

EXPLANATORY STATEMENT

Select Legislative Instrument No. 244, 2015

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

Airports Act 1996

Airports Legislation Amendment (2015 Measures No. 2) Regulation 2015

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

Section 252 of 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.

The *Airports Legislation Amendment (2015 Measures No. 2) Regulation 2015* (the Amending Regulation) enables the application of regulatory requirements common to certain other airports to Sydney West Airport, and addresses other matters associated with a greenfield airport development.

Specifically, the Amending Regulation amends the *Airports Regulations 1997* to:

- require the airport operator for Sydney West Airport to comply with account and record keeping and quality of service monitoring requirements;
- enable the Minister to refuse to approve the transfer of an airport lease for an airport if rights, liabilities and obligations relating to the airport between the Commonwealth and the transferor are not also transferred; and
- prescribe the disinterment of remains from grave sites, and associated activities, as a type of ‘development’ for the purposes of an airport plan for Sydney West Airport.

The Amending Regulation also amends the *Airports (Building Control) Regulations 1996* to prescribe fees for building applications at Sydney West Airport.

Consultation

No formal consultation was undertaken in relation to the Amending Regulation as the amendments are minor and machinery in nature.

Regulation Impact Statement

As 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. 2) 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 purpose of the legislative instrument is to apply regulatory requirements common to certain other airports to Sydney West Airport, and to address other matters associated with a greenfield airport development.

The legislative instrument amends the *Airports Regulations 1997* to:

- require the airport operator for Sydney West Airport to comply with account and record keeping and quality of service monitoring requirements;
- enable the Minister to refuse to approve the transfer of an airport lease for an airport if rights, liabilities and obligations relating to the airport lease or airport site under certain contracts, or other arrangements, between the Commonwealth and the transferor are not also transferred; and
- prescribe the disinterment of remains from grave sites, and associated activities, as a type of ‘development’ for the purposes of an airport plan for Sydney West Airport.

There are two cemeteries located on Commonwealth-owned land at Badgerys Creek — St John's Anglican Church and Badgerys Creek Uniting (Methodist) Church. Both cemeteries have been closed to new burials since their acquisition by the Commonwealth in the 1990s, in anticipation of a decision on the location of an airport.

A draft airport plan which, when finalised is intended to be determined under the *Airports Act 1996*, was published for public comment on 19 October 2015. The draft airport plan provides that before any remains in graves can be disinterred, an approved Cemeteries Relocation Management Plan will be developed taking into account certain principles including: reasonable endeavours to contact surviving relatives, including a public notice period prior to exhumation activities; due respect and reverence; consideration of public health and heritage matters; and carrying out activities in a sensitive and respectful manner.

The instrument also amends the *Airports (Building Control) Regulations 1996* to prescribe fees for building applications at Sydney West Airport.

Human rights implications

The amendments are mostly minor in nature, however there is potential for the disinterment of graves to engage the right to freedom of religion or belief of people who are still alive (for example surviving relatives).

The right to freedom of thought, conscience, religion and belief derives from Article 18 of the International Covenant on Civil and Political Rights and provides that all persons have the right to think freely, and to entertain ideas and hold positions based on conscientious or religious or other beliefs. Subject to certain limitations, it also provides that persons have the right to demonstrate or manifest religious or other beliefs, by way of worship, observance, practice and teaching.

The relocation of grave sites from the airport site for Sydney West Airport will be managed by the Commonwealth in consultation with relatives and relevant churches, in accordance with an approved Cemeteries Relocation Management Plan to ensure any necessary work is done in a sensitive and respectful manner in accordance with the right to freedom of religion and belief.

To the extent that the right to freedom of thought, conscience, religion and belief is engaged, and to the extent that there may be any limitation on the right to manifest religion or beliefs, any limitation would be necessary and in accordance with the law.

Conclusion

The legislative instrument is compatible with human rights because to the extent it may engage human rights, safeguards are provided to respect these rights.

Warren Truss

Minister for Infrastructure and Regional Development

ATTACHMENT B

Details of the Airports Legislation Amendment (2015 Measures No. 2) Regulation 2015

Section 1 – Name

Section 1 provides that the title of the Amending Regulation is the *Airports Legislation Amendment (2015 Measures No. 2) 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 (Building Control) Regulations 1996*

Item [1] – Part 10 of Schedule 1 (heading)

This item repeals the existing heading and substitutes it with ‘Part 10 – Sydney (Kingsford Smith), Sydney West, Camden and Bankstown Airports.’ The purpose of this amendment is to prescribe fees for building applications at Sydney West Airport consistent with other airports in NSW.

Amendments to the *Airports Regulations 1997*

Item [2] – At the end of regulation 2.02

This item adds paragraph (f) to regulation 2.02. The paragraph provides for the Minister to refuse to approve the transfer of an airport lease if rights, liabilities and obligations relating to the airport lease or airport site under all contracts, or other arrangements, between the Commonwealth and the transferor and that are specified by the Minister, are not also transferred. This amendment recognises that airport lessee companies may have a range of obligations to the Commonwealth in addition to those set out in an airport lease.

Item [3] – At the end of Part 5

This item inserts new regulation 5.05 at the end of Part 5. The amendment prescribes the disinterment of remains from the airport site for Sydney West Airport and related activities as a type of ‘development’ for the purposes of an airport plan for Sydney

West Airport. The effect of this amendment is that exhumation of human remains and related activities can be authorised by an airport plan determined in accordance with Section 96B of the *Airports Act 1996*.

The draft airport plan, which was published for public comment on 19 October 2015, indicates that before remains in any graves can be disinterred from the airport site, an approved Cemeteries Relocation Management Plan (CRMP) will be developed. The CRMP will set out the detailed process for the relocation of grave sites from the airport site in three main stages: preparatory work, disinterment process and the reinterment process. This plan will be developed taking into account certain principles including: reasonable endeavours to contact surviving relatives, including a public notice period prior to exhumation activities; due respect and reverence; consideration of public health and heritage matters; and carrying out activities in a sensitive and respectful manner.

Item [4] – At the end of regulation 7.02B

This item adds paragraph (f) to regulation 7.02B. The effect of the amendment is to require an airport-operator company for Sydney West Airport to comply with accounting, record keeping and reporting requirements established by Part 7 of the *Airports Act 1996* once the airport is operational. While an airport is not expected to be operational for some time, the amendment provides regulatory certainty to the community and potential airport-operators.

Item [5] – At the end of regulation 8.01

This item adds paragraph (f) to regulation 8.01. The effect of the amendment is to require an airport-operator company for Sydney West Airport to comply with quality of service monitoring and reporting requirements established by Part 8 of the *Airports Act 1996* once the airport is operational. While an airport is not expected to be operational for some time, the amendment provides regulatory certainty to the community and potential airport-operators.