



AUSTRALIAN
AIRPORTS
ASSOCIATION

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Director, Airport Reform, Sunsetting and IFAM Section
Airports Branch
Department of Infrastructure, Transport, Communications and Regional Development
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To whom it may concern,

**Response to Consultation Regulatory Impact Statement:
Sunsetting Airports Regulations Stage 1a: Cutting Red Tape**

On behalf of its members, the Australian Airports Association (AAA) welcomes the opportunity to comment on the Department of Infrastructure, Transport, Communications and Regional Development's (the Department) Consultation Regulatory Impact Statement (CRIS) for Stage 1a of Sunsetting Airport Regulations.

The AAA's submission supports those provided by individual airport operators, such as Adelaide Airports Limited, Brisbane Airport Corporation and Sydney Metro Airports. It also contains advice provided by other Federally-leased airports.

The AAA notes that the CRIS relates to subleases and licensing on Federally-leased airports, which fall under the *Airports Regulations 1997* (Airport Regulations) and those relating to financial structures and reporting, which fall under the *Airports (Ownership – Interest in Shares) Regulations 1996* (AOISRs).

The AAA supports the proposed Option 3 in the CRIS, to "*Remake the Airport Regulations and the AOISRs with changes*". The AAA's view is that, while scope for some improvement exists, the Airport Regulations and AOISRs are currently implemented and administered in a generally fit-for-purpose manner. There is potential for minor changes to modernise and improve the regulatory framework, but in principle the Commonwealth should maintain its regulatory oversight at a level similar to current standards.

The relevant changes and the rationale influencing the AAA's position are given below, along with addressing specific issues raised in the CRIS.

Subleases and licensing

As summarised in the CRIS, subleases and licensing regulations in Part 2 of the Airports Regulations allow businesses to rent space and operate at the airport. Under the current regulatory framework, subleases and licenses are generally prohibited (except for Commonwealth authorities, constitutional corporations and banks) unless the Secretary of the Department makes a declaration about the sublease or license (Regulations 2.04, 2.05, 2.12 and 2.1).

The CRIS proposes to amend Part 2 of the Airport Regulations to permit declaration by exception, while maintaining a requirement for airports to maintain a register of subleases and licenses. As part of this proposal, the Department would have visibility of the register and the ability to intervene if required.

The AAA does not agree with this proposal on the following grounds:

- The requirement for obtaining a Secretary's declaration in connection with an application for a sublease or license be removed to reduce the regulatory burden on airports and the Department. Given almost all applications for prohibited licences and subleases are approved without amendment, removing the declaration process will free up the Department and airports to focus on other areas requiring regulatory oversight.
- Short-term (less than two years) subleases to State or Territory governments/agencies should be removed from the prohibited category, particularly if permitted uses include enforcement of specific state/territory laws and regulations such as public health orders (e.g. COVID-19) or law enforcement by state/territory police. This is recommended on the proviso that enforcement of state and territory laws are not inconsistent with the *Airports Act 1996* (the Act) and Airports Regulations, and the subletting parties undertake to comply with Commonwealth laws.

Ownership

The CRIS proposes to change the frequency of Airport Lessee Companies (ALCs) reporting on their ownership structure from an annual basis to up to every three years unless there is a change of ownership over a certain nature or threshold. It is also proposed to simplify language and consolidate the AOISRs with ownership provisions in Part 3 of the Airports Regulations.

In general, the AAA supports these proposals for the following reasons:

- If adopted, they will provide a net benefit to both ALCs and the Department from a reduction in regulatory complexity and obligations for positive reporting, leading to reduced administration and compliance costs.
- Adopting these proposals will also provide clarity for both the Department and ALCs by keeping all regulations relating to airport ownership in a single place.

Ideally, ALCs would prefer regulation to compel reporting only when changes of airport ownership occur, similar to Australian Securities and Investments Commission's reporting requirements on changes to company shareholding and ownership structures, which it administers under the *Corporations Act 2001*.

As part of this review, the Department should also consider potential interactions between the requirements of ALCs to report under the AOISRs and the reporting requirements embedded in other Australian Government legislation. Of particular concern is that some ALCs will be declared as 'Critical Infrastructure Assets' (CI Assets) by the Home Affairs Minister under s. 51 of the *Security of Critical Infrastructure Act 2018* (SOCI Act). The ALCs declared as CI Assets under the SOCI Act will potentially be subject to parallel requirements when reporting changes of ownership and control, which are 'notifiable events' under s. 6, 8a, 8b and 8c of the SOCI Act.

The AAA strongly recommends the Department ensures revised AOISR reporting requirements will be accepted by Home Affairs as valid 'notifiable event' reporting by ALCs declared as CI Assets in s. 51 of the SOCI Act.

In terms of keeping airport ownership as competitive as possible, the AAA supports the Australian Government's continued support of the objectives in Part 1 of the Act, which aims to (among other things):

- ensure majority Australian ownership of airports;
- to limit the ownership of certain airports by airlines, and;
- ensure diversity of ownership and control of certain major airports;

Continuing to ensure these aims in the Act (and the Regulations) keep Australia's national airport infrastructure as part of its sovereign aviation network should be a priority of Government. As a result, the AAA's view is the existing rules remain fit for purpose.

Finally, the AAA holds the view that as part of the regulatory reform process, ALCs should have the opportunity to take up the option of extending their head lease to the full 99 year term as soon as possible. With the initial ALC leases having between 25 and 30 years to run, non-aeronautical on-airport development plans are becoming increasingly constrained.

Property and capital markets require certainty around the rights of ALCs to extend their leases with the Commonwealth when considering whether to invest on airport land, particularly in commercial and industrial developments, which have payback periods of 30 years or more. These developments allow ALCs to diversify their revenue streams, increasing their economic resilience to shock events such as the COVID-19 pandemic.

An early lease renewal option would be at no cost to the Commonwealth and would provide certainty for these projects to progress and provide an important component of a construction and infrastructure led-recovery from the pandemic.

General comments

An initial reading of the CRIS indicates there is no urgent driver for regulatory reform, beyond the requirement under the *Legislation Act 2003* for sunseting several instruments in the *Airports Act 1996* (the Act) by 2024 and the Government's broader de-regulation agenda. Similarly, the intent of the Department in its key aviation policy document, the *Aviation Recovery Framework* (the Framework) does not present a compelling case for regulatory reform; indeed, some proposed measures in the section dealing with 'enhanced regulation for major airports' would indicate greater oversight of major airports by the Department, along with increased administrative burden and red tape.¹

If you require further information, please contact Mr. Scott Martin, Director of Policy and Research on [REDACTED] or at [REDACTED].

Yours sincerely



James Goodwin
Chief Executive

¹ DITCRD (2021), *Aviation Recovery Framework – Flying to Recovery*, p. 17.