a), (b) or (c).

### 204 Category exclusion schemes

- (1) For the purposes of this Part, a **category exclusion scheme** is a scheme that has the effect of prohibiting specified categories of aircraft movements at an airport (except in cases relating to emergencies or safety matters).
- (2) The prohibitions may apply:
  - (a) at all times; or
  - (b) only during one or more specified intervals of time (whether recurring or otherwise).

### 205 Slot allocation schemes

- (1) For the purposes of this Part, a **slot allocation scheme** is a scheme of a kind known in the civil aviation industry as a scheme for the allocation of take-off and landing slots at an airport.

## Section 206

---

- (2) A slot allocation scheme for an airport may provide for the Minister to authorise a person to be the *slot co-ordinator* for the airport.
- (3) A slot allocation scheme for an airport may confer powers and functions on the slot co-ordinator for the airport.

### 206 Movement limitation schemes

For the purposes of this Part, a *movement limitation scheme* is a scheme that:

- (a) limits the total number of aircraft movements that may be handled at an airport during one or more specified intervals of time (whether recurring or otherwise); or
- (b) limits the total number of aircraft movements belonging to a specified category that may be handled at an airport during one or more specified intervals of time (whether recurring or otherwise).

### 207 Concurrent schemes

This Part does not prevent 2 or more schemes from applying to the same airport at the same time.

## **Division 7—Compliance with demand management schemes**

### **208 Compliance with demand management schemes**

A person commits an offence if:

- (a) the person is subject to a provision of a demand management scheme and the scheme declares that this section applies to that provision; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the provision.

Penalty: 250 penalty units.

### **209 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against section 208 to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

**Part 13** Access to airports and demand management at airports

**Division 8** Part supplements Sydney Airport Curfew Act and Air Navigation Regulations

Section 210

---

**Division 8—Part supplements Sydney Airport Curfew Act  
and Air Navigation Regulations**

**210 Part supplements Sydney Airport Curfew Act**

This Part has effect in addition to, and not instead of, the *Sydney Airport Curfew Act 1995*.

**211 Part supplements Air Navigation Regulations**

This Part has effect in addition to, and not instead of, regulations under the *Air Navigation Act 1920*.

## **Division 9—Intervals of time**

### **212 Recurring intervals of time**

For the purposes of this Part, the following periods are examples of recurring intervals of time:

- (a) a calendar year;
- (b) a week;
- (c) a day;
- (d) a day (a **business day**) that is not a Saturday, a Sunday or a public holiday;
- (e) a 60-minute period that begins at 8 am on a business day;
- (f) Christmas day.

### **213 Specification of 2 or more intervals of time**

- (1) 2 or more intervals of time (whether recurring or otherwise) may be specified in an airport capacity declaration or a demand management scheme even if one or more of those intervals is included in any other of those intervals.
- (2) The following is an example of the operation of subsection (1):  
An airport capacity declaration for the XYZ airport is expressed in the following terms:
  - (a) the airport is capable of handling a maximum of 186,150 aircraft movements each calendar year that is not a leap year, and 186,660 aircraft movements each leap year;
  - (b) the airport is capable of handling a maximum of 510 aircraft movements each day;
  - (c) the airport is capable of handling a maximum of 30 aircraft movements each 60-minute period beginning at 8 am on a day that is not a Saturday, a Sunday or a public holiday.

## **Division 10—Severability**

### **214 Severability**

In addition to their effect apart from this section, Divisions 3 to 9 (inclusive) also have the effect they would have if each reference in those Divisions to a scheme for the management of demand for the handling of aircraft movements at an airport were, by express provision, confined to a scheme for the management of demand for the handling of any or all of the following:

- (a) aircraft movements at an airport, where the movements are in the course of interstate air transport operations;
- (b) aircraft movements at an airport, where the movements are in the course of international air transport operations;
- (c) aircraft movements at an airport, where the aircraft are operated by constitutional corporations;
- (d) aircraft movements at an airport, where the aircraft are operated by the Commonwealth or by an authority or instrumentality of the Commonwealth;
- (e) aircraft movements at an airport, where the movements are for a purpose related to the defence of Australia;
- (f) aircraft movements at an airport in a Territory;
- (g) other aircraft movements at an airport, where it is in the interests of the safety, efficiency or regularity of, or it is otherwise incidental to:
  - (i) interstate air transport operations; or
  - (ii) international air transport operations; or
  - (iii) air transport operations carried on by constitutional corporations; or
  - (iv) air transport operations carried on by the Commonwealth or by an authority or instrumentality of the Commonwealth; or
  - (v) air transport operations carried on for a purpose related to the defence of Australia; or
  - (vi) air transport operations in a Territory;



for those other aircraft movements to be dealt with by the scheme.

Section 215

---

## **Part 14—Air traffic services and aerodrome rescue and fire fighting services**

### **215 Simplified outline**

The following is a simplified outline of this Part:

- Air traffic services, and aerodrome rescue and fire fighting services, must not be provided at airports without the approval of the Civil Aviation Safety Authority.

### **216 Air traffic services, and aerodrome rescue and fire fighting services, not to be provided without approval**

- (1) An airport-lessee company for an airport must not:
  - (a) provide either of the following services in relation to the airport:
    - (i) the operation and/or maintenance of air traffic control and/or navigation technical facilities;
    - (ii) aerodrome rescue and fire fighting services; or
  - (b) cause or permit either of the following services to be provided in relation to the airport:
    - (i) the operation and/or maintenance of air traffic control and/or navigation technical facilities;
    - (ii) aerodrome rescue and fire fighting services;unless the services are provided by:
  - (c) a person approved or licensed, by the Civil Aviation Safety Authority under regulations made under section 98 of the *Civil Aviation Act 1988*, to provide the services; or
  - (d) the Australian Defence Force.
- (2) A company commits an offence if:

Section 216

---

- (a) the company is subject to a requirement under subsection (1);  
and
- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

(2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## Part 15—Injunctions

### 217 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions relating to contraventions of this Act or of a demand management scheme.

### 218 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act or of a demand management scheme, the Federal Court may, on the application of the Minister, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (2) If:
  - (a) a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 41 or 45; and
  - (b) in the case of a contravention of section 41—the contravention relates to the existence of an unacceptable foreign-ownership situation in relation to an airport-operator company; and
  - (c) in the case of a contravention of section 45—the contravention relates to the existence of an unacceptable airline-ownership situation in relation to an airport-operator company;

---

Section 218

---

the Federal Court may, on the application of the company, grant an injunction:

- (d) restraining the person from engaging in the conduct; and
  - (e) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (3) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 51, the Federal Court may, on the application of a member of the pair of companies referred to in that section, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

*Performance injunctions*

- (4) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Act or of a demand management scheme;
- the Federal Court may, on the application of the Minister, grant an injunction requiring the person to do that act or thing.
- (5) If:
- (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of subsection 60(4) that relates to a requirement covered by paragraph 60(1)(c) to give information to an airport-operator company;
- the Federal Court may, on the application of the company, grant an injunction requiring the person to do that act or thing.

Section 219

---

**219 Interim injunctions**

*Grant of interim injunction*

- (1) If an application is made to the court for an injunction under section 218, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

*No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under section 218, as a condition of granting an interim injunction, to give any undertakings as to damages.

**220 Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Part.

**221 Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**222 Other powers of the court unaffected**

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Part 16—Prosecutions

### 223 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with the proof of offences that involve employees, agents etc.

### 224 Prosecutions of corporations

#### *State of mind*

- (1) If, in proceedings for an offence against this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
- (a) a director, employee or agent of the corporation engaged in that conduct; and
  - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
  - (c) the director, employee or agent had that state of mind.

#### *Conduct*

- (2) If:
- (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
  - (b) the conduct is within the scope of his or her actual or apparent authority;
- the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the corporation unless the corporation establishes that it took



reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of **state of mind***

- (3) A reference in subsection (1) to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **director***

- (4) A reference in this section to a **director** of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or a State.

*Extended meaning of **engaging in conduct***

- (5) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

*Extended meaning of **offence against this Act***

- (6) A reference in this section to an **offence against this Act** includes a reference to:
- (a) an offence created by section 6 of the *Crimes Act 1914* that relates to this Act; and
  - (b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to this Act.

## **225 Prosecutions of persons other than corporations**

*State of mind*

- (1) If, in proceedings for an offence against this Act in respect of conduct engaged in by a person other than a corporation, it is

Section 225

---

necessary to establish the state of mind of the person, it is sufficient to show that:

- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
- (b) the employee or agent had that state of mind.

*Conduct*

(2) If:

- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
- (b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

*Limitation on imprisonment*

(3) Despite any other provision of this Act, if:

- (a) a person is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (1) and (2) had not been in force;

the person is not liable to be punished by imprisonment for that offence.

*Extended meaning of **state of mind***

(4) A reference in this section to the **state of mind** of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **engaging in conduct***

- (5) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

*Extended meaning of **offence against this Act***

- (6) A reference in this section to an **offence against this Act** includes a reference to an offence against section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to this Act.

## Part 17—Incorrect records

### 226 Simplified outline

The following is a simplified outline of this Part:

- It is an offence to keep an incorrect record in connection with the operation of this Act.

### 228 Incorrect records

- (1) A person must not, in purported compliance with a requirement covered by paragraph 60(1)(a), subsection 146(1) or paragraph 156(1)(a), make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: Imprisonment for 6 months.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 230 Incorrect accounts and statements

- (1) A company must not, in purported compliance with section 141, prepare any accounts or statements in such a way that they do not correctly record and explain the matters or things to which they relate.
- (2) A company commits an offence if:

---

Section 231

---

- (a) the company is subject to a requirement under subsection (1);  
and
- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 150 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **231 False or misleading audit certificates**

A person commits an offence if:

- (a) the person gives a certificate in relation to a company's accounts and statements and that company is an airport operator company; and
- (b) the person does so reckless as to whether the certificate:
  - (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the certificate is misleading in a material particular.

Penalty: Imprisonment for 6 months.

## Part 18—Monitoring powers

### 232 Simplified outline

The following is a simplified outline of this Part:

- This Part authorises leased airports to be monitored for the purposes of ascertaining whether Part 5 or 6 has been complied with.
- Parts 5 and 6 deal with land use, planning, building control and environmental management.

### 233 Authorised officers

- (1) The Minister may make a written determination that a specified person is an ***authorised officer*** for the purposes of this Part. The determination has effect accordingly.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

- (2) The Minister may make a written determination that a specified authorised officer does not have such of the powers conferred on an authorised officer by this Part as are specified in the determination. The determination has effect accordingly.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

- (3) The Minister may make a written determination that the powers conferred on a specified authorised officer by this Part are subject to such limitations as are specified in the determination. The determination has effect accordingly.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

---

Section 234

---

- (4) If the Minister makes a determination under subsection (2) or (3) about a named individual, the Minister must give the individual a copy of the determination.
  - (5) The Minister may issue a written certificate stating any or all of the following:
    - (a) that a specified person was at a specified time, or was at all times during a specified period, an authorised officer for the purposes of this Part;
    - (b) that at a specified time, or at all times during a specified period, a specified person had such of the powers conferred on an authorised officer by this Part as are specified in the certificate;
    - (c) that a specified time, or at all times during a specified period, the powers conferred on a specified person by this Part were subject to such limitations as are specified in the certificate.
- Note: A person may be specified by name, by inclusion in a specified class or in any other way.
- (6) In any proceedings relating to this Act, a certificate under subsection (5) is prima facie evidence of the matters in the certificate.
  - (7) A document purporting to be a certificate under subsection (5) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

**234 Identity cards**

- (1) The Secretary of the Department may cause to be issued to each authorised officer an identity card.
- (2) An identity card must:
  - (a) be in a form approved in writing by the Secretary of the Department; and
  - (b) incorporate a recent photograph of the person.

## Section 235

---

- (3) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Secretary of the Department.
- (4) A person commits an offence if:
  - (a) the person is required to return his or her identity card under subsection (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 5 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **235 Searches to monitor compliance with Part 5 or 6—occupier consents**

- (1) Subject to this section, an authorised officer may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Part 5 or 6 has been or is being complied with, enter any airport premises and exercise monitoring powers at any time during the day or night.

Note 1: *Airport premises* is defined by section 239.

Note 2: *Monitoring powers* is defined by section 238.

- (2) An authorised officer may not, under subsection (1), enter any airport premises unless the occupier of the airport premises has consented to the entry.
- (3) An authorised officer is not entitled to exercise any powers under subsection (1) in relation to airport premises if:



---

Section 236

---

- (a) the occupier of the airport premises has required the authorised officer to produce his or her identity card for inspection by the occupier; and
  - (b) the authorised officer fails to comply with the requirement.
- (4) Before obtaining the consent of a person for the purposes of this section, the authorised officer must inform the person that he or she may refuse to give consent.
- (5) An entry by an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

**236 Monitoring warrants**

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular airport premises.  
Note: *Airport premises* is defined by section 239.
- (2) Subject to subsection (3), the magistrate may issue the warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorised officer should have access to the airport premises for the purpose of finding out whether Part 5 or 6 has been or is being complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or someone else has given the magistrate, either orally (on oath or affirmation) or by affidavit, any further information the magistrate may require about the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
  - (a) authorise any authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable, from time to time while the warrant remains in force, to enter the airport premises and exercise monitoring powers; and

Section 237

---

- (b) state whether an entry under the warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Note: *Monitoring powers* is defined by section 238.

**237 Power to require persons to answer questions etc.**

- (1) If an authorised officer is on or in airport premises because the occupier of the airport premises consented to the officer's entry, the officer may ask the occupier to:
  - (a) answer any questions put by the authorised officer; and
  - (b) produce any documents requested by the authorised officer.
- (2) An authorised officer who is on or in airport premises that he or she has entered under a warrant may require any person on or in the airport premises:
  - (a) to answer any questions put by the authorised officer; and
  - (b) to provide any documents requested by the authorised officer.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: Imprisonment for 6 months.

- (3A) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (3B) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a document on the ground that to do so would tend to incriminate the person.

## **238 Monitoring powers**

- (1) A reference in this Part to ***monitoring powers*** is a reference:
- (a) in relation to airport premises—to the following powers:
    - (i) to search the airport premises;
    - (ii) to take photographs (including a video recording), or make sketches, of the airport premises or any substance or thing at the airport premises;
    - (iii) to inspect, examine and take samples of, any substance or thing on or in the airport premises;
    - (iv) to take extracts from, or make copies of, any document on the airport premises;
    - (v) to take measurements, make surveys or take levels at airport premises and, for those purposes, to dig trenches, break up the soil or set up any post, stake or mark at the airport premises;
    - (vi) to take onto the airport premises any equipment or material reasonably necessary for the purpose of exercising a power under subparagraph (i), (ii), (iii), (iv) or (v); and
  - (b) in relation to certain documents on airport premises—to the powers described in subsections (2) and (3).
- (2) An authorised officer has power to operate equipment at the airport premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the airport premises; and
    - (ii) can be used with or is associated with the equipment; contains information that is relevant to determining whether there has been compliance with Part 5 or 6.

## Section 239

---

- (3) If the authorised officer, after operating equipment at the airport premises, finds that the equipment, or that a disk, tape or other storage device at the airport premises, contains information of that kind, he or she has power:
- (a) to operate the equipment or other facilities to put the information in documentary form and copy the documents so produced; or
  - (b) if the information can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the airport premises; or
    - (ii) is at the airport premises and the use of which for the purpose has been agreed to in writing by the occupier of the airport premises;to operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the airport premises.

### 239 Airport premises

A reference in this Part to *airport premises* is a reference to:

- (a) an airport site, if there is an airport lease for the airport; or
  - (b) a building or other structure on such a site;
- and includes a part of any such premises.

### 240 References to *Part 5 or 6*

A reference in this Part to *Part 5 or 6* includes a reference to regulations made for the purposes of Part 5 or 6.

## Part 19—Miscellaneous

### 241 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions under this Act can be reviewed by the Administrative Appeals Tribunal.
- The Minister is required to table statements about certain decisions under this Act
- The Minister may delegate his or her powers under this Act.
- Certain offences against Part 2, 3 or 4 are indictable offences.
- Parts 3 to 8 (inclusive) do not apply to an airport-operator company unless the company is a constitutional corporation.
- This Act does not, by implication, limit the application of the *Competition and Consumer Act 2010*. However, section 50 of that Act does not prevent the common ownership of Sydney (Kingsford-Smith) and Sydney West Airports.
- An airport-operator company may relocate an abandoned aircraft within the airport site.
- Provision is made for access to airports for defence-related purposes and for emergency or disaster relief.
- The Governor-General may make regulations for the purposes of this Act.

Section 242

---

**242 Review of decisions by Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Minister under this Act.
- (2) Subsection (1) does not apply to the following decisions:
  - (a) a decision under Division 3 of Part 2 (which deals with the grant of airport leases);
  - (b) a decision to approve, or to refuse to approve, the transfer of an airport lease;
  - (c) a decision to approve, or to refuse to approve, a company, an agreement or a variation, under section 33 (which deals with airport-management agreements);
  - (d) a decision under section 55 (which deals with the practical control of airport-operator companies);
  - (da) a decision under subsection 89(8) or (10) (which deal with legislative instruments in connection with major airport developments);
  - (db) a decision under section 96AA (which deals with the cessation of approval of major development plans in exceptional circumstances);
  - (e) a decision under Part 13 (which deals with access to airports and demand management schemes for airports);
  - (f) a decision under section 96B to determine an airport plan for Sydney West Airport;
  - (fa) a decision under section 96D to vary an airport plan for Sydney West Airport;
  - (fb) a decision under section 112B to declare that a specified day is the Sydney West Airport completion day for the purposes of this Act;
  - (g) a decision to apply, or to refuse to apply, to the Federal Court for an order or injunction;
  - (ga) a decision under section 233 (which deals with authorised officers for the purposes of exercising monitoring powers);
  - (h) a decision under section 244 to delegate, or to refuse to delegate, a power.

---

Section 243

---

*Notification of right of review*

- (3) If the Minister:
- (a) makes a decision of a kind covered by subsection (1); and
  - (b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision;
- that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.

*Validity of decision*

- (4) A failure to comply with subsection (3) does not affect the validity of a decision.

*Definition*

- (5) In this section:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**this Act** does not include the regulations.

*Regulations may provide for review of decisions by Administrative Appeals Tribunal*

- (6) This section does not, by implication, prevent the regulations from providing that applications may be made to the Administrative Appeals Tribunal for review of decisions made in the exercise of powers conferred by the regulations.

**243 Tabling of Ministerial statements about certain decisions**

- (1) This section applies to the following decisions under this Act:
- (a) a decision to grant an airport lease under section 13;
  - (b) a decision to approve, or to refuse to approve, the transfer of an airport lease;

## Section 244

---

- (c) a decision to approve, or to refuse to approve, a company, an agreement or a variation, under section 33 (which deals with airport-management agreements);
  - (d) a decision to make a declaration under section 55 (which deals with the practical control of airport-operator companies);
  - (e) a decision to make a determination, declaration or other instrument under Part 13 (which deals with access to airports and demand management schemes for airports).
- (2) If a decision is made, the Minister must:
- (a) prepare a statement about the decision; and
  - (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sittings days of that House after the decision was made.
- (3) The Minister is not required to comply with subsection (2) to the extent to which compliance could reasonably be expected to prejudice substantially the commercial interests of a person.

### 244 Delegation

- (1) The Minister may, by writing, delegate to:
- (a) the Secretary of the Department; or
  - (b) an SES employee or acting SES employee whether or not in the Department;
- all or any of the Minister's powers under this Act or under a demand management scheme.
- (2) However, the Minister must not delegate the power to give an approval under section 89A.

### 245 Indictable offences

An offence against any of the following provisions is an indictable offence:

- (a) Part 2;
- (b) Division 3, 4 or 5 of Part 3;



(c) Part 4.

## **246 Constitutional corporations**

Parts 3 to 8 (inclusive) do not apply to an airport-operator company unless the company is a constitutional corporation.

## **247 Severability**

In addition to its effect apart from this section, this Act also has the effect it would have if each reference in this Act (other than in the definition of ***Commonwealth place*** in section 5) to a Commonwealth place were a reference to a place owned by the Commonwealth.

## **248 Application of the *Competition and Consumer Act 2010***

- (1) This Act does not, by implication, limit the application of the *Competition and Consumer Act 2010*.
- (2) For the purposes of section 50 of the *Competition and Consumer Act 2010*, if:
  - (a) a person directly or indirectly acquires shares in either or both of the following:
    - (i) the airport-lessee company for Sydney (Kingsford-Smith) Airport;
    - (ii) the airport-lessee company for Sydney West Airport;and
  - (b) the acquisition has the effect that those companies become subsidiaries of another company;that effect, when considered in isolation from any other effect of the acquisition, does not, and is not likely to, substantially lessen competition in any market.
- (3) For the purposes of subsection (2), a company (the ***subsidiary company***) is taken to be a ***subsidiary*** of another company (the ***holding company***) if, and only if, all the shares in the subsidiary company are beneficially owned by the holding company.

Section 249

---

**249 Relocation of abandoned aircraft etc.**

- (1) If:
- (a) an aircraft at an airport site is interfering, or is likely to interfere, with the operation of the airport; and
  - (b) the aircraft is in a state of disrepair or is apparently abandoned;
- an airport-operator company for the airport may, with the approval of the Secretary of the Department, cause the aircraft to be moved to another part of the airport, so long as that movement is carried out with reasonable care.
- (2) A person is not liable to an action or other proceeding, whether civil or criminal, for or in relation to an act done in accordance with subsection (1).
- (3) The Secretary may, by writing, delegate to an SES employee or acting SES employee in the Department all or any of the Secretary's powers under this section.
- (4) This section has effect in addition to, and not instead of, regulations under the *Air Services Act 1995*.
- (5) Subsection (1) does not limit, restrict or otherwise affect any right or remedy the company would have if this section had not been enacted.
- (6) In addition to its effect apart from this section, this section has the effect it would have if each reference to an airport-operator company were, by express provision, confined to an airport-operator company that is a constitutional corporation.
- (7) In this section:
- aircraft*** includes an object that was designed or adapted for use as an aircraft but is incapable of being so used because:
- (a) one or more parts have been removed from it; or
  - (b) it is in a wrecked or damaged condition.

**250 Access to airports for defence-related purposes and for emergency or disaster relief**

- (1) The Minister may, by written notice given to an airport-operator company for an airport:
  - (a) require that access be given to specified kinds of airport services for specified kinds of defence-related purposes; or
  - (b) require that priority of access be given to specified kinds of airport services for specified kinds of defence-related purposes.
- (2) The manner in which that access, or priority of access, is to be given is to be set out in the notice.
- (3) Subject to section 251, the terms and conditions on which that access, or priority of access, is to be given are to be set out in the notice.
- (4) A company must comply with a notice given to it under subsection (1).
- (5) A contravention of subsection (4) is not an offence. However, a contravention of subsection (4) is a ground for obtaining an injunction under Part 15.
- (6) In addition to other methods of giving a notice to a company, a notice under subsection (1) may be given to a company by fax.
- (7) In addition to its effect apart from this section, this section has the effect it would have if each reference to an airport-operator company were, by express provision, confined to an airport-operator company that is a constitutional corporation.
- (8) In this section:

***airport service*** means a service provided at an airport, if the service is necessary for the purposes of operating or maintaining civil aviation services at the airport, and includes the use of facilities at the airport for those purposes.

Section 251

---

***defence-related purposes*** means a purpose related to any of the following:

- (a) the defence of Australia;
- (b) the operation of the Australian Defence Force in connection with the defence of Australia;
- (c) the operation of an aircraft owned by the armed forces of a foreign country, where that operation is in accordance with an arrangement approved by the Australian Defence Force;
- (d) the management of an emergency or a disaster (whether natural or otherwise), where that management involves the Australian Defence Force.

**251 Compensation for access to airports for defence-related purposes and for emergency or disaster relief**

*Designated agency in relation to a notice*

- (1) A notice under subsection 250(1) must specify a Commonwealth agency as the designated agency in relation to the notice.
- (2) If a notice under subsection 250(1) relates to any of the following purposes:
  - (a) the defence of Australia;
  - (b) the operation of the Australian Defence Force in connection with the defence of Australia;
  - (c) the operation of an aircraft owned by the armed forces of a foreign country, where the operation is in accordance with an arrangement approved by the Australian Defence Force;the notice must specify the Defence Department as the designated agency in relation to the notice.
- (3) If a notice under subsection 250(1) relates to the management of an emergency or a disaster (whether natural or otherwise), the notice may specify:
  - (a) the Defence Department; or
  - (b) any other Commonwealth agency that is involved in the management of the emergency or disaster;

as the designated agency in relation to the notice.

*Liability for loss or damage*

(4) If:

- (a) a notice under subsection 250(1) is given to an airport-operator company for an airport; and
- (b) a person covered by one of the following subparagraphs suffers loss or damage in consequence of the giving of access, or the giving of priority of access, in accordance with the notice:
  - (i) an airport-operator company for the airport;
  - (ii) a person who is a lessee of the airport-lessee company for the airport;
  - (iii) a person who holds a licence relating to an airport lease for the airport;

the Commonwealth is liable to pay to the person an amount equal to the loss or damage.

(5) If:

- (a) the person; and
- (b) the head of the designated agency in relation to the notice (on behalf of the Commonwealth);

do not agree on the amount of loss or damage mentioned in subsection (4), the person may recover the amount of the loss or damage by action against the Commonwealth in a court of competent jurisdiction.

- (6) In determining the amount of any loss or damage mentioned in subsection (4), regard must be had to anything done in mitigation of the loss or damage (including any remedial work).
- (7) A payment under subsection (4) or (5) is to be made out of amounts appropriated by the Parliament for the purposes of the designated agency in relation to the notice.

## Section 251

---

### *Compensation—constitutional safety-net*

- (8) If:
- (a) apart from this section, the operation of section 250 would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (9) If the Commonwealth and the person do not agree on the amount of the compensation mentioned in subsection (8), the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### *Section 70 of the Defence Act 1903*

- (10) This section has effect despite anything in section 70 of the *Defence Act 1903*.

### *Definitions*

- (11) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***Commonwealth agency*** means:

- (a) a Department; or
- (b) an agency or instrumentality of the Commonwealth.

***designated agency***, in relation to a notice, means the Commonwealth agency specified in the notice as the designated agency in relation to the notice.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**251A Sydney West Airport—miscellaneous provisions***Other leases*

- (1) Neither this Act nor the *Airports (Transitional) Act 1996* prevents the Commonwealth from granting a lease of a part of the airport site of Sydney West Airport otherwise than under section 13 of this Act or section 21 or 22 of the *Airports (Transitional) Act 1996*.
- (2) A lease granted as mentioned in subsection (1) is taken not to be an airport lease for the purposes of this Act.
- (3) If:
  - (a) a lease was granted by the Commonwealth before the commencement of the regulation that inserted a paragraph relating to Sydney West Airport in subregulation 1.03(1) of the *Airports Regulations 1997*; and
  - (b) after that commencement, the leased area is a part of the airport site of Sydney West Airport;the lease is taken not to be an airport lease for the purposes of this Act.

Note: Regulation 1.03 of the *Airports Regulations 1997* declares certain places to be airport sites.

*Powers of the Commonwealth*

- (4) The Commonwealth has power to do all things necessary or convenient to be done for or in connection with the development or use of Sydney West Airport.
- (5) The powers of the Commonwealth include, but are not limited to, the power to form, or participate in the formation of, a company.

## Section 251B

---

### 251B Regulations declaring airport site

#### *Scope*

- (1) This section applies if a prescribed provision (the ***declaration provision***) of regulations made under this Act declares a place (to the extent that it is a Commonwealth place) to be an airport site.

#### *Part of place*

- (2) A regulation may amend the declaration provision by inserting a provision that specifies a place even if, at the time the amending regulation commences, a part of the place is not a Commonwealth place.
- (3) The part of the place becomes part of the airport site when the part of the place becomes a Commonwealth place, so long as the place satisfies paragraph (c) of the definition of ***airport site*** in subsection 5(1).
- (4) If the declaration provision refers to a place made up of the land described in a prescribed provision (the ***land description provision***) of regulations made under this Act, a regulation may amend the land description provision by inserting a description of land even if, at the time the amending regulation commences, the land is not a Commonwealth place.
- (5) The land becomes part of the airport site when the land becomes a Commonwealth place, so long as the place satisfies paragraph (c) of the definition of ***airport site*** in subsection 5(1).

#### *Avoidance of doubt*

- (7) This section is enacted for the avoidance of doubt.



Section 252

---

**252 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**253 Repeals**

The following Acts are repealed:

*Airports (Business Concessions) Act 1959*

*Airports (Surface Traffic) Act 1960.*

## Schedule—Ownership definitions

### 1 Object

The object of this Schedule is to define terms used in Part 3 (which deals with ownership restrictions).

### 2 Definitions

- (1) In Part 3 and this Schedule, unless the contrary intention appears:

**acquisition** includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law;  
or
- (b) an acquisition by way of enforcement of a loan security.

**aggregate substantial interest**, in relation to a trust estate, has the meaning given by clause 13.

**arrangement** has the meaning given by clause 4.

**associate** has the meaning given by clause 5.

**child**: without limiting who is a child of a person for the purposes of Part 3 and this Schedule, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

**constituent document**, in relation to a company, means:

- (a) the memorandum and articles of association of the company;  
or
- (b) any rules or other documents constituting the company or governing its activities.

**direct control interest** has the meaning given by clause 12.

**director** includes any person occupying the position of director of a company, by whatever name called.

***discretionary trust*** means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
  - (i) the identities of those who may benefit under the trust;
  - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

***foreign citizen*** means an individual who is not an Australian citizen.

***foreign company*** means a company incorporated outside Australia.

***foreign government body*** means:

- (a) a foreign State (within the meaning of the *Foreign States Immunities Act 1985*); or
- (b) a separate entity of such a foreign State (within the meaning of that Act).

***foreign person*** means:

- (a) a foreign citizen not ordinarily resident in Australia; or
- (b) a foreign government body; or
- (c) a company where:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;holds a particular type of stake in the company of not less than 15%; or
- (d) a company where a group of 2 or more persons, each of whom is:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;

## Clause 2

---

holds, in total, a particular type of stake in the company of not less than 40%; or

- (e) the trustee of a trust estate in which:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;holds a substantial interest; or
- (f) the trustee of a trust estate in which 2 or more persons, each of whom is:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;hold an aggregate substantial interest.

**group** includes:

- (a) one person alone; or
- (b) a number of persons, even if they are not in any way associated with each other or acting together.

**increase**, in relation to a stake in a company, includes an increase from a starting point of nil.

**interest in a share** has the meaning given by clause 8.

**officer**, in relation to a company, includes:

- (a) a director, secretary or employee of the company; or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or
- (c) a liquidator of the company appointed in a voluntary winding-up.

**ordinarily resident in Australia** has the meaning given by clause 3.

**ownership provisions** means Part 3 and this Schedule.

**parent**: without limiting who is a parent of a person for the purposes of Part 3 and this Schedule, someone is the **parent** of a

---

Clause 2

person if the person is his or her child because of the definition of **child** in this clause.

**power to appoint a director of a company** has a meaning affected by clause 6.

**practical control**, in relation to an airport-operator company, has the meaning given by section 55.

**relative**, in relation to a person, means:

- (a) the person's spouse; or
- (b) a de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*; or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a child or remoter issue of the person; or
- (e) a brother or sister of the person.

Note: See also subclause (2).

**share**, in relation to a company, means a share in the share capital of the company, and includes:

- (a) stock into which any or all of the share capital of the company has been converted; or
- (b) an interest in such a share or in such stock.

**stake**, in relation to a company, has the meaning given by clause 11.

**substantial interest**, in relation to a trust estate, has the meaning given by clause 13.

**voting power** has the meaning given by clause 10.

- (2) For the purposes of paragraphs (c), (d) and (e) of the definition of **relative** in subclause (1), if one person is the child of another person because of the definition of **child** in that subclause, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

## Clause 3

---

### 3 When foreign citizens are ordinarily resident in Australia

For the purposes of the ownership provisions, a foreign citizen is ***ordinarily resident in Australia*** at a particular time if, and only if:

- (a) the foreign citizen has been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and
- (b) at that time, one of the following subparagraphs applies:
  - (i) the foreign citizen is in Australia and has permission to remain in Australia indefinitely;
  - (ii) the individual is not in Australia but has a right to re-enter Australia and, on re-entry, to be granted permission to remain in Australia indefinitely;
  - (iii) the individual is in Australia, is a New Zealand citizen, holds a New Zealand passport and has a special category visa under section 32 of the *Migration Act 1958*;
  - (iv) the individual is not in Australia, is a New Zealand citizen, holds a New Zealand passport and, on re-entry to Australia, would have the right to be granted a special category visa under section 32 of the *Migration Act 1958*.

### 4 Entering into an agreement or arrangement

- (1) For the purposes of the ownership provisions, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in the ownership provisions to ***entering into an agreement or arrangement*** includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in the ownership provisions to ***entering into an arrangement*** is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by

---

Clause 5

implication and, without limiting the generality of the foregoing, includes a reference to:

- (a) entering into an agreement; or
- (b) creating a trust, whether express or implied; or
- (c) entering into a transaction;

and a reference in the ownership provisions to an arrangement is to be construed accordingly.

- (4) A reference in the ownership provisions to an **arrangement** does not include a reference to a moneylending agreement.

## **5 Associates**

- (1) For the purposes of the ownership provisions, the following persons are, subject to subclause (3), **associates** of a person:
  - (a) a relative of the person;
  - (b) a partner of the person;
  - (c) a company of which the person is an officer;
  - (d) if the person is a company—an officer of the company;
  - (e) an employee or employer of the person;
  - (f) an officer of a company of which the person is an officer;
  - (g) an employee of an individual of whom the person is an employee;
  - (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;
  - (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;
  - (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;

Clause 5

---

- (k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15%;
  - (l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15%;
  - (m) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (the **first person**) enters, or proposes to enter, into an arrangement with another person (the **second person**) that relates to any of the following matters:
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;
  - (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
  - (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together;
- then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of the ownership provisions in relation to the matter concerned.

*Regulations may provide that persons are not associates*

- (3) The regulations may provide that, for the purposes of the ownership provisions, a specified person is not an **associate** of another specified person.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.



**6 Power to appoint director**

- (1) A reference in the ownership provisions to a ***power to appoint a director*** includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of the ownership provisions, a person is taken to have the power to appoint a director if:
  - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
  - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

**7 Meaning of entitled to acquire**

For the purposes of the ownership provisions, a person is ***entitled to acquire*** anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

**8 Meaning of interest in a share**

- (1) Subject to this clause, a person holds an ***interest in a share*** if the person has any legal or equitable interest in the share.
- (2) A person is taken to hold an interest in a share if:
  - (a) the person has entered into a contract to purchase the share; or
  - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
  - (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable

## Clause 9

---

- presently or in the future and whether or not on the fulfilment of a condition); or
- (d) the person is otherwise entitled to acquire the share or an interest in the share; or
  - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) Subclause (2) does not, by implication, limit subclause (1).
- (4) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.
- (5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (6) An interest in a share is not to be disregarded only because of:
- (a) its remoteness; or
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

## 9 Certain interests and stakes to be disregarded

- (1) For the purposes of the ownership provisions, the following interests and stakes must be disregarded:
- (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security;
  - (b) an interest in a share held by a person, being an interest held by the person because the person holds a prescribed office;
  - (c) an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed;
  - (d) an interest in a share held by the Commonwealth;

---

Clause 10

---

- (e) a direct control interest, or stake, of a prescribed kind in a company, being an interest or stake held by a prescribed person.

Note: For prescription by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) For the purposes of the ownership provisions, if:
  - (a) a person holds an interest in a share as a loan security; and
  - (b) the ordinary business of the person includes the lending of money; and
  - (c) the loan security is enforced; and
  - (d) as a result of the enforcement of the loan security, the person becomes the holder of the share; and
  - (e) the person holds the share for a continuous period (the ***holding period***) beginning at the time when the security was enforced;

the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:

- (f) the period of 90 days beginning when the security was enforced;
- (g) if the Minister, by written notice given to the person, allows a longer period—the end of that longer period.

## 10 Voting power

- (1) A reference in the ownership provisions to the ***voting power*** in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
  - (a) the making of distributions of capital or profits of the company to its shareholders;
  - (b) the constituent document of the company;
  - (c) any variation of the share capital of the company.
- (2) A reference in the ownership provisions to ***control of the voting power*** in a company is a reference to control that is direct or

## Clause 11

---

indirect, including control that is exercisable as a result of or by means of arrangements or practices:

- (a) whether or not having legal or equitable force; and
  - (b) whether or not based on legal or equitable rights.
- (3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this clause.
- (4) If a company:
- (a) is limited both by shares and by guarantee; or
  - (b) does not have a share capital;
- this clause has effect as if the members or policy holders of the company were shareholders in the company.

### 11 Stake in a company

- (1) A particular type of **stake** that a person holds in a company at a particular time is the aggregate of:
- (a) the direct control interests in the company of that type that the person holds at that time; and
  - (b) the direct control interests in the company of that type held at that time by associates of the person.
- (2) In calculating the stake that a person holds in a company, a direct control interest held because of subclause 12(5) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).
- (3) For the purpose of calculating the total of the stakes of a particular type that a group of persons holds in a company, if a particular stake that a person holds in a company would be counted more than once because the person is an associate of one or more other persons in the group, that interest is to be counted only once.

**12 Direct control interests in a company**

- (1) A person holds a ***direct control interest*** in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.
- (2) A person also holds a ***direct control interest*** in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.
- (3) A person also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.
- (4) A person also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.
- (5) If:
  - (a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subclause) in a company (the ***first level company***); and
  - (b) the first level company holds the same type of direct control interest in another company (the ***second level company***);the person is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

first level percentage × second level percentage

where:

***first level percentage*** means the percentage of the direct control interest held by the person in the first level company.

## Clause 13

---

***second level percentage*** means the percentage of the direct control interest held by the first level company in the second level company.

### 13 Substantial interests in trust estates

- (1) For the purposes of the ownership provisions:
  - (a) a person is taken to hold a ***substantial interest*** in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15% of the corpus or income of the trust estate; and
  - (b) 2 or more persons are taken to hold an ***aggregate substantial interest*** in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40% of the corpus or income of the trust estate.
- (2) For the purposes of subclause (1), if, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.

### 14 Airport holding companies in which foreign persons have direct control interests

- (1) This clause applies if:
  - (a) a foreign person holds a particular type of direct control interest in a company (the ***designated holding company***); and
  - (b) the designated holding company holds the same type of direct control interest in a particular airport-operator company (the ***eligible airport-operator company***); and
  - (c) if the eligible airport-operator company is the airport-lessee company for Sydney (Kingsford-Smith) Airport or the airport-lessee company for Sydney West Airport—the designated holding company is operated solely for:

---

Clause 14

---

- (i) the purpose of holding direct control interests in the airport-lessee company for Sydney (Kingsford-Smith) Airport and the airport-lessee company for Sydney West Airport; and
    - (ii) such other purposes (if any) as are prescribed; and
  - (d) if the eligible airport-operator company is neither the airport-lessee company for Sydney (Kingsford-Smith) Airport nor the airport-lessee company for Sydney West Airport—the designated holding company is operated solely for the purpose of holding direct control interests in one or more airport-operator companies; and
  - (e) the designated holding company is incorporated, or taken to be incorporated, under the *Corporations Act 2001*; and
  - (f) the designated holding company has a share capital.
- (2) In determining, for the purposes of section 40, whether there is a group of foreign persons who hold, in total, that type of stake in the eligible airport-operator company of more than 49%:
- (a) the stake of that type that the foreign person holds in the eligible airport-operator company is to be calculated on the basis that the designated holding company is taken not to be an associate of the foreign person; and
  - (b) the designated holding company is taken not to be a foreign person.
- (3) Subclause 12(5) is to be disregarded for the purposes of subclause (1) of this clause.

Note: Subclause 12(5) deals with deemed direct control interests.

## Endnotes

### Endnote 1—About the endnotes

---

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



---

Endnote 1—About the endnotes

---

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

---

#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Airports Act 1996	42, 1996	9 Oct 1996	9 Oct 1996	
Aviation Legislation Amendment Act (No. 1) 1997	30, 1997	17 Apr 1997	17 Apr 1997	—
Sydney Airport Demand Management Act 1997	173, 1997	17 Nov 1997	Schedule 2: Royal Assent	—
Aviation Legislation Amendment Act (No. 1) 1998	95, 1998	23 July 1998	Schedule 2: Royal Assent	—
Airports Amendment Act 1999	19, 1999	19 Apr 1999	19 Apr 1999	Sch. 1 (item 18)
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Schedule 7 (items 5, 6): 16 July 2000 (s. 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 81–84): 5 Dec 1999 ( <i>Gazette</i> 1999, No. S584)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 24–27, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 22–25): 15 July 2001 (s. 2(3) and <i>Gazette</i> 2001, No. S285)	ss. 4–14

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (item 10): 15 July 2001 (s 2(1) item 27)	—
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001	143, 2001	1 Oct 2001	2 Oct 2001	s. 4
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2002	8, 2002	4 Apr 2002	5 Apr 2002	s. 4
Civil Aviation Legislation Amendment Act 2003	83, 2003	6 Sept 2003	Schedule 3: Royal Assent	—
Trade Practices Legislation Amendment Act 2003	134, 2003	17 Dec 2003	Schedules 1 and 2: 1 Mar 2004 ( <i>Gazette</i> 2004, No. GN8)	—
Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006	109, 2006	27 Sept 2006	Schedule 2 (items 3–8): Royal Assent	—
Airports Amendment Act 2007	59, 2007	15 Apr 2007	Schedule 1 (items 1–169, 171–175): 13 May 2007	Sch. 1 (items 171–175)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 11 (items 15–22): 10 Dec 2008	Sch. 11 (item 22)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 11 (item 2): 20 Feb 2010	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 4– 17, 154–156): 1 Jan 2011	—
Airports Amendment Act 2010	149, 2010	17 Dec 2010	Schedules 1 and 2: 18 Dec 2010 Remainder: Royal Assent	Sch. 1 (items 7, 75–78)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 6 (items 1–4) and Schedule 7 (items 8– 14): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 53– 59) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (item 10): Royal Assent	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 1 (item 14): Royal Assent	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (item 58): 24 June 2014	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 48): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Airports Amendment Act 2015	108, 2015	30 June 2015	Sch 1 (items 1–46, 72–74): 1 July 2015 (s 2)	Sch 1 (items 72–74)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 13–15): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 10, 331): 10 Mar 2016 (s 2(1) item 6)	—
Airports Amendment Act 2018	107, 2018	21 Sept 2018	28 Sept 2018 (s 2(1) item 1)	Sch 1 (items 26–28)
Statute Update (Regulations References) Act 2020	18, 2020	6 Mar 2020	Sch 1 (items 11–17): 6 Sept 2020 (s 2(1) item 1)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s. 3 .....	am. No. 59, 2007
s. 4 .....	am. No. 30, 1997; No. 59, 2007; No. 149, 2010; No 108, 2015
s. 5 .....	am. No. 30, 1997; No. 95, 1998; No. 19, 1999; Nos. 55 and 143, 2001; No. 59, 2007; No. 149, 2010; No. 5, 2011; No 108, 2015
s. 7 .....	am. No. 59, 2007; No. 149, 2010
s. 7A .....	ad. No. 30, 1997
s. 7B .....	ad. No. 95, 1998
	am. No. 149, 2010
s. 7C .....	ad. No. 59, 2007
	am. No. 149, 2010
s. 8 .....	am. No. 149, 2010; No 59, 2015
s. 10A .....	ad. No. 143, 2001
<b>Part 2</b>	
<b>Division 1</b>	
s. 11 .....	am. No. 30, 1997; No. 95, 1998; No 108, 2015
<b>Division 2</b>	
s. 12 .....	am. No. 149, 2010
<b>Division 3</b>	
s 16 .....	am. No. 95, 1998
s 17 .....	am. No. 95, 1998
s 18 .....	am No 108, 2015
s 19 .....	am. No. 95, 1998
s 20 .....	am. No. 95, 1998
s 20A .....	ad. No. 95, 1998
s 22 .....	am. No. 149, 2010
<b>Division 4</b>	
s 24 .....	am. No. 95, 1998; No 108, 2015

## Endnotes

### Endnote 4—Amendment history

---

Provision affected	How affected
s 28 .....	am. No. 30, 1997
s 29 .....	am. No. 30, 1997; No. 143, 2001
<b>Division 5</b>	
Division 5 heading.....	rs. No. 30, 1997
s. 31 .....	am. No. 30, 1997
<b>Division 6</b>	
<b>Subdivision A</b>	
Subdivision A heading.....	ad. No. 30, 1997
s. 32 .....	am. No. 95, 1998; No. 143, 2001; No. 59, 2007
<b>Subdivision B</b>	
Subdivision B heading.....	ad. No. 30, 1997
s. 33 .....	am. No. 30, 1997
<b>Subdivision C</b>	
Subdivision C heading.....	ad. No. 30, 1997
s. 34 .....	am. No. 30, 1997
ss. 34A–34D .....	ad. No. 30, 1997
s. 35 .....	am. No. 30, 1997
ss. 35A–35F.....	ad. No. 30, 1997
<b>Division 8</b>	
s. 37 .....	am. No. 149, 2010
<b>Part 3</b>	
<b>Division 1</b>	
s 38 .....	am. No. 59, 2007; No 108, 2015
<b>Division 3</b>	
s 41 .....	am No 4, 2016
s. 42 .....	am. No. 143, 2001
<b>Division 4</b>	
Division 4 heading.....	rs. No. 59, 2007
s. 44 .....	am. No. 59, 2007
s 45 .....	am No 4, 2016
s. 46 .....	am. No. 143, 2001



## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 5</b>	
<b>Subdivision A</b>	
s 48 .....	am No 108, 2015
<b>Subdivision B</b>	
s 49 .....	am No 108, 2015
<b>Subdivision C</b>	
s 51 .....	am No 4, 2016
s. 52 .....	am. No. 143, 2001
<b>Subdivision D</b>	
s. 56 .....	am. No. 143, 2001
<b>Division 7</b>	
s. 60 .....	am. No. 30, 1997; No. 143, 2001
<b>Division 8</b>	
Division 8 heading.....	rs. No. 149, 2010
s. 61 .....	am. No. 149, 2010
<b>Part 4</b>	
s 65 .....	am No 4, 2016
<b>Part 5</b>	
<b>Division 1</b>	
s 67 .....	am. No. 30, 1997; No 108, 2015
<b>Division 2</b>	
s 68 .....	am. No. 19, 1999; No. 149, 2010; No 108, 2015
<b>Division 3</b>	
s. 70 .....	am. No. 59, 2007; No. 149, 2010
s 71 .....	am No 30, 1997; No 59, 2007; No 149, 2010; No 5, 2011; No 46, 2011; No 107, 2018
s. 71A .....	ad. No. 149, 2010
	am. No. 103, 2013
s 72 .....	am No 149, 2010; No 107, 2018
s. 73 .....	am. No. 95, 1998; No. 59, 2007
s. 74 .....	am. No. 95, 1998

## Endnotes

### Endnote 4—Amendment history

---

Provision affected	How affected
s 75 .....	am. No. 143, 2001; No. 59, 2007; No 108, 2015
s 76 .....	am No 143, 2001; No 59, 2007; No 149, 2010; No 107, 2018
s 77 .....	am No 107, 2018
s 78 .....	am No 143, 2001; No 59, 2007; No 149, 2010; No 107, 2018
ss. 79, 80 .....	am. No. 59, 2007; No. 149, 2010
s. 80A .....	ad. No. 59, 2007
s. 81 .....	am. No. 143, 2001; No. 59, 2007; No. 149, 2010
s 81A .....	ad No 108, 2015
s. 83 .....	am. No. 59, 2007
s. 83A .....	ad. No. 149, 2010
s. 84 .....	am. No. 59, 2007; No. 149, 2010
s 84A .....	ad. No. 30, 1997 am. No. 59, 2007; No. 149, 2010; No 136, 2015
s 84AA .....	ad No 108, 2015
s. 85 .....	am. No. 143, 2001
s. 86 .....	am. No. 143, 2001; No. 59, 2007; No. 149, 2010
s 86A .....	ad No 149, 2010 rep No 107, 2018
<b>Division 4</b>	
<b>Subdivision A</b>	
Subdivision A heading.....	ad. No. 149, 2010
s. 88 .....	am. No. 149, 2010
s 89 .....	am No 30, 1997; No 59, 2007; No 149, 2010; No 46, 2011; No 107, 2018
<b>Subdivision B</b>	
Subdivision B .....	ad. No. 149, 2010
s. 89A .....	ad. No. 149, 2010
<b>Subdivision C</b>	
Subdivision C heading.....	ad. No. 149, 2010
s 90 .....	am No. 143, 2001; No 108, 2015

## Endnote 4—Amendment history

Provision affected	How affected
s. 91 .....	am. No. 30, 1997; No. 59, 2007; No. 149, 2010; Nos. 5 and 46, 2011
s. 92 .....	am. No. 59, 2007; No. 149, 2010; No. 107, 2018
s. 93 .....	am. No. 59, 2007; No. 149, 2010
s. 93A .....	ad. No. 59, 2007
s. 94 .....	am. No. 92, 1999; No. 59, 2007; No. 149, 2010; No. 107, 2018
s. 94AA .....	ad. No. 108, 2015
s. 94A .....	ad. No. 59, 2007
s. 95 .....	am. No. 92, 1999; No. 59, 2007; No. 149, 2010
s. 95AA .....	ad. No. 108, 2015
s. 95A .....	ad. No. 30, 1997
	am. No. 59, 2007; No. 149, 2010
s. 96 .....	am. No. 143, 2001; No. 59, 2007; No. 149, 2010
s. 96AA .....	ad. No. 107, 2018
<b>Division 4A</b>	
Division 4A .....	ad. No. 108, 2015
s. 96A .....	ad. No. 108, 2015
s. 96B .....	ad. No. 108, 2015
s. 96C .....	ad. No. 108, 2015
s. 96D .....	ad. No. 108, 2015
s. 96E .....	ad. No. 108, 2015
s. 96F .....	ad. No. 108, 2015
s. 96G .....	ad. No. 108, 2015
s. 96H .....	ad. No. 108, 2015
s. 96J .....	ad. No. 108, 2015
s. 96K .....	ad. No. 108, 2015
s. 96L .....	ad. No. 108, 2015
s. 96M .....	ad. No. 108, 2015
<b>Division 5</b>	
<b>Subdivision A</b>	
s. 97 .....	am. No. 30, 1997

## Endnotes

### Endnote 4—Amendment history

---

Provision affected	How affected
<b>Subdivision B</b>	
s 98.....	am No. 59, 2007; No 108, 2015
<b>Subdivision C</b>	
s 99.....	am No. 143, 2001; No. 59, 2007; No 108, 2015
s. 100.....	am. No. 30, 1997; No. 149, 2010; No. 46, 2011
s 101.....	am. No. 59, 2007; No 108, 2015
s. 102.....	rs. No. 143, 2001
s 103.....	am No. 143, 2001; No. 59, 2007; No. 5, 2011; No 108, 2015
s 103A.....	ad No 108, 2015
s 103B.....	ad No 108, 2015
<b>Subdivision D</b>	
Subdivision D heading.....	rs. No. 30, 1997
s. 104.....	rs. No. 30, 1997
s. 106.....	am. No. 30, 1997; No. 143, 2001; No. 149, 2010; No 4, 2016
s. 107.....	am. No. 30, 1997; No. 149, 2010; No. 46, 2011
s. 108.....	am. No. 30, 1997 rs. No. 143, 2001
s. 109.....	am. No. 30, 1997; No. 143, 2001; No. 5, 2011
<b>Division 6</b>	
s. 112.....	am. No. 59, 2007; No. 149, 2010
s. 112A.....	ad. No. 59, 2007
s 112B.....	ad No 108, 2015
<b>Part 6</b>	
<b>Division 1</b>	
s. 113.....	am. No. 30, 1997; No. 149, 2010
Division 2.....	rep. No. 149, 2010
s. 114.....	am. No. 19, 1999 rep. No. 149, 2010
s. 115.....	am. No. 59, 2007 rep. No. 149, 2010
ss. 116, 117.....	rep. No. 149, 2010

## Endnote 4—Amendment history

Provision affected	How affected
ss. 118, 119.....	am. No. 95, 1998 rep. No. 149, 2010
ss. 120, 121.....	am. No. 143, 2001; No. 59, 2007 rep. No. 149, 2010
s. 122.....	rep. No. 149, 2010
s. 123.....	am. No. 143, 2001; No. 59, 2007 rep. No. 149, 2010
ss. 124, 125.....	am. No. 59, 2007 rep. No. 149, 2010
s. 125A.....	ad. No. 59, 2007 rep. No. 149, 2010
s. 126.....	am. No. 143, 2001; No. 59, 2007 rep. No. 149, 2010
s. 127.....	rep. No. 149, 2010
ss. 128, 129.....	am. No. 59, 2007 rep. No. 149, 2010
s. 130.....	am. No. 30, 1997 rep. No. 149, 2010
s. 131.....	am. No. 143, 2001; No. 59, 2007 rep. No. 149, 2010
<b>Division 3</b>	
s. 131A.....	ad. No. 30, 1997 am. No. 19, 1999; No. 149, 2010
s. 131B.....	ad. No. 30, 1997 am. No. 143, 2001; No. 149, 2010
s. 131C.....	ad. No. 30, 1997 am. No. 143, 2001
s. 131D.....	ad. No. 30, 1997 am. No. 143, 2001
s. 131E.....	ad. No. 30, 1997

## Endnotes

### Endnote 4—Amendment history

---

Provision affected	How affected
s. 132 .....	am. No. 30, 1997; No. 95, 1998; No. 8, 2002; No. 46, 2011; No 4, 2016
s. 133 .....	am. No. 30, 1997; No. 95, 1998; No. 46, 2011
ss. 134, 135.....	am. No. 30, 1997
s. 136 .....	am. No. 30, 1997; No. 149, 2010
s. 137 .....	am. No. 30, 1997
<b>Part 7</b>	
<b>Division 2</b>	
s. 140 .....	am. No. 19, 1999; No. 59, 2007
<b>Division 3</b>	
s. 141 .....	am. Nos. 55 and 143, 2001
ss. 142, 143.....	am. No. 143, 2001
s. 143A .....	ad. No. 30, 1997
s. 144 .....	am. No. 55, 2001
	rs. No. 59, 2007
<b>Division 4</b>	
s. 145 .....	am. No. 143, 2001
s. 145A .....	ad. No. 30, 1997
<b>Division 5</b>	
s. 146 .....	am. No. 143, 2001
<b>Division 6</b>	
s. 147 .....	am. No. 30, 1997; No. 134, 2003; No. 103, 2010
<b>Division 7</b>	
Division 7 heading.....	rs. No. 134, 2003; No. 103, 2010
s. 148 .....	am. No. 134, 2003; No. 103, 2010
<b>Division 8</b>	
Division 8 heading.....	rs. No. 149, 2010
s. 149 .....	am. No. 149, 2010
<b>Part 8</b>	
<b>Division 1</b>	
s. 150 .....	rs. No. 59, 2007

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 2</b>	
s. 151 .....	am. No. 19, 1999; No. 59, 2007
Division 3 .....	rep. No. 59, 2007
ss. 153, 154 .....	rep. No. 59, 2007
<b>Division 4</b>	
Division 4 .....	rs. No. 59, 2007
s. 155 .....	rs. No. 59, 2007
	am No 126, 2015
<b>Division 5</b>	
s. 156 .....	am. No. 143, 2001; No. 59, 2007
<b>Division 6</b>	
s. 157 .....	am. No. 59, 2007
<b>Division 7</b>	
s. 158 .....	am. No. 134, 2003; No. 103, 2010
<b>Division 8</b>	
Division 8 heading .....	rs. No. 134, 2003; No. 103, 2010
s. 159 .....	am. No. 134, 2003; No. 103, 2010
<b>Part 9</b>	
s. 160 .....	am. No. 19, 1999
s. 161 .....	am. No. 19, 1999
s. 163A .....	ad. No. 19, 1999
	am. No. 149, 2010
<b>Part 10</b>	
s. 167 .....	rs. No. 143, 2001
<b>Part 11</b>	
s. 168 .....	am. No. 149, 2010
s. 169 .....	am. No. 19, 1999; No. 149, 2010
s. 171 .....	am. No. 103, 2010
ss. 172, 173 .....	am. No. 59, 2007
s. 177 .....	am. No. 149, 2010

## Endnotes

### Endnote 4—Amendment history

---

Provision affected	How affected
<b>Part 12</b>	
<b>Division 2</b>	
s. 180 .....	am. No. 149, 2010
<b>Division 4</b>	
s. 182 .....	am. No. 19, 1999
s. 183 .....	am. No. 143, 2001
s. 185 .....	rs. No. 143, 2001
s. 186 .....	am. No. 143, 2001
s. 187 .....	am. No. 19, 1999
<b>Part 13</b>	
<b>Division 1</b>	
s. 191 .....	am. No. 109, 2006; No. 149, 2010
<b>Division 2</b>	
Division 2 heading.....	rs. No. 103, 2010
s. 192 .....	am. No. 95, 1998; No. 19, 1999
	rep. No. 83, 2003
s. 193 .....	am. No. 103, 2010
<b>Division 3</b>	
s. 194 .....	am. No. 173, 1997; No. 19, 1999; No. 149, 2010
<b>Division 4</b>	
s. 196 .....	am. No. 149, 2010
<b>Division 5</b>	
s. 198 .....	am. No. 109, 2006; No 126, 2015
s. 200 .....	am. No. 30, 1997
<b>Division 6</b>	
s. 201 .....	am. No. 109, 2006
s. 202 .....	am. No. 30, 1997
<b>Division 7</b>	
s. 208 .....	rs. No. 143, 2001
<b>Part 14</b>	
Part 14 heading.....	rs. No. 149, 2010



## Endnote 4—Amendment history

Provision affected	How affected
s. 215 .....	rs. No. 59, 2007 am. No. 149, 2010
s. 216 .....	am. No. 143, 2001; No. 59, 2007; No. 149, 2010
<b>Part 16</b>	
s. 224 .....	am. No. 143, 2001; No. 149, 2010
s. 225 .....	am. No. 4, 2010
<b>Part 17</b>	
Part 17 heading .....	rs. No. 137, 2000
s. 226 .....	am. No. 137, 2000
s. 227 .....	rep. No. 137, 2000
s. 228 .....	am. No. 143, 2001
s. 229 .....	rep. No. 137, 2000
s. 230 .....	am. No. 143, 2001
s. 231 .....	rs. No. 143, 2001
<b>Part 18</b>	
s. 234 .....	am. No. 143, 2001; No. 5, 2011
s. 237 .....	am. No. 143, 2001
<b>Part 19</b>	
s. 241 .....	am. No. 103, 2010
s. 242 .....	am. No. 30, 1997; No. 59, 2007; No. 108, 2015; No. 107, 2018
s. 243 .....	am. No. 30, 1997
s. 244 .....	am. No. 146, 1999; No. 149, 2010; No. 5, 2011
s. 248 .....	am. No. 103, 2010
s. 249 .....	am. No. 146, 1999; No. 5, 2011
s. 250 .....	am. No. 149, 2010; No. 31, 2014
s. 251 .....	am. No. 95, 1998; No. 5, 2011
s. 251A .....	ad. No. 108, 2015
s. 251B .....	ad. No. 108, 2015 am. No. 18, 2020
<b>Schedule</b>	
c. 2 .....	am. No. 144, 2008

## Endnotes

### Endnote 4—Amendment history

---

Provision affected	How affected
c. 5.....	am. No. 59, 2007; No 126, 2015
c. 9.....	am. No. 59, 2007; No 126, 2015
c. 14.....	am. No. 55, 2001