

EXPLANATORY STATEMENT

Subject - *Airports Act 1996*

Airports Legislation Amendment Regulations 2009 (No. 1)

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

The Act provides for a comprehensive regulatory regime for Commonwealth-owned and privately-leased airports. The Act also provides that much of the detail of the regulatory regime can be dealt with in subordinate legislation by providing numerous matters for which regulations may be made.

Because of the large quantity of detail that is included in the regime, a number of items of subordinate legislation have been made under the Act which deal with separate subject matters, including:

- the *Airports (Building Control) Regulations 1996*, relating to building approvals;
- the *Airports (Control of On-Airport Activities) Regulations 1997*, relating to the control of vehicle movements within a specified airport; and
- the *Airports (Environment Protection) Regulations 1997*, relating to environmental standards at airports.

The *Airports Regulations 1997* currently set out the detail of those parts of the airports regulatory regime for which a separate body of regulations is not warranted.

The Regulations amend these four sets of Principal Regulations to:

- make them consistent with the Act as amended in 2007; and
- remove references to Hoxton Park Airport as the lease of this airport has expired and is no longer subject to the Act and its associated regulations.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised. A comprehensive consultation process was undertaken when the Act was amended in 2007. The amendments to the Principal Regulations are consequential to the 2007 amendments to the Act.

The new Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The new Regulations would commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 252 of the *Airports Act 1996*

Details of the *Airports Legislation Amendment Regulations 2009 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Airports Legislation Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after registration.

Regulation 3 – Amendment of *Airports Regulations 1997*

This regulation provides that the *Airports Regulations 1997* (the *Airports Regulations*) are amended as set out in Schedule 1.

Regulation 4 – Amendment of *Airports (Building Control) Regulations 1996*

This regulation provides that the *Airports (Building Control) Regulations 1996* (the *Building Control Regulations*) are amended as set out in Schedule 2.

Regulation 5 – Amendment of *Airports (Control of On-Airport Activities) Regulations 1997*

This regulation provides that the *Airports (Control of On-Airport Activities) Regulations 1997* (the *Control of On-Airport Activities Regulations*) are amended as set out in Schedule 3.

Regulation 6 – Amendment of *Airports (Environment Protection) Regulations 1997*

This regulation provides that the *Airports (Environment Protection) Regulations 1997* (the *Environment Protection Regulations*) are amended as set out in Schedule 4.

Regulation 7 – Transitional for amendments of *Airports (Control of On-Airport Activities) Regulations 1997* – undetermined applications for ADAs and AUAs

This regulation provides that applications for an Authority to Drive Airside (ADA) or Authority for Use Airside (AUA) made before the commencement of Schedule 3 must be determined in accordance with the *Control of On-Airport Activities Regulations* in place immediately before the commencement of Schedule 3.

Schedule 1 – Amendments of *Airports Regulations 1997*

Items [1] and [2] – Subregulation 1.03(1)

Paragraph 1.03(1)(f) which refers to Coolangatta Airport is deleted and paragraph 1.03(1)(ha) is inserted which refers to Gold Coast Airport. These items reflect the name change of the airport from Coolangatta Airport to Gold Coast Airport.

Items [3] and [4] – Paragraph 1.03(1)(ia) and paragraph 2.01A (ba)

Paragraph 1.03(1)(ia) and paragraph 2.01A(ba) of the Airports Regulations refer to Hoxton Park Airport. The airport lease to Hoxton Park Airport expired at midnight on 27 October 2008. In light of this, Hoxton Park Airport is no longer subject to the Act and its associated regulations. Items 3 and 4 delete the reference to Hoxton Park Airport.

Item [5] – subregulation 3.23(2)

Section 60 of the Act provides that the Airports Regulations may make provision for a person to give information to the Minister that is relevant to an ownership matter. Under subregulation 3.23(2) of the Airports Regulations, airport-operator companies must give the Minister within 14 days after the end of each reporting period declarations stating whether an unacceptable foreign ownership, airline-ownership or cross-ownership situation has existed at any time during the reporting period.

Item 5 deletes the reference to 14 days and extends the timeframe to 30 business days subject to subregulation 3.23(2A) to be consistent with amendments made to the Act in 2007.

Item [6] – After subregulation 3.23(2)

Currently, the Airport Regulations do not make provision for an airport-operator company to request an extension of time from the Minister to submit the declaration or written return required under subregulation 3.23(2). Item 6 allows an airport-operator company to request an extension of time, in writing, from the Minister for more than 30 business days. The request must specify the number of additional days required.

Further, subregulation 3.23(2C) allows the Minister to exercise discretion in extending beyond 30 business days the period within which an airport-operator company is to provide the information relating to an ownership matter.

Item [7] – Paragraph 5.02(1)(b)

Item 7 substitutes Airports (Environment Protection) Regulations with the *Airports (Environment Protection) Regulations 1997*.

Items [8] and [9] – Subregulation 5.02(3)

Paragraph 5.02(3)(c) provides that a draft or final master plan relating to Canberra Airport must comply with and not be inconsistent with the National Capital Plan prepared under Part III of the *Australian Capital Territory (Planning and Land Management) Act 1988* (the Planning and Land Management Act). From 13 May 2007, Canberra Airport has been excluded from the Planning and Land Management Act. Further, it is no longer specified as ‘Designated Area’ in the National Capital Plan. The Act was amended in 2007 to reflect this. Item 9 removes Canberra Airport from the operation of the National Capital Plan by deleting paragraph 5.02(3)(c) in the Airports Regulations.

Items [10], [13] and [16]

These items delete references to Hoxton Park Airport. The amendments are consequential to the expiry of the lease of Hoxton Park Airport and the fact that the airport is no longer subject to the Act and its associated regulations.

Items [11], [12], [14], [15], [17], [18], [19] and [20]

These items reflect the name change of Coolangatta Airport to Gold Coast Airport. The Act has been amended to reflect this name change. The amendments ensure consistency between the Act and the Airports Regulations.

Schedule 2 – Amendments of *Airports (Building Control) Regulations 1996*

Item [1] – After paragraph 2.05(1)(c)

Regulation 2.05 provides for the information that must be included in an application for a building approval. Item 1 inserts new paragraphs 2.05(1)(ca) and (cb). Paragraph 2.05(1)(ca) provides that if a proposed building activity is not, or is not a part of, a major airport development as defined in section 89 of the Act, the application must accompany a statement to that effect.

Paragraph 2.05(1)(cb) provides that if a proposed building activity is, or is a part of, a draft major development plan, whether or not it has been submitted to the Minister for consideration, a statement to that effect must accompany an application for approval of a building activity.

Item [2] – Subregulation 2.05(2), including the note

Subregulation 2.05(2) is re-drafted to conform with current drafting practice but the substance is unchanged.

Items [3] and [4] – Subregulation 2.11(1)

Regulation 2.11 sets out the duties of an Airport Building Controller (ABC) in determining applications for a building approval.

Regulation 2.11 is amended to provide that any building activity that is, or is part of, a major airport development (as defined in section 89 of the Act) cannot be carried out and cannot be considered by the ABC unless there is an approved major development plan. This includes the situation where a proposed building activity is, or is part of, a draft major development plan whether or not it has been submitted to the Minister for consideration. In this case, the ABC is prohibited from dealing with the application.

If the Minister refuses to approve the draft major development plan, subregulation 2.11(1B) prohibits an ABC from dealing with the application.

Further, subregulation 2.11(1C) requires the ABC to advise an applicant, orally or in writing that the application for approval of a building activity that is, or is part of, a major airport development cannot be considered unless there is an approved major development plan.

Items [5] and [6] – Subregulation 2.11(2)

Subregulation 2.11(2A) prohibits the ABC from requesting further information concerning a proposed building activity if the proposed building activity is, or is part of, a major airport development which has not been decided or taken to be approved under the Act.

Item [7] – Subregulation 2.11(6), including the note

Item 7 amends subregulation 2.11(6) and the note at the end of the subregulation 2.11. It also inserts subregulation 2.11(7).

Under subregulation 2.11(1), the ABC must deal with an application by: approving the building activity, approving the building activity subject to any condition, undertaking to the applicant that the building activity will be approved subject to compliance by the applicant of a direction, or refusing to approve the building activity.

If the ABC fails to inform the applicant of a decision 28 days after receipt of the application or receipt of further information [if further information has been requested under subregulation 2.11(2)], the application is deemed refused.

If an application involves a building activity that is, or is part of, a major airport development and there is no approved major development plan, the ABC cannot consider the application. Once a draft major development plan is approved or taken to be approved under section 94 of the Act, and the ABC did not request for further information, the ABC is deemed to have refused the application for approval of a building activity if the ABC failed to inform the applicant of a decision within 28 days after the approval of the plan. However, if the ABC requested for further information, the ABC is deemed to have refused the application if the ABC failed to inform the applicant of a decision within 28 days after receipt of further information.

The note acknowledges that a proposed building activity could be affected by a requirement of the Environment Protection Regulations.

Item [8] – Schedule 1, Part 3, heading

Item 8 substitutes the reference to Coolangatta Airport for a reference to Gold Coast Airport to reflect that airport's change of name.

Item [9] – Schedule 1, Part 10, heading

Item 9 deletes Hoxton Park Airport.

Item [10] – Further amendments

Item 10 substitutes Airports Regulations with *Airports Regulations 1997*.

Schedule 3 – Amendments of *Airports (Control of On-Airport Activities) Regulations 1997*

Items [1],[2] and [13]

These items remove references to Hoxton Park Airport as the airport is no longer subject to the Act and its associated regulations.

Items [3] to [8] and [14]

These items substitute references to Coolangatta Airport with references to Gold Coast Airport to reflect that airport's change of name.

Items [9] and [10] – Regulation 105

A note is inserted at the bottom of the definition of *vehicle* to provide that terms used in the Control of On-Airport Activities Regulations (e.g. '*Airside Vehicle Control Handbook*') are defined in the Act.

The definition of *Vehicle Control Handbook* in the Control of On-Airport Activities Regulations is deleted. The term is relevantly defined in subsection 172 (2) of the Act.

Item [11] - Subregulation 123(1), at the foot

Subregulation 123(1) prohibits a person from taking a vehicle onto, or operating a vehicle on, the airside of a regulated airport unless the person: (a) holds an ADA; or (b) is accompanied by a person authorised to provide airside vehicle services. Item 11 inserts a penalty of 5 penalty units for a breach of this prohibition.

Item [12] – Subregulation 123(2A), including the note

Item 12 provides that an offence against subregulation 123(1) or 123(2) is both a strict liability offence and an infringement notice offence. This will allow airport operator companies to deal with this offence expeditiously without having to resort to judicial proceedings in order to enforce the provision. A note is inserted directing readers to see Part 7 of the Control of On-Airport Activities Regulations for further information on 'infringement notices'.

Item [15] – Further amendments

Item 15 contains housekeeping amendments by substituting:

- 'Airports Regulations' with '*Airports Regulations 1997*' to provide for the full title of the regulations;
- 'Coolangatta Airport' with 'Gold Coast Airport' to reflect the airport's name change; and
- 'Vehicle Control Handbook' with '*Airside Vehicle Control Handbook*' to be consistent with the Act.

Schedule 4 – Amendments of *Airports (Environment Protection) Regulations 1997*

Items [1] and [2]

These items delete references to Hoxton Park Airport as the airport is no longer subject to the Act and its associated regulations.