

# **Airports (Building Control) Regulations 1996 No. 292**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1996 No. 292

Issued by the Authority of the Minister for Transport and Regional Development

Airport Act 1996

Airports (Building Control) Regulations

Section 252 of the *Airports Act 1996* (the Act) allows the Governor-General to make regulations prescribing matters that are required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act

Part 5, Division 5, of the Act provides for the Commonwealth to regulate "building activities" (defined in section 98 of the Act) at airports to which the Part applies (see section 68 of the Act).

Section 99 of the Act prohibits building activity (other than an activity exempted under the regulations) without an approval granted under the regulations. Section 100 of the Act enables the regulations to make provision for and in relation to approvals for on-airport building activities and, in doing so, to draw on relevant documents, including the Building Code of Australia, as in force or existing from time to time. The regulations may deal with matters including inspections in addressing the conditions of building approvals.

Section 106 of the Act prohibits the occupation or use of a building or works without a certificate of fitness (defined in section 104 of the Act) in force under the regulations. Section 107 of the Act enables the regulations to make provision for and in relation to certificates of fitness and, in doing so, to draw on relevant documents, including the Building Code of Australia, as in force or existing from time to time.

The Airports (Building Control) Regulations (the Regulations):

- \* provide for the approval of the conduct of building and other works at leased airports (Part 2 of the Regulations), and the issue of certificates of fitness in respect of those buildings and works (Part 3 of the Regulations);
- \* provide for airport-lessee company consent to building applications to ensure that building activities are consistent with the airport master plan and any relevant major development plan (as required by the Act) and that the airport-lessee company's own planning objectives for the airport are properly taken into account (regulations 2.03 and 2.04);
- \* empower the Secretary to appoint an appropriately qualified "airport building controller" in respect of each airport to whom applications for approval to conduct building or works activities, and for certificates of fitness in respect of those buildings or works, may be made (Part 4 of the Regulations);
- \* enable the Secretary to the Department of Transport and Regional Development to oversee the airport building controller's approval and certification processes (regulation 2.22);
- \* provide for the payment of fees in respect of applications submitted to the airport building controller (regulation 5.01). The quantum of fees is still to be determined following the submission of tenders for the performance of the functions of airport building controller; and

\* provide for review of certain decisions of the airport building controller and the airport-lessee company by the Administrative Appeals Tribunal (regulation 5.02).

Details of the Regulations appear in the Attachment.

The Regulations commenced on notification in the Gazette.

## ATTACHMENT

### **PART 1 - PRELIMINARY**

Regulation 1.01 provides that the Regulations may be cited as the Airports (Building Control) Regulations.

Regulation 1.02 provides that the object of the Regulations is to establish a system for the approval of building activity on airports consistent with Division 5 of Part 5 of the Act. The Note makes it clear that a particular building activity may also require approval under the Airports (Protection of Airspace) Regulations.

Regulation 1.03 clarifies that the Regulations do not affect the operation of certain State laws dealing with builders' qualifications, insurance, occupational health and safety, and the protection of persons against fire.

Regulation 1.04 defines certain terms and expressions for the purposes of the proposed Regulations,

### **PART 2 - BUILDING ACTIVITY APPROVALS**

Regulation 2.01 sets out the purpose of the Part.

Regulation 2.02 provides that a person requiring a building approval must make written application to the airport building controller. The regulation also specifies who can apply for a building approval and the types of approvals which can be given.

Regulation 2.03 requires an applicant (who is not the airport-lessee company) to seek the consent of the airport-lessee company prior to making an application for building approval. An airport building controller cannot approve a building application without this consent. The airport lessee-company is required to respond in writing within 28 days or to such longer period as may be agreed with the applicant. If the airport-lessee company has not responded within this time period, consent is taken to have been refused.

Regulation 2.04 sets out certain considerations to which the airport-lessee company must have regard in deciding whether to grant or refuse consent.

Regulations 2.05 and 2.06 set out the information which must be included in an application for building approval.

Regulations 2.07, 2.08 and 2.09 set out additional information which must be included in an application for a building permit, a works permit or a demolition authorisation, respectively.

Regulation 2.10 enables an applicant to make minor variations to, or withdraw, an application for building approval.

Regulation 2.11 sets out the duties of the airport building controller in determining applications for building approval. The airport building controller is required to determine an application within 28 days of receiving the application or any further information requested. If the airport building controller has not responded within this time period, the application is taken to have been refused. The airport building controller must notify the applicant and, if appropriate, the airport-lessee company of decisions on building applications.

Regulation 2.12 provides that, in certain circumstances, the airport building controller must not approve an application unless the proposed building activity has received airport-lessee company consent and approval under the Airports (Protection of Airspace) Regulations.

Regulations 2.13, 2.14 and 2.15 set out specific criteria to which the airport building controller must have regard in deciding whether to grant a building permit, works permit or demolition authorisation, respectively. In each case, the airport-building controller can accept a report or certificate from a suitably qualified person as evidence that a requirement of the regulations has been satisfied.

Regulation 2.16 enables a person carrying out a building activity to apply for a minor variation of a building approval.

Regulation 2.17 sets out the duties which attach to a building approval. The duties include that a building activity must be carried out in accordance with an approved plan, supervised by appropriately qualified persons and all necessary safety precautions taken. There is also a requirement for site cleanup on completion of the building activity.

Regulation 2.18 empowers the airport building controller to impose additional conditions on a building approval and to issue written stop work orders.

Regulation 2.19 provides that, unless extended or revoked, a building approval has effect for 3 years or such shorter period as is specified in the building approval. This provision also makes it clear that while building activity must be commenced during the currency of a building approval, there is no requirement that it must be completed during this period.

Regulation 2.20 sets out the circumstances in which an airport building controller may revoke a building approval.

Regulation 2.21 requires an airport building controller to keep a register of applications. The Secretary (or an authorised person) may inspect the register.

Regulation 2.22 empowers the Secretary (or an authorised person) to request documents and inspect building activity in order to monitor an airport building controller's approval of building activities.

Regulation 2.23 requires an airport building controller to make timely inspections of building activity.

Regulation 2.24 sets out the building activities which are exempt from Subdivision C of Division 5 of Part 5 of the Act, that is, building activity which does not require a building approval. A person who carries out an exempt building activity must notify the airport building controller of that fact and keep appropriate records of that activity which may be inspected by the airport building controller.

Regulation 2.25 contains transitional provisions in relation to building activity that has been approved prior to the time when an airport lease is first granted.

### **PART 3 - CERTIFICATES OF FITNESS**

Regulation 3.01 defines certain terms used in the Part.

Regulation 3.02 specifies the persons who can apply for a certificate of fitness

Regulation 3.03 enables an applicant to make minor variations to, or withdraw, an application for a certificate of fitness.

Regulation 3.04 sets out the duties of the airport building controller in considering an application for a certificate of fitness. The regulation clarifies that there are two types of certificates of fitness, namely, certificates for occupancy (in respect of buildings) and certificates for use (in respect of works). In each case, the airport-building controller can accept a report or certificate from a suitably qualified person as evidence that a requirement of the regulations has been satisfied.

Regulations 3.05 and 3.06 set out specific criteria to which the airport building controller must have regard in deciding whether to grant a certificate of , occupancy or a certificate for use, respectively. These include that the building or works are consistent with the approval given.

Regulation 3.07 sets out the duties which attach to a certificate of fitness. These include that a building must not be used for a purpose inconsistent with the classification of the building under the Building Code.

Regulation 3.08 sets out the content of a certificate of fitness.

Regulation 3.09 provides for the amalgamation of related certificates of fitness.

Regulation 3.10 sets out the circumstances in which an airport building controller may vary a certificate of fitness.

Regulation 3.11 provides that a certificate of fitness has effect from the time it is granted until the building or works to which it applies ceases to exist, or undergoes substantial alteration, or it is revoked.

Regulation 3.12 sets out the circumstances in which an airport building controller may revoke a certificate of fitness.

Regulation 3.13 provides that a transfer or termination of an airport lease has no effect on a certificate of fitness.

Regulation 3.14 enables an airport building controller to issue certified copies of a certificate of fitness which has been lost or destroyed.

Regulation 3.15 provides that a certificate of fitness is evidence that the building or works may be occupied or used. The certificate of fitness is not evidence that the building or works complies with the Regulations or that the airport building controller has authorised the building to be used for a particular purpose.

Regulation 3.16 sets out the buildings and works which are exempt from Subdivision D of Division 5 of Part 5 of the Act, that is, buildings and works which do not require a certificate of fitness. Buildings and works completed prior to the lease of the airport on which they are located are exempt.

## **PART 4 - AIRPORT BUILDING CONTROLLER**

Regulation 4.01 provides that the Secretary may appoint an airport building controller for an airport site and specifies who may be so appointed. This includes an authority of the Commonwealth or State, a local government body or an individual, body or corporation authorised under the law of the State to approve building activity in the State. The Secretary is

required to consult with the airport-lessee company before appointing an airport building controller.

Regulation 4.02 provides that an airport building controller has no liability for anything done, or omitted to be done, in good faith under the Regulations or in reliance on a certificate given by a building or works expert.

Regulation 4.03 provides for the protection of information give to, or obtained by, an airport building controller under the Regulations.

## **PART 5 - MISCELLANEOUS**

Regulation 5.01 provides for fees to be payable in accordance with the schedule.

Regulation 5.02 provides for review of certain decisions of the airport building controller and the airport-lessee company by the Administrative Appeals Tribunal.

## **SCHEDULE**

The Schedule specifies the matters for which fees are payable under the Regulations. The quantum of fees is still to be determined following the submission of tenders for the performance of the functions of airport building controller.