

EXPOSURE DRAFT



EXPOSURE DRAFT

Airports (Ownership) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2023

David Hurley
Governor-General

By His Excellency's Command

Catherine King [DRAFT ONLY—NOT FOR SIGNATURE]
Minister for Infrastructure, Transport, Regional Development and Local Government

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *Airports (Ownership) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2024.	1 April 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Airports Act 1996*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) airline;
- (b) airport-operator company;
- (c) unacceptable airline-ownership situation;
- (d) unacceptable cross-ownership situation;
- (e) unacceptable foreign-ownership situation.

- (1) In this instrument:

Act means the *Airports Act 1996*.

details of a person means:

- (a) if the person is an individual:

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Part 1 Preliminary

Section 6

- (i) the person's name; and
 - (ii) the address of the person's usual residence; and
 - (iii) the person's citizenship, or (if the person claims more than one citizenship) each citizenship that the person claims; or
- (b) if the person is a corporation:
- (i) the corporation's name; and
 - (ii) the place in which the corporation is incorporated; and
 - (iii) the address of the corporation's registered office or principal office; or
- (c) if the person is a foreign government body:
- (i) the name of the relevant foreign state (within the meaning of the *Foreign States Immunities Act 1985*); and
 - (ii) the address of the body's principal office.

entity has the meaning given by section 64A of the *Corporations Act 2001*.

investment fund means any of the following:

- (a) a fund of the kind generally known as a unit trust (except a unit trust of the kind generally known as a discretionary trust);
- (b) a statutory fund, within the meaning of the *Life Insurance Act 1995*, of a life insurance company;
- (c) a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (d) an exempt public sector superannuation scheme, within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

ownership matter has the meaning given by subsection 60(6) of the Act.

- (2) An expression used in this instrument and in the Schedule to the Act has the same meaning in this instrument as it has in the Schedule to the Act.

Note: The following are examples of expressions used in this instrument and in the Schedule to the Act:

- (a) associate;
- (b) direct control interest;
- (c) foreign government body;
- (d) foreign person;
- (e) interest in a share;
- (f) ownership provisions;
- (g) share;
- (h) stake.

6 Beneficial interest in the capital or income of investment fund

- (1) A reference in this instrument to a person who holds a beneficial interest in the capital, or income, of an investment fund includes a reference to a person who holds:
- (a) an interest of that kind jointly with another person; and
 - (b) an interest of that kind that is prospective because the person:
 - (i) has entered into a contract to purchase a beneficial interest; or
 - (ii) has a right, otherwise than by reason of holding an interest in the fund, to have a beneficial interest in the fund transferred to the person or to

- the person's order (whether exercisable presently or in the future, and whether or not subject to a condition); or
- (iii) has a right to acquire a beneficial interest under an option (whether exercisable presently or in the future, and whether or not subject to a condition).
- (2) Subsection (1) applies regardless of:
- (a) the remoteness of the interest; or
 - (b) the way in which the interest arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to a restraint or restriction.
- (3) For the purposes of subsection (1), an interest is not a beneficial interest if:
- (a) the interest is held solely as security under a moneylending agreement that has not ceased to have effect; and
 - (b) the ordinary business of the interest-holder includes the lending of money.
- (4) If:
- (a) a person holds a beneficial interest in an investment fund as a loan security; and
 - (b) the ordinary business of the person includes the lending of money; and
 - (c) the loan security is enforced; and
 - (d) as a result of the enforcement, the person becomes the holder of the interest; and
 - (e) the person holds the interest for a continuous period (*the holding period*) beginning at the time when the security was enforced;
- the person is taken not to hold the interest at all times during so much of the holding period as occurs during whichever of the following periods is applicable:
- (f) the period of 90 days beginning when the security was enforced;
 - (g) if the Minister, by written notice, allows a longer period—that longer period.

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Part 2 Record-keeping and giving information

Section 7

Part 2—Record-keeping and giving information

7 Purposes of this Part

For the purposes of subsection 60(1) of the Act, this Part makes provision for and in relation to requiring a person:

- (a) to keep and retain records that are relevant to an ownership matter; and
- (b) to give information to the Minister that is relevant to an ownership matter; and
- (c) to give information to an airport-operator company that is relevant to an ownership matter and that concerns the company.

8 Relationship with *Corporations Act 2001*

To avoid doubt, it is declared that the requirements of this Part are in addition to, and not in substitution for, the requirements of the *Corporations Act 2001*.

9 Airport-operator company to keep records

- (1) For the purposes of paragraph 60(1)(a) of the Act, an airport-operator company must keep a record of:
 - (a) any stake in the company that is held by a foreign person; and
 - (b) any stake in the company that is held by an airline; and
 - (c) if the company is a member of a pair of airport-operator companies:
 - (i) any stake in the company that is held by the other member of the pair; and
 - (ii) any stake in the company that is held by a person that holds a stake in the other member of the pair; and
 - (iii) any stake that the company holds in the other member of the pair.
- (2) The record must include, for each stake:
 - (a) in the case of a stake that is composed of a direct control interest held by only one person:
 - (i) the amount of the interest; and
 - (ii) the type of interest held; and
 - (iii) details of the person holding the interest; and
 - (b) in the case of a stake that is composed of direct control interests held by 2 or more persons—the information mentioned in subparagraphs (a)(i), (ii) and (iii) about each of those interests.

Note: A person's stake of a particular type in an airport-operator company includes both the person's direct control interest in the company and any direct control interests held by the person's associates (see clause 11 of the Schedule to the Act).

- (3) The record for a stake must:
 - (a) be made as soon as reasonably practicable after the stake is acquired; and
 - (b) be updated as soon as reasonably practicable after any increase or decrease in the stake; and

- (c) be retained:
 - (i) until the end of the financial year after the financial year in which the record is made; or
 - (ii) if the record is updated as referred to in paragraph (b)—the end of the financial year after the financial year in which the record was most recently so updated.
- (4) The records required to be kept under this section must be indexed in a way that allows the aggregate of stakes of a particular type, or held by a particular class of person, to be readily worked out.

Note: An airport-operator company may commit an offence if it contravenes the requirements in this section to keep records (see subsection 60(4) of the Act).

10 Minister may require information

- (1) For the purposes of paragraph 60(1)(b) of the Act, the Minister may, by written notice given to an airport-operator company, require the company to give the Minister information specified in the notice about:
 - (a) an ownership matter relating to the company; or
 - (b) the location of the place where the central management and control of the company is ordinarily exercised; or
 - (c) whether a director of the company is an Australian citizen or a foreign citizen ordinarily resident in Australia.
- (2) The notice may require the information to be given in a particular form or manner and within a specified period.
- (3) Without limiting subsection (2), the notice may require the information to be given in a written statement that complies with one or more of the following requirements:
 - (a) a requirement that the statement is signed by a director of the company;
 - (b) a requirement that the statement is verified by statutory declaration by a director of the company;
 - (c) a requirement that the statement is approved by the directors of the company by resolution;
 - (d) a requirement that the statement is accompanied by a copy of the resolution mentioned in paragraph (c).
- (4) If a period is specified in the notice as the period within which the information must be given to the Minister, the period must be at least 14 days.
- (5) If no period within which the information must be given to the Minister is specified in the notice, the information must be given to the Minister within 14 days of the date of the notice.
- (6) An airport-operator company must comply with a notice given to the company under subsection (1).

Note: An airport-operator company may commit an offence if it does not give information to the Minister as required by this section (see subsection 60(4) of the Act).

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Part 2 Record-keeping and giving information

Section 11

11 Information about unacceptable foreign-ownership situations etc.

- (1) For the purposes of paragraph 60(1)(b) of the Act, an airport-operator company must give the Minister written notice as soon as reasonably practicable after it has reason to believe that:
 - (a) one or more of the following situations exist in relation to the company:
 - (i) an unacceptable foreign-ownership situation;
 - (ii) an unacceptable airline-ownership situation;
 - (iii) an unacceptable cross-ownership situation; or
 - (b) the central management and control of the company is no longer being ordinarily exercised at a place in Australia; or
 - (c) a majority of the company's directors are neither Australian citizens nor foreign citizens ordinarily resident in Australia.
- (2) The notice must include the following information:
 - (a) the circumstance mentioned in paragraph (1)(a), (b) or (c) that the airport-operator company believes exists;
 - (b) the reason for the belief;
 - (c) the steps taken, or intended to be taken, by the airport-operator company to determine whether, in fact, the circumstance does exist;
 - (d) the steps intended to be taken by the company to remedy the circumstance, if that circumstance does exist.

Note: An airport-operator company may commit an offence if it does not give information to the Minister as required by this section (see subsection 60(4) of the Act).

12 Person must give information relevant to ownership matter to airport-operator company

- (1) For the purposes of paragraph 60(1)(c) of the Act, a person must give information to an airport-operator company if:
 - (a) the information is relevant to an ownership matter that concerns the company; and
 - (b) the company has, in writing, requested the person to give the information; and
 - (c) the request specifies the kind of information the person is to give.
- (2) The request must specify a period of at least 14 days within which the information must be given to the airport-operator company.
- (3) The information must be verified by statutory declaration.

Note: A person may commit an offence if the person does not give information to an airport-operator company as required by this section (see subsection 60(4) of the Act).

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Interests in shares that are to be disregarded **Part 3**
Purposes of this Part **Division 1**

Section 13

Part 3—Interests in shares that are to be disregarded

Division 1—Purposes of this Part

13 Purposes of this Part

For the purposes of paragraph 9(1)(c) of the Schedule to the Act, this Part sets out:

- (a) prescribed kinds of interests in shares; and
- (b) prescribed persons who hold those kinds of interests.

Note: Under paragraph 9(1)(c) of the Schedule to the Act, an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed, must be disregarded for the purposes of the ownership provisions.

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Part 3 Interests in shares that are to be disregarded

Division 2 Foreign ownership

Section 14

Division 2—Foreign ownership

14 Double holding companies

- (1) This section applies if:
 - (a) a foreign person has a stake in a company (*holding company 2*); and
 - (b) holding company 2 has 100% of all types of direct control interests in another company (*holding company 1*); and
 - (c) holding company 1 has 100% of all types of direct control interests in an airport-operator company; and
 - (d) holding company 1 and holding company 2 are both incorporated in Australia, and both have a share capital; and
 - (e) holding company 2 is operated solely for the purpose of holding direct control interests in holding company 1 and at least one airport-operator company; and
 - (f) holding company 1 is operated solely for the purpose of holding direct control interests in one or more airport-operator companies.

Prescribed interest

- (2) An interest in a share that results in the foreign person having a stake in holding company 2:
 - (a) is an interest of a prescribed kind only for the purpose of determining whether:
 - (i) holding company 1, holding company 2 or the airport-operator company mentioned in paragraph (1)(c) is a foreign person; or
 - (ii) any of those companies is an associate of a foreign person; and
 - (b) is to be disregarded only after it has been counted for the purposes of subclause 12(5) of the Schedule to the Act to calculate the stake that the foreign person holds in the airport-operator company.

Prescribed person

- (3) The foreign person mentioned in paragraph (1)(a) is a prescribed person.

15 Indirect interest-holders

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if the interest exists solely because the interest-holder is a shareholder in a company that is none of the following:
 - (a) a foreign person within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*;
 - (b) an airport lessee company;
 - (c) a designated holding company mentioned in clause 14 of the Schedule to the Act;
 - (d) a holding company to which section 14 of this instrument applies.

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Interests in shares that are to be disregarded **Part 3**
Foreign ownership **Division 2**

Section 16

Prescribed person

- (2) The interest-holder mentioned in subsection (1) is a prescribed person.

16 Australian associates of a foreign person—no action in concert etc.

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if, in connection with that interest or any interest in an airport-operator company:
- (a) the interest-holder, although being an associate of a foreign person:
 - (i) is not directly or indirectly controlled by the foreign person; and
 - (ii) is not accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the foreign person; and
 - (iii) is not an associate, within the meaning of subclause 5(2) of the Schedule to the Act, of the foreign person; and
 - (b) the foreign person does not have any direct control interest in the share.

Prescribed person

- (2) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder is not a foreign person.

17 Australian associates of a foreign person—avoidance of double counting

- (1) This section applies to an interest in a share if the interest-holder, although an associate of one or more persons in a group to which subclause 11(3) of the Schedule to the Act applies, is not a person in the group.

Prescribed interest

- (2) The interest is an interest of a prescribed kind if, after being counted once for the ownership provisions in determining the total of the stakes of a particular type that the group holds in an airport-operator company, the interest would, except for the operation of this section, be counted again for that purpose.

Prescribed person

- (3) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder is not a foreign person.

18 Foreign-owned investment funds

Application for investment fund to be declared a substantially Australian investment fund

- (1) A trustee or manager of an investment fund may, in writing, apply to the Minister for a declaration that the investment fund is a substantially Australian investment fund.

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Part 3 Interests in shares that are to be disregarded

Division 2 Foreign ownership

Section 18

Eligibility for declaration

- (2) An investment fund is eligible to be declared a substantially Australian investment fund if the investment fund is a fund in which a beneficial interest in less than 40% of the capital, and 40% of the income, is held by persons who are foreign persons.
- (3) For the purposes of subsection (2), a person is not taken to be a foreign person if:
 - (a) the person holds a beneficial interest in the investment fund; and
 - (b) the person is the trustee of another investment fund; and
 - (c) the beneficial interest exists solely because the person is the trustee of the other investment fund; and
 - (d) the other investment fund is a fund in which a beneficial interest in less than 40% of the capital, and 40% of the income, is held by persons who are foreign persons.

Minister to decide if investment fund to be declared a substantially Australian investment fund

- (4) On application under subsection (1), the Minister must:
 - (a) if reasonably satisfied that the investment fund is eligible to be declared a substantially Australian investment fund:
 - (i) make the declaration; and
 - (ii) within 7 days of making the declaration, give a copy of the declaration to the applicant and publish a notice of the declaration on the Department's website; or
 - (b) if not so satisfied—refuse to make the declaration.

Notice of refusal decision to be given

- (5) The Minister must, within 7 days of deciding to refuse to make a declaration, give the applicant written notice stating:
 - (a) the reasons for the decision; and
 - (b) the applicant's right to have the decision reviewed by the Administrative Appeals Tribunal.

Note: See section 28 for review of decisions.

Prescribed interest and prescribed person

- (6) If a declaration by the Minister that an investment fund is a substantially Australian investment fund is in force:
 - (a) an interest in a share is an interest of a prescribed kind if the interest exists solely as a result of an action by the interest-holder in the interest-holder's capacity as trustee or manager of the fund; and
 - (b) the interest-holder is a prescribed person.

Minister to be advised of adverse facts or circumstances

- (7) If:
 - (a) a declaration by the Minister that an investment fund is a substantially Australian investment fund is in force; and

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Interests in shares that are to be disregarded **Part 3**
Foreign ownership **Division 2**

Section 18

(b) the interest-holder is, or becomes, aware of the existence of a fact or circumstance that, had it existed and been known to the Minister at the time the declaration was made, is likely to have resulted in the Minister refusing to make the declaration;

the interest-holder must give the Minister written details of the fact or circumstance, before the end of 7 days after becoming aware of the fact or circumstance.

Minister may require information about continuing eligibility of investment fund

- (8) The Minister may, by written notice given to the interest-holder, require the interest-holder to give the Minister, within any period and in the manner specified in the notice, specified information about the eligibility of the investment fund to continue to be declared a substantially Australian investment fund.
- (9) If a period is specified in the notice as the period within which the information must be given to the Minister, the period must be at least 14 days.
- (10) If no period within which the information must be given to the Minister is specified in the notice, the information must be given to the Minister within 14 days of the date of the notice.

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Part 3 Interests in shares that are to be disregarded

Division 3 Agents

Section 19

Division 3—Agents

19 Agents

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if the interest exists solely as a result of an action taken by the interest-holder in the interest-holder's capacity as depositary or custodian for, or nominee of, another person.

Prescribed person

- (2) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder does not:
 - (a) hold a beneficial interest in the share; or
 - (b) have authority, by proxy or any other arrangement with the holder of the beneficial interest, to exercise in a discretionary way the voting rights attaching to the share.

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Interests in shares that are to be disregarded **Part 3**

Airline ownership **Division 4**

Section 20

Division 4—Airline ownership

20 Investment fund whose trustee or manager is an associate of an airline

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if:
 - (a) the interest is an interest in a share in an airline; and
 - (b) the interest-holder, in the interest-holder's capacity as the trustee or manager of an investment fund, is an associate of the airline; and
 - (c) the interest exists solely as a result of an action by the interest-holder in the interest-holder's capacity as trustee or manager of an investment fund.

Prescribed person

- (2) The interest-holder mentioned in subsection (1) is a prescribed person if:
 - (a) the Minister declares the investment fund, of which the interest-holder is trustee or manager, to be a distanced investment fund; and
 - (b) the declaration is in force.

Application for investment fund to be declared a distanced investment fund

- (3) The interest-holder may, in writing, apply to the Minister for a declaration that an investment fund is a distanced investment fund.

Eligibility for investment fund to be declared

- (4) An investment fund is eligible to be declared a distanced investment fund if:
 - (a) neither the trustee nor the manager of the investment fund is an associate (within the meaning of paragraph 5(1)(j) of the Schedule to the Act) of the airline; and
 - (b) the investment fund is a fund in which a beneficial interest in less than 40% of the capital, and 40% of the income, is held by persons who are foreign persons.

Minister to decide if investment fund to be declared a distanced investment fund

- (5) The Minister must:
 - (a) if reasonably satisfied that the investment fund is eligible to be declared a distanced investment fund:
 - (i) make the declaration; and
 - (ii) within 7 days of making the declaration, give a copy of the declaration to the interest-holder and publish a notice of the declaration on the Department's website; or
 - (b) if not so satisfied—refuse to make the declaration.

Reasons for refusal decision to be given

- (6) The Minister must, within 7 days of deciding to refuse to make a declaration, give the interest-holder written notice stating:

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Part 3 Interests in shares that are to be disregarded

Division 4 Airline ownership

Section 21

- (a) the reasons for the decision; and
- (b) the interest-holder's right to have the decision reviewed by the Administrative Appeals Tribunal.

Note: See section 28 for review of decisions.

Minister to be advised of adverse facts or circumstances

- (7) If:
 - (a) a declaration by the Minister that an investment fund is a distanced investment fund is in force; and
 - (b) the interest-holder is, or becomes, aware of the existence of a fact or circumstance that, had it existed and been known to the Minister at the time the declaration was made, is likely to have resulted in the Minister refusing to make the declaration;

the interest-holder must give the Minister written details of the fact or circumstance before the end of 7 days after becoming aware of it.

Minister may require information about continuing eligibility of investment fund

- (8) The Minister may, by written notice given to the interest-holder, require the interest-holder to give the Minister, within any period and in the manner specified in the notice, specified information about the eligibility of the investment fund to continue to be declared a distanced investment fund.
- (9) If a period is specified in the notice as the period within which the information must be given to the Minister, the period must be at least 14 days.
- (10) If no period within which the information must be given to the Minister is specified in the notice, the information must be given to the Minister within 14 days of the date of the notice.

21 Airline holding stake in certain airport-operator companies

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if the result of the interest-holder holding the interest is that an airline has a stake in the airport-operator company for:
 - (a) Archerfield Airport; or
 - (b) Essendon Fields Airport; or
 - (c) Jandakot Airport; or
 - (d) Moorabbin Airport; or
 - (e) Parafield Airport.

Note: The effect of disregarding those interests is that the limitations on ownership by airlines do not apply to the 5 airports mentioned.

Prescribed person

- (2) The interest-holder mentioned in subsection (1) is a prescribed person.

22 Irrelevant associates—airline ownership

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if, after being counted to determine the direct control interests held by the interest-holder (the **primary interest-holder**) in an airport-operator company, the interest would, except for the operation of this section, also be counted to determine the size and type of stake held by an irrelevant associate.

Prescribed person

- (2) The primary interest-holder is a prescribed person.

Irrelevant associate

- (3) For the purposes of subsection (1), a person is an **irrelevant associate** in relation to an interest in a share (a **relevant share**) held by the primary interest-holder that results in the primary interest-holder having a direct control interest in an airport-operator company if:
 - (a) the person is not a related entity of the primary interest-holder; and
 - (b) the person does not hold any direct control interest in the airport-operator company arising from any relevant shares; and
 - (c) the person is not an associate of the primary interest-holder because of paragraph 5(1)(i) or (j), or subclause 5(2), of the Schedule to the Act.

Related entities

- (4) For the purposes of subsection (3), an entity (the **first entity**) is a **related entity** of another entity (the **second entity**) if:
 - (a) the first entity controls the second entity; or
 - (b) the second entity controls the first entity; or
 - (c) the first entity and the second entity are controlled by the same person.
- (5) For the purposes of subsection (4), a person controls an entity if:
 - (a) for an entity that is a company—the person:
 - (i) controls the entity within the meaning of section 50AA of the *Corporations Act 2001*; or
 - (ii) has a direct control interest of at least 15% in the company; or
 - (b) in any other case—the person controls the entity, within the meaning of section 50AA of the *Corporations Act 2001*.

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Part 3 Interests in shares that are to be disregarded

Division 5 Cross-ownership

Section 23

Division 5—Cross-ownership

23 Irrelevant associates—cross-ownership

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if, after being counted to determine the direct control interests held by an interest-holder (the **primary interest-holder**) in an airport-operator company, the interest would, except for the operation of this section, also be counted to determine the size and type of stake held by an irrelevant associate.

Prescribed person

- (2) The primary interest-holder is a prescribed person.

Irrelevant associates

- (3) For the purposes of subsection (1), a person is an **irrelevant associate** in relation to an interest in a share (a **relevant share**) held by the primary interest-holder that results in the primary interest-holder having a direct control interest in an airport-operator company if:
 - (a) the person is not a related entity of the primary interest-holder; and
 - (b) the person does not hold any direct control interest in the airport-operator company arising from any relevant shares; and
 - (c) the person is not an associate of the primary interest-holder because of paragraph 5(1)(i) or (j), or subclause 5(2), of the Schedule to the Act; and
 - (d) neither the primary interest-holder nor the person is an airport entity.

Airport entities

- (4) For the purposes of paragraph (3)(d), an **airport entity** is a person who:
 - (a) owns, leases, controls or operates an airport; or
 - (b) is a related entity of a person mentioned in paragraph (a).

Related entities

- (5) For the purposes of subsections (3) and (4), an entity (the **first entity**) is a **related entity** of another entity (the **second entity**) if:
 - (a) the first entity controls the second entity; or
 - (b) the second entity controls the first entity; or
 - (c) both the first entity and the second entity are controlled by the same person.
- (6) For the purposes of subsection (5), a person controls an entity if:
 - (a) in the case of an entity that is a company, the person:
 - (i) controls the entity within the meaning of section 50AA of the *Corporations Act 2001*; or
 - (ii) has a relevant direct control interest in the company; or

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- (b) in any other case—the person controls the entity, within the meaning of section 50AA of the *Corporations Act 2001*.

Relevant direct control interest

- (7) For the purposes of this section, a **relevant direct control interest** is:
- (a) in determining whether the primary interest-holder and the person are related entities for the purposes of paragraph (3)(a)—at least 15%; or
 - (b) in determining whether a person is a related entity of a person mentioned in paragraph (4)(a)—at least 50%.

24 Interest in specified airports

Prescribed interest

- (1) An interest in a share is an interest of a prescribed kind if the interest is an interest in a share held by the interest-holder in an airport-operator company for:
- (a) Brisbane Airport; or
 - (b) Melbourne (Tullamarine) Airport; or
 - (c) Perth Airport.

Note: See subsection (8) for the limited purpose for which a prescribed interest may be disregarded.

Prescribed person

- (2) The interest-holder mentioned in subsection (1) is a prescribed person if:
- (a) the Minister declares under subsection (4) that the interest-holder satisfies the conditions set out in subsection (5); and
 - (b) the interest-holder, or an associate of the interest-holder, acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport.

Application for a declaration that conditions are satisfied

- (3) The interest-holder, or an associate of the interest-holder, may apply to the Minister, in writing, for a declaration under subsection (4) that the interest-holder satisfies the conditions set out in subsection (5).

Minister to decide if conditions are satisfied

- (4) On application under subsection (3), the Minister must:
- (a) if reasonably satisfied that the interest-holder has made the application in good faith and satisfies the conditions in subsection (5):
 - (i) make the declaration; and
 - (ii) within 7 days of making the declaration give a copy of the declaration to the interest-holder and publish a notice of the declaration on the Department's website; or
 - (b) if not so satisfied—refuse to make the declaration.

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Conditions to be satisfied before declaration is made

- (5) For the purposes of subsections (2) to (4), the conditions are that the interest-holder has, before the Minister makes the declaration:
- (a) given a written undertaking to the Minister:
 - (i) to dispose of the prescribed interest; or
 - (ii) to ensure that the interest-holder's stake in an airport-operator company mentioned in subsection (1) is reduced, so that an unacceptable cross-ownership situation does not (and would not, in the absence of this section) exist in relation to a pair of airport-operator companies and in relation to the interest-holder; within 12 months after the interest-holder acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport; and
 - (b) given the Minister, in writing, a firm strategy and timetable for complying with the undertaking under paragraph (a).

Report to be provided if requested

- (6) If a declaration by the Minister under subsection (4) is in force in relation to an interest-holder, the interest-holder must, if requested by the Minister in writing, give the Minister a written report on the progress that the interest-holder has made towards:
- (a) disposing of the prescribed interest; or
 - (b) ensuring that interest-holder's stake in an airport-operator company mentioned in subsection (1) is reduced;
- in accordance with the undertaking given under paragraph (5)(a).

Interest-holder must notify Minister if ceases to be willing or able to comply with conditions

- (7) If a declaration by the Minister under subsection (4) is in force in relation to an interest-holder, and the interest-holder ceases to be willing or able to comply with the undertaking given under paragraph (5)(a), the interest-holder must advise the Minister in writing of that fact within 7 days after ceasing to be willing or able to comply.

Prescribed interest to be disregarded for limited purpose

- (8) Despite subsection (1), a prescribed interest held by the interest-holder, or by an associate of the interest-holder, is disregarded only for the purposes of determining whether an unacceptable cross-ownership situation is created by the acquisition of a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport in relation to which the undertaking under paragraph (5)(a) is given.

When declaration ceases to have effect

- (9) A declaration under this section ceases to have effect at the end of 12 months after the interest-holder acquires a stake in the airport-operator company for Sydney (Kingsford-Smith) Airport, unless it is revoked earlier.

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Notice of refusal decision to be given

- (10) The Minister must, within 7 days of deciding to refuse to make a declaration, give the applicant written notice stating:
- (a) the reasons for the decision; and
 - (b) the interest-holder's right to have the decision reviewed by the Administrative Appeals Tribunal.

Note: See section 28 for review of decisions.

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Part 4 Revocation of declarations

Section 25

Part 4—Revocation of declarations

25 Purposes of this Part

This Part sets out the circumstances in which a declaration made under section 18, 20 or 24 may be revoked.

26 Revocation of declarations

Revocation of declarations made under subsection 18(4)

- (1) The Minister may revoke a declaration made under subsection 18(4) if the Minister reasonably believes that:
 - (a) a fact or circumstance exists that, had it existed and been known to the Minister at the time the declaration was made, is likely to have resulted in the Minister refusing to make the declaration; or
 - (b) the holder of the declaration has failed to give the Minister:
 - (i) details of facts and circumstances in accordance with subsection 18(7); or
 - (ii) information in accordance with a notice under subsection 18(8).

Revocation of declarations made under subsection 20(5)

- (2) The Minister may revoke a declaration made under subsection 20(5) if the Minister reasonably believes that:
 - (a) a fact or circumstance exists that, had it existed and been known to the Minister at the time the declaration was made, is likely to have resulted in the Minister refusing to make the declaration; or
 - (b) the holder of the declaration has failed to give the Minister:
 - (i) details of facts and circumstances in accordance with subsection 20(7); or
 - (ii) information in accordance with a notice under subsection 20(8).

Revocation of declarations made under subsection 24(4)

- (3) The Minister may revoke a declaration made under subsection 24(4) if the Minister reasonably believes that:
 - (a) a fact or circumstance exists that, had it existed and been known to the Minister at the time the declaration was made, is likely to have resulted in the Minister refusing to make the declaration; or
 - (b) the holder of the declaration has failed:
 - (i) to comply with a request from the Minister for a report under subsection 24(6); or
 - (ii) to advise the Minister in accordance with subsection 24(7).

Reasons etc. for revocation

- (4) Before the end of 7 days after a declaration is revoked, the Minister must give the holder of the declaration written notice stating:

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- (a) the reasons for the revocation; and
- (b) the holder's right to have the decision reviewed by the Administrative Appeals Tribunal.

Note: See section 28 for review of decisions.

When revocation takes effect

- (5) A revocation takes effect 30 days after notification under subsection (4).

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Part 5 Review

Section 27

Part 5—Review

27 Purposes of this Part

This Part provides for review by the Administrative Appeals Tribunal of certain decisions under this instrument.

28 Review of decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister, under subsection 18(4), 20(5) or 24(4), to refuse to make a declaration.
- (2) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister, under subsection 26(1), (2) or (3), to revoke a declaration.

Part 6—Application, saving and transitional provisions

29 Definitions

In this Part:

old Airports regulations means the *Airports Regulations 1997*, as in force immediately before the commencement of this section.

old Ownership regulations means the *Airports (Ownership—Interests in Shares) Regulations 1996*, as in force immediately before the commencement of this section.

30 Things done under the *old Ownership regulations* and the *old Airports regulations*

- (1) If:
 - (a) a thing was done for a particular purpose under the old Ownership regulations or the old Airports regulations; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a direction, notice, application, authorisation or other instrument being given or made.

31 Declarations, notices and requests

Foreign-owned investment funds

- (1) A declaration:
 - (a) made under regulation 2.07 of the old Ownership regulations; and
 - (b) in force immediately before the commencement of this section;has effect, from that commencement, as if it were a declaration made under section 18 of this instrument.

Investment fund whose trustee or manager is an associate of an airline

- (2) A declaration:
 - (a) made under regulation 4.03 of the old Ownership regulations; and
 - (b) in force immediately before the commencement of this section;has effect, from that commencement, as if it were a declaration made under section 20 of this instrument.

Specified airports

- (3) A declaration:
 - (a) made under regulation 5.04 of the old Ownership regulations; and

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Part 6 Application, saving and transitional provisions

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(b) in force immediately before the commencement of this section; has effect, from that commencement, as if it were a declaration made under section 24 of this instrument.

Notices requiring information

- (4) A notice:
- (a) given under regulation 3.24 of the old Airports regulations; and
 - (b) in force immediately before the commencement of this section;
- has effect, from that commencement, as if it were a notice given under section 10 of this instrument.

Requests for information

- (5) A request:
- (a) given under regulation 3.26A of the old Airports regulations; and
 - (b) in force immediately before the commencement of this section;
- has effect, from that commencement, as if it were a request given under section 12 of this instrument.

Schedule 1—Repeals

Airports (Ownership—Interests in Shares) Regulations 1996

1 The whole of the instrument

Repeal the instrument.