

## EXPLANATORY STATEMENT

### Select Legislative Instrument No. 122, 2015

Issued by the authority of the Minister for Infrastructure and Regional Development

#### *Airports Act 1996*

#### *Airports Legislation Amendment (2015 Measures No. 1) Regulation 2015*

The *Airports Act 1996* (the Act) establishes a system for the regulation of airports.

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.

Part 12 of the Act provides for the Commonwealth to regulate certain incursions into airspace around airports to which the Part applies (see section 180 of the Act).

Section 181 of the Act requires a “prescribed airspace” to be specified in, or ascertained in accordance with, the regulations, where it is in the interests of safety, efficiency or regularity of existing or future air transport operations into or out of an airport.

There is currently no process in the *Airports (Protection of Airspace) Regulations 1996* for the protection of airspace surrounding airport sites that are not leased, for example at future airports such as Sydney West Airport. Currently, these regulations only provide a process for protecting airspace around airports where an airport lease is in place.

The *Airports Legislation Amendment (2015 Measures No. 1) Regulation 2015* (the Amending Regulation) amends the *Airports (Protection of Airspace) Regulations 1996* to enable airspace surrounding airport sites that are not leased to be protected.

The Amending Regulation provides for minor and machinery changes to enable the operation of the prescribed airspace regime where there is no airport lease and, by extension, no airport-operator company.

Section 184 of the Act provides that the regulations may make provision for, or in relation to, approvals authorising “controlled activities” (defined in section 182 of the Act) to be carried out in relation to prescribed airspace.

The Amending Regulation amends the system for approving controlled activities by providing for the Secretary of the Department of Infrastructure and Regional Development to perform the functions of the airport-operator company, in circumstances where a lease is not in place for an airport site.

The Amending Regulation also amends the *Airports Regulations 1997* to declare the airport site for Sydney West Airport.

#### **Consultation**

No formal consultation was undertaken in relation to the Amending Regulation as it is minor and machinery in nature and does not substantially alter existing arrangements.

## **Regulation Impact Statement**

The amendments are minor and machinery in nature. No analysis in the form of a Regulation Impact Statement was required.

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

A Statement of Compatibility with Human Rights is at Attachment A.

The Amending Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Details of the Amending Regulation are set out in Attachment B.

The Amending Regulation commenced on the day after it was registered.

## **Authority**

The Amending Regulation amends existing regulations under section 252 of the *Airports Act 1996*. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## ATTACHMENT A

### Statement of Compatibility with Human Rights

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

*Airports Legislation Amendment (2015 Measures No. 1) Regulation 2015*

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the legislative instrument

The legislative instrument amends the *Airports (Protection of Airspace) Regulations 1996* to ensure the protection of airspace and the operation of the prescribed airspace regime where a lease is not in place for an airport. It also amends the *Airports Regulations 1997* to declare the airport site for Sydney West Airport.

#### Human rights implications

The instrument is of a machinery nature and does not engage any of the applicable rights or freedoms.

#### Conclusion

The legislative instrument is compatible with human rights.

**Warren Truss**

**Minister for Infrastructure and Regional Development**

## ATTACHMENT B

### **Details of the Airports Legislation Amendment (2015 Measures No. 1) Regulation 2015**

#### Section 1 – Name

Section 1 provides that the title of the Amending Regulation is the *Airports Legislation Amendment (2015 Measures No. 1) Regulation 2015*.

#### Section 2 – Commencement

Section 2 provides that the Amending Regulation commences on the day after it is registered.

Subsection 2(2) confirms that column 3 in the commencement table under subsection 2(1) does not form part of the instrument. This allows the commencement dates to be published and edited in column 3.

#### Section 3 – Authority

Section 3 states that the Amending Regulation is made under the *Airports Act 1996*.

#### Section 4 – Schedules

Section 4 provides that the instruments specified in a Schedule to the Amending Regulation are amended or repealed as set out in that Schedule.

### **Schedule 1 – Amendments**

#### **Amendments to the *Airports (Protection of Airspace) Regulations 1996***

##### Item [1] – Subregulation 3(1) (paragraph (a) of the definition of *building authority*)

This item substitutes a new paragraph (a) of the definition of *building authority* to designate the person appointed by the Secretary as the building authority where the airport site does not have an airport lease. This is necessary because a building authority is currently defined in paragraph 3(1)(a) as the airport building controller for the airport site. Under subregulation 4.01(2) of the *Airport (Building Control) Regulations 1996*, the Secretary may only appoint an airport building controller after providing at least 14 days' notice to the airport-operator company. However, there will be no airport-operator company where there is no airport lease. This amendment provides for the situation where there is no lease and, accordingly, no airport-operator company, by permitting the Secretary to appoint a designated person as the building authority.

##### Item [2] – Subregulation 3(1) (definition of *proponent*)

This item is a minor amendment to the definition of *proponent* to remove the reference to regulation 9.

##### Item [3] – Paragraph 5(2)(a)

This item substitutes paragraph 5(2)(a) to clarify that the Secretary is only required to have regard to changes to the Obstacle Limitation Surface (OLS) and Procedures for

Air Navigation Operations (PANS-OPS) surfaces for the airport proposed where there is a final master plan for the airport. Where there is no final master plan, paragraph 5(2)(a) does not apply. This amendment clarifies that the Secretary is able to make a declaration preserving airspace for an airport site that does not have a final master plan.

Item [4] – Subregulation 6(2)

This item amends subregulation 6(2) so that where there is no airport-operator company, it is the Secretary who must make available a chart of prescribed airspace around the airport.

Item [5] – Subregulation 6(4)

This amendment is consequential to item [4].

Item [6] – Regulation 6A

This amendment substitutes the incorrect reference to subparagraph 182(f)(i) of the *Airports Act 1996* with the correct reference to subparagraph 182(1)(f)(i). It does not change the substance of the existing regulation.

Item [7] – Subregulation 7(2)

The amendment is consequential to item [8].

Item [8] – After subregulation 7(2)

New subregulation 7(3) provides for the proponent to give their application for a proposed controlled activity to either the airport-operator company, or where there is no company, the Secretary. This facilitates the processing of applications for a proposed controlled activity where there is no airport-operator company because there is no lease in place for the airport.

New subregulation 7(4) requires the proponent to give their application to the applicable person under subregulation 7(3) at least 28 days before the intended commencement of the controlled activity. This improves the readability of the regulation as a whole but does not change the substance of the existing regulation in relation to timeframes (see also item [7]).

Item [9] – Regulation 8

This amendment requires a building authority (such as a local council) that receives notice of a proposal regarding a controlled authority to give notice of that proposal to the Secretary where there is no airport-operator company.

Item [10] – Subregulation 9(1A)

This amendment requires, where there is no airport-operator company, the Secretary to give the required written notice that a building, structure or thing will, if erected, intrude into PANS-OPS airspace. This notice must be given to the proponent of the controlled activity and to the relevant building authority.

Item [11] – Subregulation 9(2)

This amendment is consequential to item [10].

Item [12] – Subregulation 10(1) (note)

This amendment is consequential to item [22].

Item [13] – Subregulation 10(2)

This amendment provides, where there is no airport-operator company, for the Secretary to give the required written notice of the application to carry out the proposed controlled activity and invite submissions about the activity.

Item [14] – Subregulation 10(3) (note)

This amendment is consequential to item [22].

Item [15] – Subregulation 10(4)

This amendment provides, where there is no airport-operator company, for the Secretary to give the required written notice of an application to carry out the proposed short-term controlled activity that intrudes into prescribed airspace, and to invite submissions about the activity.

Item [16] – Subregulation 10(5)

This amendment is consequential to items [13] and [15].

Item [17] – Subregulation 10(6)

This amendment is consequential to items [13] and [15].

Item [18] – Subregulation 11(1)

This amendment provides that subregulation 11(1) only applies where there is an airport-operator company. This accounts for items [13]-[17], which provide for the Secretary to provide the required written notice regarding a proposed controlled activity where there is no airport-operator company. The amendment acknowledges that the requirements in regulation 11 are not applicable where the Secretary provides the requisite written notice of a proposed controlled activity, because in these circumstances the Secretary will already have notice of the application.

Item [19] – Paragraph 11(1)(a)

This amendment is consequential to item [18]. It does not change the substance of the existing regulation.

Item [20] – Paragraph 11(1)(b)

This amendment improves readability by clarifying that paragraph 11(1)(b) applies to any activity that is not a short-term controlled activity. It does not change the substance of the existing regulation.

Item [21] – Paragraph 13(b)

This amendment provides that the Secretary is only required to have regard to the opinion of an airport-operator company about the effect of a proposed controlled activity on the efficiency or regularity of existing or future air transport operations where there is an airport-operator company for the airport.

Item [22] – Paragraph 14(5)(b)

This amendment provides that paragraph 14(5)(b) only applies where there is an airport-operator company. The effect of the amendment is that the Secretary does not require the support of the airport-operator company to approve a proposal for a particular controlled activity where there is no such airport-operator company.

Item [23] – Subregulation 15(1)

This amendment is consequential to item [25].

Item [24] – Paragraph 15(1)(b)

This amendment provides that the Secretary is only required to give written notice of his or her decision to approve or refuse a proposal to carry out a controlled activity to the airport-operator company where there is such a company for the airport.

Item [25] – After subregulation 15(1)

New subregulations 15(1AA) and 15(1AB) create two different rules for the time period within which the Secretary—not being a delegate within an airport-operator company—must give notice of his or her decision to approve or refuse a proposed controlled activity. The applicable rule will depend on whether the Secretary receives the application for the activity from the proponent directly or through an airport-operator company.

*Application from the proponent*

Where the Secretary receives the application for a proposed controlled activity directly from the proponent, subregulation 15(1AA) applies. Under this new subregulation, the Secretary must give notice of his or her decision to approve or refuse a proposed controlled activity within 49 days of receiving the application from the proponent or within 28 days after receiving the further information requested under regulation 12.

This 49 day period would combine the 21 day referral period as per subregulation 11(2), and the 28 day decision-making period as per the new paragraph 15(1AB)(a).

This amendment ensures that the Secretary has sufficient time to perform the functions of the airport-operator company (such as seeking advice under regulation 10) and also has sufficient time to perform the functions of the Secretary (such as making a decision under regulation 14).

#### *Application from the airport-operator company*

Where the Secretary receives the application for the proposed controlled activity from an airport-operator company and not directly from a proponent, subregulation 15(1AB) applies. Under this new subregulation, the Secretary must give notice of his or her decision within 28 days of receiving the application where it concerns only one airport, and where there is more than one airport, within 28 days of receiving the application from the first of the airport-operator companies. Alternatively, the amendment provides that the Secretary must provide notice within 28 days after the Secretary receives the further information requested under regulation 12. This subregulation improves the readability of the regulation as a whole but does not change the substance of the existing regulation in relation to timeframes where the Secretary receives the application for the proposed controlled activity from an airport-operator company (see also item [23]).

#### Item [26] – Subregulation 15(2)

This amendment is consequential to item [25].

#### Item [27] – Subregulation 15A(2)

This item substitutes an incorrect reference to regulation 11 with the correct reference to regulation 12.

#### Item [28] – Paragraph 17(2)(b)

This amendment provides that an application for review of the Secretary's decision under regulation 14 or 16 may be made by an airport-operator company, only if there is such a company for the airport concerned. It does not change the substance of the existing provision.

### **Amendments to the *Airports Regulations 1997***

#### Item [29] – After paragraph 1.03(1)(s)

This amendment has the effect of declaring an airport site for Sydney West Airport. The boundaries of the new airport site are those set out in Part 1.19A of Schedule 1, as inserted by item [31].

#### Item [30] – At the end of Part 12

This amendment provides that, for the purpose of describing the boundaries of an airport site under subsection 180(2) of the Act for the prescribed airspace regime, the boundaries of the airport site for Sydney West Airport are described in sub-item (2) of Part 1.19A of Schedule 1.

#### Item [31] – After Part 1.19 of Schedule 1

The new Part 1.19A describes the boundaries of the airport site for Sydney West Airport. Part 1.19A(1) provides that Sydney West Airport will include the land that is described in the listed New South Wales certificates of title.



According to new section 251B of the Act, which was inserted by the *Airports Amendment Act 2015*, the regulations may specify a place to be an airport site even if a part of the place is not a Commonwealth place at the time that the amending regulation commences. Part 1.19A(2) describes land that is not currently a Commonwealth place, but will form part of the Sydney West Airport if and when the Commonwealth acquires the land, provided that the land will be used, or intended to be developed for use, as an airport under paragraph 5(1)(c) of the Act.

The land described in Part 1.19A(2) constitutes a road.