

Airports (Control of On-Airport Activities) Amendment Regulations 2002 (No. 1) 2002 No. 49

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 49

Minute No.3 of 2002 - Minister for Transport and Regional Services

Subject: *Airports Act 1996*

Airports (Control of On-Airport Activities) Amendment Regulations 2002 (No. 1)

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

Section 172 of the Act provides that the regulations may make provision for and in relation to prohibiting or regulating the parking or use of vehicles within a specified airport and provide for signs and road markings for those purposes.

Section 178 of the Act provides that the Minister must give each airport operator company notice that there is a proposal to make regulations and invite the company to give a submission about the proposed regulations within 30 days after receiving the notice.

In accordance with sections 172 and 178, regulations were made on 2 July 2001 by Statutory Rules 2001 No. 170 ("the Original Amendments") after consultation with airport-operator companies, to amend the *Airports (Control of On-Airport Activities) Regulations 1997* ("the Regulations"). Item 1, Schedule 1 to the Original Amendments was intended to amend the Regulations by substituting a new Part 4 Division 2 with respect to landside vehicle parking for the previous Part 4 Division 2. However, the Original Amendments misdescribed "Division 2" as "Division 11", which resulted in the new Division 2 not being incorporated in the current reprint of the Regulations.

The main purpose of these amendments is to rectify the drafting errors in the Original Amendments by remaking the entire Part 4 Division 2, and amending incorrect references to various divisions which resulted from the misdescription. The new Division 2 is substantially the same in content as the misdescribed "Division 11" made by the Original Amendments.

The amendments also:

- i. insert additional notes under the offence provisions made by the Original Amendments to ensure that those provisions continue to operate in the same manner following the application of the *Criminal Code Act 1995* (the *Criminal Code*) to all Commonwealth legislation on 15 December 2001; and
- ii. replace reference to Senior Executive Service Officer with "SES employee" in line with the *Public Service Act 1999*.

Details of the amendments are set out in the Attachment.

The Regulations commenced upon gazettal.

Authority: Section 252 of the *Airports Act 1996*

ATTACHMENT

Airports (Control of On-Airport Activities) Amendment Regulations 2002 (No. 1)

Clause 1 - Name of Regulations

Item 1 provides for the name of the Regulations

Clause 2 - Commencement

Item 2 provides that the Regulations commence on gazettal.

Clause 3 - Amendment

Item 3 provides that Schedule 1 of the Regulations amends the *Airports (Control of On-Airports Activities) Regulations 1997*. This amendment is necessary to correct drafting errors in Statutory Rules 2001 No.170, which resulted in misdescription of the amendments made by Statutory Rules 2001 No.170.

Schedule 1 - Amendments to *Airports (Control of On-Airports Activities) Regulations 1997*

Item 1 - substitution of Part 4, Division 2

Item 1 inserts a number of Regulations:

Regulation 106

provides the definitions for the Division. The Regulation makes a distinction between the various definitions of "public bus", depending on where the airports are located. The necessity to do this arises from the fact that Coolangatta Airport has parking management responsibilities that must comply with both Queensland and New South Wales law.

Regulation 106A

lists the Airports to which the Division is intended to apply.

Regulation 106B

provides that the laws in the state in which an airport is located do not apply to the Airport in so far as Division 2 deals with the same subject matter.

Regulation 106BA

provides for the implementation of a regime that allows for the enforcement of parking management and the collection of fines associated with this management. This is achieved by requiring airport operators to whom the Division applies, to give to the Secretary a parking signage plan and standard operating procedures.

The Commonwealth is concerned to ensure that all airport operators handle their

power in a responsible manner, consistent with Commonwealth accountability guidelines. All airport operators will be required to enter a binding commercial agreement with the

Commonwealth that requires, among other things, that the standard operating procedures must comply with the reasonable requirements of the Secretary of the Department of Transport and Regional Services. In return, airport operators receive reimbursement for the reasonable costs associated with enforcing the parking scheme.

A parking signage plan is required to describe the landside areas (ie those areas of the airport, outside the terminals, to which the public has access) of the airport where parking restrictions are enforced pursuant to the regulations and the traffic control devices used to identify where the infringement notice offences apply.

The standard operating procedures document is required to set out the airport operator's policy for dealing with airport users' access to public parking facilities on the landside of the airport. It sets out the manner in which duties and functions are to be carried out by persons authorised by the Secretary of the Department of Transport and Regional Services to enforce the functions associated with traffic control on the airport site. It also sets out the procedures for issuing infringement notices and the manner in which the airport operator may move vehicles.

An airport operator that submits standard operating procedures that do not reach the Commonwealth's minimum standards, eg for the removal of vehicles, would be in breach of its commercial agreement with the Commonwealth, triggering a termination for default clause. Compliance with the agreement is reviewed every six months. An airport operator who fails to comply with the contractual and regulatory requirements of the scheme risks termination of its agreement. Further, an airport operator who was found to have acted unreasonably in its exercise of the power conferred upon it by these regulations could also find that it is asked to show cause why it should not be removed as a participant in the scheme.

Regulation 106C

provides that an airport operator may install traffic control devices on the landside of an airport providing they comply with Australian Road Rule 316, except where an emergency necessitates otherwise.

Regulation 106D

permits vehicles to stop in a permit zone, as defined by Australian Road Rule 185, provided a permit is issued.

Regulation 106E

lists the rules of the Australian Road Rules that apply in relation to parking enforcement matters on the landside of an airport. The rules are interpreted in accordance with the Australian Road Rules, with the exception of the term "vehicle". That term is interpreted in accordance with the meaning given in subsection 172(2) of the *Airports Act 1996*.

Regulation 107

provides that an offence against the Australian Road Rules as applied by regulation 106E is punishable by a fine comparable with that for the same offence in the State in which the Airport is located, as set out in Schedule 2 of the Regulations. However, for the purposes of the Regulations the offence is always considered a strict liability offence and an infringement notice offence. Note 1 is added to make reference to the relevant provision in the *Criminal Code* regarding strict liability.

Regulation 108

makes it an offence for taxi drivers to leave taxis unattended in taxi zones and provides for the fines payable. A taxi is considered to be unattended if its driver is more than 3 metres from the closest point of the taxi while it is in the taxi zone. Note 1 is added under subregulation (3) to make reference to the relevant provision in the *Criminal Code* regarding strict liability.

Regulation 109

provides that drivers of taxis, hire cars, public buses and minibuses must show the authority card issued by the industry regulation agency where the airport is located, to a person authorised by the airport operator. However, this obligation does not apply if the authorised person refuses to present his or her own identification as an authorised person.

The necessity to refer to the 'landside of the airport' as opposed to 'the airport' arises from the fact that Coolangatta Airport has parking management responsibilities that must comply with both Queensland and New South Wales law.

Note 1 is added under subregulation (2) to make reference to the relevant provision in the *Criminal Code* regarding strict liability.

Regulation 110

provides that an authorised officer of the airport operator may direct the driver of a vehicle to move the vehicle if it is parked in contravention of the Regulations.

Note 1 is added under subregulation (4) to make reference to the relevant provision in the *Criminal Code* regarding strict liability.

Regulation 111

permits an authorised person to move a vehicle, where certain conditions are met. The only person who can authorise the towing or moving of a vehicle will be the person referred to as Duty Terminal Manager or its equivalent (for example the equivalent officer at Brisbane International Airport bears the title of Landside Traffic Co-ordinator).

Regulation 112

authorises an airport operator to recover the reasonable costs it incurs in lawfully removing a vehicle pursuant to regulation 111. The amount payable will be a debt owed to the airport operator, recoverable in a court of competent jurisdiction. Airport operators will be entitled to maintain possession of a moved motor vehicle until the owner pays the reasonable amount that was spent on moving it.

Regulation 113

covers vehicles moved under Regulation 111. If the driver of a moved vehicle cannot be found within 3 months from the day on which the vehicle was moved, the airport operator can sell or otherwise dispose of it, providing the operator gives notice of its intention to do so. Such a notice must be published in a newspaper circulating generally in the State in which the landside of the airport is located 14 days before the sale takes place. The proceeds of the sale, less the reasonable costs of moving, storing and selling the vehicle must go into the Commonwealth's Consolidated Revenue Fund.

The necessity to refer to the 'landside of the airport' as opposed to 'the airport' arises from the fact that Coolangatta Airport has parking management responsibilities that must comply with both Queensland and New South Wales law.

Regulation 114

provides that the Secretary of the Department of Transport and Regional Services may appoint an employee of the Department, an officer of the Australian Protective Service, an employee of, or contractor to, an airport operator as an authorised person for the purposes of this Division 2.

Item 2 - Amendment of Regulation 156

Item 2 replaces the reference to "Senior Executive Service officer" with a reference to "SES employee, or acting SES employee" in line with the *Public Service Act 1999*.

Item 3- Further amendments - references to Divisions in Part 4

Item 3 amends the references to Divisions in Part 4 to remedy the incorrect identification of Divisions.