

SUMMARY OF PROPOSED CHANGES TO REGULATIONS - FOR CONSULTATION

Airports (Environment Protection) Regulations 2026

Legislative authority

The *Airports Act 1996* (the Act) provides for a regulatory regime for leased federal airports. Section 252 of 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 identifies a range of matters which may be prescribed by regulations.

The Act provides that much of the detail of the regulatory scheme be dealt with in subordinate legislation by providing numerous matters for which regulations may be made. In particular, Divisions 2 and 3 of Part 6 of the Act allow regulations to be made that deal with environmental matters at leased federal airports.

The regulations are a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

Purpose and Operation

The Airports (Environment Protection) Regulations 2026 (the Regulations) establish an environmental management and regulation regime that aligns with the environmental management framework under Part 6 of the *Airports Act 1996* (the Act). The Regulations establish a cooperative system of environmental regulation, where Airport Lessee Companies (ALCs) are responsible for environmental management, with appointed Airport Environment Officers (AEOs) providing regulatory oversight.

The objectives of the Regulations are to ensure that environmental management upon leased federal airports is managed by ALCs and their tenants in accordance with appropriate national standards, including National Environment Protection Measures (NEPMs) made under section 14 of the *National Environment Protection Council Act 1994*. The Regulations also aim to promote improving environmental management practices for activities carried on at airports.

The Regulations prescribe a range of matters to support the operation of the Act, including to:

- Set out a regulatory framework that aligns with national environmental standards, guidelines and frameworks for air, water, and soil pollution (including pollution from per- and polyfluoroalkyl substances (PFAS)).
- Establish definitions, standards and pollution investigation levels for air, soil and water pollution and offensive noise.
- Impose general duties upon operators of undertakings at airports to:
 - avoid polluting,
 - preserve a range of heritage and environmental values, including local biota, the ecosystems and habitats of native species and listed threatened species or ecological communities.

- report significant environmental or heritage finds in a timely manner.
 - prevent or minimise offensive noise.
- Allow an ALC to apply to the Minister for a 'local standard' for pollution or offensive noise that is different to the investigation levels set out in Schedules 1 to 4 of the regulations.
- Allow a person to apply for an authorisation to pollute or generate offensive noise in excess of the pollution investigation levels or excessive noise levels set out in Schedules 1 to 4 of the Regulations.
- Provide a system for monitoring, reporting, investigating and remediating pollution or offensive noise that aligns with national guidelines and standards.
- Provide enforcement mechanisms to address pollution, including environmental protection orders and environmental remedial orders as well as enhanced offence provisions to improve AEOs' powers to monitor and ensuring effective reporting, investigation and remedial management of pollution and offensive noise.
- Provide for offence provisions for non-compliance with environmental management controls outlined in the Act and the Regulations.
- Establish a system of infringement notices for strict liability offences under the Regulations.
- Provide for internal review of certain decisions made by an AEO, as well as review of any internal review decisions by the Administrative Review Tribunal.
- Stipulate a process for the appointment of AEOs and procedures to be followed in relation to exercising their powers and responsibilities, as well as procedures for monitoring and oversight of their actions and decisions by the department.
- Provide a number of technical provisions to ensure the smooth transition from the Airports (Environment Protection) Regulations 1997 to the remade 2026 Regulations.

This instrument replaces the Airports (Environment Protection) Regulations 1997, which sunset on 1 April 2026. Sunsetting is an automatic repeal of instruments after a fixed period, under the *Legislation Act 2003*. The aim of sunsetting is to ensure instruments remain fit for purpose and only in force for so long as required.

The sunsetting date was set by the Legislation (Airport Instruments) Sunset-altering Declaration 2018, and subsequently the Legislation (Deferral of Sunsetting-Airport Instruments) Certificate 2022 and the Legislation (Deferral of Sunsetting-Airport Instruments) Amendment Certificate 2025.

The main purpose of this document is to provide an overview of the changes that have been made as part of the remaking process. The Federal Register of Legislation provides the legislative history of the sunsetting instrument, including past explanatory statements.

Consultation

The department initially conducted public consultation on airports environmental regulation policy through a survey on the sunseting regulations in 2017. There has also been extensive public consultation in the past on regulations under the Act, including public consultation to inform development of the *Aviation White Paper – Towards 2050*.

In 2022, the department commenced parallel consultations with ALCs which covered:

- proposed reforms to the way in which environmental risks are managed on airports
- proposed reforms to the current AEO charging model, and
- potential updates to the Regulations, including to the ‘accepted limits’ of pollution in the Schedules.

In 2023, the department further briefed all relevant ALCs and AEOs on proposed changes to the Regulations and also distributed comprehensive consultation papers on proposed changes to the Regulations and Schedules. All ALCs provided written feedback on the consultation papers and this feedback was used to inform the drafting of the Regulations.

The approach to remaking the Regulations has also been informed by the views of:

- AEOs,
- Airport Building Controllers and other relevant departmental stakeholders, including from the Western Sydney Airport Regulatory Branch,
- the department’s regular engagement with airport environment managers,
- the Airports Association of Australia (AAA),
- Airservices Australia,
- the Department of Climate Change, Energy, the Environment and Water (DCCEEW),
- state and territory environment protection agencies, water authorities and
- other relevant stakeholders engaged with in the course of administering the airport environment regulatory framework.

Consultation and engagement with relevant stakeholders has found that the Airports (Environment Protection) Regulations 1997 are generally fit for purpose although there is ample potential to modernise them, align them more closely to national standards, and ensure that the pollution levels referenced in the Schedules can be more rapidly updated, to keep track with new scientific developments and evidence. Additionally, airports have urged for a simpler process to apply for a local standard.

Consultation has revealed that while the Regulations are generally fit for purpose, there are opportunities to align them more closely to national standards, simplify the means by which changing pollution standards may be updated in the Schedules, strengthen monitoring, reporting, investigation and compliance options to respond to emerging pollutants of concern such as polyfluoroalkyl substances (PFAS), modernise language in the regulations, and make minor and technical updates.

Relation to current regulations

Updates from the Airports (Environment Protection) Regulations 1997 are summarised below.

Minor and technical updates

The Regulations have been updated to more closely align with the drafting of the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the Regulations they replace. Examples of minor and technical updates include:

- Make minor technical amendments to improve administration, including provisions to extend timeframes, clarify meanings, repeal redundant clauses, modernise publication and notification requirements and fix general errors.
- Correcting outdated references to relevant standards, agencies and documents.
- The source of legislative authority for each Part of the Regulations is listed at the beginning of each Part.
- Offence and penalty provisions have been updated to reflect current drafting standards as set out in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (May 2024), and revise penalty units to allow them to better act as a deterrent to non-compliance.
- Definitions have been consolidated in Part 1 of the Regulations with notes pointing to other relevant definitions contained in the Airports Regulations 2024 and the *Airports Act 1996*.
- Spent and redundant provisions have been removed.
- In these regulations, special provisions are included for Sydney West Airport (also known as Western Sydney International (Nancy-Bird Walton) Airport) to reflect the fact that the airport is not yet operation and does not have a master plan in force.
- The Regulations also include Schedule 5, which repeals the existing Regulations from 1 April 2026.

Part 1 – Preliminary

This part has been updated to more closely align with modern drafting standards, while generally maintaining the intent and effect of the Regulations it replaces. This includes updates to:

- set out new short title for the Regulations, and proposed commencement date for the Regulations;
- outline authority for the Regulations, which are made under the *Airports Act 1996*
- reflect modern drafting practices in relation to definitions, including,
 - noting where expressions used in the Regulations are defined in the *Airports Act 1996*;
 - noting that definitions used in the Airports Regulations 2024 also apply to the Regulations;

- consolidating definitions that were located in other parts of the Regulations in Part 1 (such as “authorisation” and “local standard”).
- Expand the objects of the Regulations to include promoting improving environmental management practices on airports.
- change the term “accepted limit” (with reference to pollution limits in the Schedules) to “investigation level”, to reflect the wording in national standards for contaminated site management. This was a key request from ALCs during consultations.
- Update the definition of noise to include vibration.
- Include a more expansive definition of sensitive receptor that additionally includes environmentally sensitive areas as identified in section 71(2)(h)(ii) of the Airports Act.
- The section on **Effect on State Laws** has the same effect as in the current Regulations but in the new Regulations it is explained in more detail.
- Refine the definition of “undertakings at airports” and “operators of undertakings” to clarify the circumstances in which an ALC may be considered responsible for the operations of its sub-lessees.
- The definition of testing now specifies that Australian testing methods – approved by either the Commonwealth or a state or territory – should be used if available.
- A new section has been inserted to provide that the **Minister may determine investigation levels, etc.** This important provision provides the mechanism for the Minister to replace Schedules 1 to 4 in the current regulations with a Ministerial Determination that effectively moves the contents of Schedules 1 to 4 into an instrument that the Minister may approve without requiring it to be approved by the Governor-General in Federal Executive Council and tabled in Parliament. This will mean that as national guidelines are updated for pollution limits for emerging pollutants of concern, such as various industrial chemicals including PFAS, the Minister will be able to act quickly to amend the Schedules to align with changing National Standards or with our international treaty obligations.

Part 2 – Pollution and noise

This part has been updated to more closely align with provisions in the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the Regulations they replace. This includes revisions to:

- Specify that for an odour to cause unreasonable inconvenience to a person it must be considered objectionable in the reasonable opinion of an AEO.
- Expand the definition of water pollution to include the possibility that there could be a local standard for water pollution that will, in some airport-specific instances, apply a different pollution standard than that prescribed in Schedule 2 of the Regulations.

- The provision on offensive noise is amended to specify that vibration is a type of offensive noise that can affect heritage sites, but that heritage sites cannot be subject to any type of offensive noise other than vibration.
- Expand the definition of offensive noise to include the possibility that there could be a local standard for offensive noise that will, in some airport-specific instances, apply a different pollution standard than that prescribed in Schedule 4 of the Regulations.

Part 3 – Duties of operators of undertakings at airports

Whereas the ‘general duties’ (not to pollute, and to preserve environmental and heritage values) are contained in Part 4 of the current regulations, the renumbering process means that they are now in Part 3.

- The Regulations include a new requirement to report disturbances or adverse consequences for natural habitats and sites of cultural or indigenous significance and include clearer timeframes and requirements for managing the discovery of sites with previously unrecognised natural or cultural significance.
- A key change in the Regulations is that breaches of the general duties to avoid pollution, to preserve environmental and heritage values and not to generate offensive noise can be offences punishable by a maximum of 50 penalty units (1 x penalty unit currently = \$330).
- An AEO may also issue environmental protection orders against persons that breach the general duties in Part 3.
- Part 3 contains an additional new offence provision: it is an offence for an operator on an airport to fail to provide the AEO and ALC with written notice of a certain environmental or heritage ‘finds’ within 5 days of making a discovery. Again, this offence is punishable by a maximum of 50 penalty units.
- Making a breach of a general duty an offence sends a clear message to regulated entities about the importance of compliance with the general duties, which are at the policy heart of the Regulations.

Part 4 – Local standards and individual authorisations

This part has been updated to more closely align with provisions in the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they replace. This includes updates to:

- Clarify that an ALC that requests a local standard must publish a notice of the proposed local standard on the ALC’s website in addition to in a newspaper.
- Insert a provision that operates similarly to the ‘stop clock’ provision in section 93A of the Act so that the Minister may have time to provide interested parties with a hearing to satisfy procedural fairness obligations.
- Additionally, to insert a provision so that where the Minister fails to make a decision on an application for a local standard within 90 days, the application is deemed to be refused. The rationale for this is that local standards are effectively licenses to

pollute and should be issued by exception after careful consideration of all the circumstances. In this circumstance, the default in case of no decision by the Minister should be a refusal.

- Insert an additional factor for the Minister to consider when deciding whether to make a local standard, namely whether the local standard would permit a higher level of contamination in an area at the airport than would otherwise apply. This more closely aligns the local standard provisions with the authorisation provisions, which already apply a similar test.
- The new Regulations stipulate that the local standard will take the form of a legislative instrument, as opposed to a notice of decision (under the current Regulations). Local standards will be published as amendments to the Ministerial Instrument containing the pollution schedules.
- The new Regulation allows the Minister to vary or revoke a local standard at the request of the ALC, or at the discretion of the Minister.
- The key difference in the section on authorisations is inclusion of a process whereby the AEO may require the ALC to provide any information the AEO reasonably believes the ALC may have that may assist the AEO in determining an application made by a person other than the ALC.
- Additionally, the new Regulation includes a power for the AEO to provide a copy of the authorisation application, or other information provided by the applicant, to the relevant ALC.
- In the provision entitled “Failure to comply with condition of authorisation”, paragraph (4) and its accompanying note have been deleted on technical drafting grounds. It was not clear that they could be included in reliance on the head of power in subsection 132(2) of the *Airports Act 1996*.

Part 5 – Monitoring, reporting, investigating and remediation

This part has been updated to more closely align with national standards for contaminated site investigations and remediations, improve the AEO’s monitoring and investigation powers, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they replace. This includes updates to:

- Shorten the time frame permitted for occupiers to provide documents requested by an AEO from 3 months under the current Regulations to 30 days under the remade Regulations.
- Allow the AEO to issue a notice requesting information about pollution not only to an ‘occupier’ (as per the current Regulation 6.01(1)), but to any person the AEO reasonably suspects of having information about the environmental condition of, or pollution at or adjacent to, an airport.
- AEOs will also be able to ask persons for information concerning the environmental condition of, or pollution at or adjacent to, the airport – not just on the airport. This is useful for establishing whether pollution is migrating and in what direction.

- The occupier must give the information or documents to the ALC at the same time as they give the information or documents to the AEO.
- Section 6.01(4A) in the current Regulations will be deleted as, under the remade Regulations, the responsibility for passing information to ALC falls on the occupier and not the AEO.
- The provision on self-incrimination is retained in the new Part 5 of the Regulations, however with an additional note that a body corporate is not entitled to claim the privilege against self-incrimination.
- There is a new strict liability offence for failing to monitor pollution and noise levels in accordance with an ALC's Airport Environment Strategy, punishable by 50 penalty units.
- The requirements for what is recorded in an Environmental Site Register are changing slightly, to exclude, "details of the nature, date and place of any occurrence of environmental significance..." (current section 6.02(3) and instead include, both:
 - "details of the nature, date and place of any occurrence of environmental significance (detrimental or beneficial) relating to interference with sites of significance to Indigenous people..." and
 - details of the airport-lessee company's environmental management of the airport.
- A requirement to update the Environmental Site Register within 30 days of becoming aware of the matter. Failure to comply with the 30-day limit is a strict liability offence punishable by 50 penalty units.
- An AEO may require any information contained in an Environmental Site Register and it is an offence punishable by 50 penalty units not to comply with the written request within the time stipulated by the AEO.
- The provisions related to the Annual Environment Report have been restructured to reflect modern drafting practices, and include additions to the provision, which are:
 - to stipulate that the Report must also include details of the company's management, during the reporting period, of any ongoing pollution problems at the airport, and
 - to allow the Secretary to approve at their discretion an extra 60-days extension of time for an ALC to provide an annual report (180 days in total).
- The remade Regulations require an ALC to report to an AEO if monitoring discloses non-compliance with any type of general duty – whereas this reporting requirement is limited to pollution in the current regulations.
- The remade Regulations require an operator of an undertaking at an airport to report serious environmental incidents within 48 hours and stipulates the required content of the report. Failure to report is an offence of strict liability punishable by 50 penalty units.

- The remade Regulations require occupiers and operators of undertakings at airports to report certain suspected contraventions of Part 3 general duties. Failure to do so within 14 days is a strict liability offence punishable by 50 penalty units.
- An occupier must give the AEO access to an area of the airport or to a document the AEO requires that is under the control of the occupier. Failure to comply is a strict liability offence punishable by 50 penalty units.
- Changes to Part 5 will expand the scope for the AEO to direct the occupier of an area of an airport (or other relevant person) to investigate whether any type of pollution (not just soil) has occurred. The investigation would need to be conducted in a way that is consistent with the relevant national standard, guideline or framework, reviewed by an independent auditor and the results given to the AEO.
- The updated investigation procedures in Part 5 apply to pollution even where the pollutant is not listed in the Schedules (so they will be able to apply to PFAS and also other emerging pollutants).
- Failing to follow orders issued by the AEOs in their notices to investigate is an offence punishable by 50 penalty units.
- It is also an offence to fail to correct inaccurate or incomplete information provided to an AEO as soon as practicable.
- Current section 6.14 of the Regulations is revamped in the remade Regulations so that the voluntary remediation plan needs to be developed in consultation with an environmental auditor and must address stipulated matters.
- Current section 6.16 will be amended to clarify that any AEO may monitor the implementation of any remediation plan, not just the AEO that approved the plan.
- Division 4 of Part 5 addresses the powers of AEOs in relation to remediation work:
 - The provisions related to issuing an Environmental Remedial Order (ERO) remain largely the same, except that the words “environmental remedial order” are not used and instead the provisions simply refer to a notice issued by an AEO.
 - The AEO has more flexibility to decide to whom they will issue an ERO under the remade Regulations – they may issue the notice to whichever listed category of person they believe is the most appropriate in the circumstances (the polluter, a contributor to the pollution, the occupier of the polluted site, the lessor or licensor for the site or the ALC).
 - The section related to the power to enter and carry out remediation work has been updated with a note to remind users that under section 135 of the Act, the Commonwealth may recover reasonable expenses incurred in relation to cleaning up, remedying or rectifying pollution or environmental harm.
 - The remade Regulations stipulate that an AEO may only engage a person to undertake remedial work if satisfied they have the appropriate training, skills or experience.

Part 6 – Enforcement

This part has been updated to more closely align with provisions in the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they replace. This includes updates to:

- The provisions related to issuing an Environmental Protection Order (EPO). These remain largely the same, except that the words “environmental protection order” are not used and instead the provisions simply refer to a notice issued by an AEO, at section 76 of the remade Regulations.
 - The AEO has a new regulatory tool: it is now possible to issue an EPO if the general duties to preserve or to avoid offensive noise are contravened.
 - A key addition to the EPO provisions is to strengthen the test for the AEO to satisfy in order to issue an emergency EPO.

Part 7 – Infringement notices

- Offences for which infringement notice offences may be issued are stipulated in a table included under Section 64;
- The new Regulations explicitly provide for issuing a single infringement notice for continuing offences under Section 69(4); and
- The new Regulations better align with equivalent provisions in the *Regulatory Powers (Standard Provisions) Act 2014*, and, where possible, expectations set out in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, including updates in relation to:
 - matters to be included in an infringement notice;
 - withdrawal of an infringement notice; and
 - the effect of payment of an infringement notice.

Part 8 – Reconsideration and review of certain decisions

This part has been updated to more closely align with provisions in the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they replace. This includes updates to:

- clarify that the following decisions may be subject to internal review:

To grant, grant conditionally, or refuse to grant, an authorisation (section 43(1))

To grant, grant conditionally, or refuse to grant, an authorisation (section 47(2))

To vary or revoke, or refuse to vary or revoke, an authorisation (section 49(1))

To permit, permit conditionally, or refuse to permit, the transfer of an authorisation (section 52(2))

To require an operator of an undertaking to comply with the general duty to avoid polluting (section 20(1))

To require an operator of an undertaking to comply with the general duty to preserve (at section 23(1))

To require an operator of an undertaking to comply with the duty to prevent or minimise offensive noise (section 25(1))

To require the holder of an authorisation to comply with a condition of the authorisation (section 81)

- Section 93 provides that any internal review decision (listed above) may be subject to Administrative Review Tribunal review.
- The provisions relating to an internal review by the Secretary (sections 91 and 92) have been redrafted to reflect modern drafting practices to specify with more precision how a request for internal review should be made and specify that an affected party must apply for a review within 28 days of receiving notice of a decision. They also take away the requirement for the Secretary to obtain expert environmental advice and impose a 120-day deadline for the Secretary to make a decision.

Part 9 – Miscellaneous

This part has been updated to more closely align with provisions in the Act, and meet modern drafting standards, while generally maintaining the intent and effect of the regulations they replace. This includes:

- updating provisions enabling the Secretary to appoint an Airport Environment Officer (AEO), so that the Secretary must be satisfied that the person “has qualifications and experience suitable to enable the person to properly discharge the functions, powers, duties and responsibilities of an AEO.” The reference to properly discharging the functions, powers, duties and responsibilities of an AEO is a new change and imposes greater rigour on the Secretary’s decision as to which persons the Secretary may appoint as an AEO than equivalent provisions in the current Regulations.
- Section 96 – AEO to keep records, etc., has been redrafted to reflect modern drafting practices but retains substantially the same provisions, except for specifying that a person authorised to inspect an AEO’s records must be an Executive Level 1, or higher, APS employee of the department.
- The immunity clause for AEOs acting in good faith remains in place in the remade Regulations as does the requirement for AEOs not to disclose information received in the exercise of their duties to a person unless required by law, a written direction of the Secretary, or a court order. The wording of this provision has changed slightly to clarify the situations in which an AEO may share information.

New Part – Application, saving and transitional provisions

This part is included to account for the transition from Airports (Environment Protection) Regulations 1997 to Airports (Environment Protection) Regulations 2026. It provides that:

- There will be a 12-month period ending on 1 April 2027, during which the Airports (Environment Protection) Regulations 1997 remain in force in their entirety, including the Schedules.
- Any appointments, orders, decisions or approvals made under the 1997 Regulations such as instruments for appointment of AEOs, Environmental Remedial Orders, Authorisations, or approvals of remedial plans continue to have effect as if they were made or done for the purpose of the 2026 Regulations.
- Functions or duties may be exercised under this instrument for matters that occurred before 1 April 2026 (such as or considering a withdrawal request for an infringement notice issued before the instrument commenced); and
- Applications made under the Airports (Environment Protection) Regulations 1997 that have not yet been dealt with before new Regulations come into effect will be dealt with under the new Regulations.
- New applications may be made under the 2026 Regulations for activities or circumstances arising prior to commencement of the new Regulations and these applications may be dealt with under the new Regulations.

Schedules 1 to 4

- When the new regulations are made from 1 April 2026 the existing schedules will remain in place.
- In the longer term, we intend to replace the Schedules with a Ministerial Determination so that the investigation levels and pollutants may be updated with the approval of the Minister, rather than requiring consideration by the Governor-General in Federal Executive Council and tabling in Parliament. This will enable the Schedules to be updated quickly to reflect changing national standards and guidelines on pollution and to keep abreast of scientific developments. The substantive provision to give effect to this is at section 1.09 of the regulations.
- Schedules 1 to 4 of this Regulation will remain substantially unchanged, with the following exceptions that are designed to improve the alignment between relevant national standards and our approach to environmental management and regulation on airports, including:
 - Changing references from “accepted limits” to “investigation levels” throughout, to align our terminology with that of the frameworks under which we operate, such as the National Environment Protection Measure (Assessment of Site Contamination).
- There will also be some minor and consequential changes in terminology, cross referencing and formatting, including ensuring that formulae are provided in accessible text.