

25 February 2022

Attention: Director, Airport Reform, Sunsetting and IFAM Section

Airports Branch
GPO Box 594
CANBERRA ACT 2601

By email: aviationreform@infrastructure.gov.au

Dear Sir/Madam

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

We refer to the Sunsetting Airports Regulations Stage 1a: Cutting Red Tape Consultation Regulatory Impact Statement dated December 2021 (**RIS**). Thank you for providing us the opportunity to provide feedback throughout this process.

We note that the RIS relates to subleases and licensing on 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**).

Adelaide and Parafield Airports (together **AAL**) are supportive of “Option 3: Remake the Airport Regulations and the AOISRs with changes” as described in the RIS.

AAL is of the view that, while there is a scope for some improvement, the Airport Regulations have been implemented and administered in a manner that is generally fit-for-purpose. There are, in AAL’s view, some minor changes that would assist in modernising and improving the regulatory framework, but in principle the Commonwealth should maintain its regulatory oversight at a level similar to the current standards. The relevant changes and the reasons which influence AAL’s position are outlined below.

Option 3: Remake the Airport Regulations and AOISRs with changes

A. Subleases and licensing

We note that RIS includes a proposal to amend Part 2 of the Airport Regulations to permit declaration by exception rather than as the rule, while maintaining a requirement for airports to maintain a register of subleases and licences. As part of this proposal, the Department of Infrastructure, Transport, Regional Development and Communications (**Department**) would have visibility of the register and the ability to intervene if required.

1. AAL’s position

AAL does not agree with the proposed amendment. AAL’s position is that:

- 1.1 the existing regulatory framework under Part 2 of the Airport Regulations, which requires a Secretary’s Declaration to be applied for and issued by the Department with respect to subleases that are prohibited, should be retained, subject to the changes as outlined below;



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- 1.2 the requirement for a Secretary's Declaration to be obtained in connection with grant of licences that are prohibited should be removed in its entirety in order to reduce regulatory burden and remove the level of scrutiny that is unnecessary, and often commercially not practical, due to short term nature of licences and the fact that vast majority of applications with respect to prohibited licences are approved without amendments; and
- 1.3 subleases to State or Territory government or authority should be excluded from the category of prohibited subleases, if such sublease is for a short term (for example, less than 2 years) and the permitted use under the sublease includes enforcement of specific state-based laws (for example, with respect to COVID-19 or general law enforcement by state authority such as the police) provided that there is no obligation or restriction imposed by a law of the State or Territory that is inconsistent with the *Airports Act 1996*, the *Airports Regulations* or the proposed sublease and that the parties to such sublease undertake to comply with the law of the Commonwealth.

2. Further Changes

Further, AAL proposes that the *Airports Regulations* are amended to provide clarification as to the circumstances, if any, when a new Secretary's Declaration must be obtained with respect to a previously approved sublease to a trustee of a trust. For example, changes to the trust structure or the identity of beneficiaries should be expressly excluded as not requiring further Secretary's Declaration, if such Declaration has been previously issued with respect to a sublease to a trustee of a trust.

3. Reasons for AAL's position

a. Need for regulatory oversight

The main rationale for AAL's position outlined in this letter is AAL's recognition that the current level of regulatory oversight under Part 2 is appropriate and fit-for-purpose with respect to majority of subleases, and especially the subleases which are entered into for long term (such as 20 years or more). The Commonwealth is well positioned to undertake analysis of current trends and step in, if necessary, prior to AAL being committed to a transaction. The proposed register of subleases will remove some level of scrutiny and will not prevent transactions from occurring. This would have far-reaching consequences in case of long-term subleases. If issues are identified by the Commonwealth through a register, some of the issues may be unresolvable due to the transaction being already finalised. Because of this specific concern, AAL does not support the proposed introduction of a register of subleases.

b. Subleases to State or Territory government or authority

One category of subleases that should not be deemed as prohibited (or otherwise exempt from the requirement of seeking a Secretary's Declaration) are subleases to State or Territory government or authority entered into to allow enforcement of specific state-based laws. The ongoing COVID-19 pandemic, required AAL to allow state authorities to occupy land and/ or buildings to enable testing and implementation of state Covid-19 related Emergency Declarations in order to ensure the safety of the traveling public. The rapidly changing nature of the pandemic and the necessity to adjust and implement a flexible testing regime proved to be a challenge for the state authorities and AAL. The prospect of seeking a Secretary's Declaration to a sublease of a state-run Adelaide Airport based testing facility, in AAL's view, represents unnecessary regulatory burden. AAL acknowledges the Department's assistance in processing all applications relating to Covid-19 testing facilities outside of the statutory 30 days application period. However, the *Airports Regulations* should be amended to remove the obligation to seek Secretary's Declaration provided that the sublease in question contains no obligation or restriction imposed by a law of the State or Territory that is inconsistent with the *Airports Act 1996*, the *Airports*

Regulations or the proposed sublease and that the parties to such sublease undertake to comply with the law of the Commonwealth.

c. Licences

While AAL supports the requirement to seek Secretary's Declaration in relation to certain prohibited subleases, the same level of scrutiny is not required with respect to licences. The application of Part 2 of the Airport Regulations represents unnecessary regulatory burden considering that majority of the applications for Secretary's Declaration are granted without amendments. Some of the licences that AAL enters into are for a very short period of time (such as less than 30 days). In AAL's experience, the application processing time of 30 days leads to outcomes where the process of applying for a Secretary's Declaration is longer than the term of the licence itself.

If the proposal of excluding licences from the requirement of seeking Secretary's Declaration is not followed, AAL would support the proposal of the Department maintaining a register of licences with the approval effective on lodgement.

4. Administration of Part 2

AAL would like to take this opportunity to acknowledge the efforts of the Department involved in administering Part 2 of the Airports Regulations, including processing large volumes of declaration applications. In AAL's experience, the assistance provided by the Department is always prompt, the applications are, without exception, assessed within the statutory timeframe and all guidance with respect to the operation of Part 2 is delivered efficiently and with clarity.

B. Ownership

We note that the current proposal from the Department is to reduce the frequency of reporting on airport ownership to potentially every three years and/or following a change in ownership of a certain threshold or nature to save administrative costs for both Airport Lessee Companies (**ALCs**) and the Department.

Further, it is proposed that simplifying language and consolidating the AOISRs with ownership provisions in Part 3 of the Airports Regulations will provide a positive benefit by ensuring clarity through having all regulations relating to airport ownership in once place only.

Do you agree or disagree with the proposed amendments? Please specify

AAL agrees with the proposed amendments outlined above, and which are consistent with the position proposed by AAL in 2018. It is our preference to have a requirement to provide reporting upon changes of airport ownership, similar to what the Australian Securities and Investments Commission requires for changes to companies.

What level of benefit would you expect these changes to bring to your business?

The proposed amendments would potentially continue to a net reduction in overall red-tape burden through the removal of a number of provisions, reducing complexity, and reducing positive reporting obligations and therefore administrative burden, all at a saving to AAL.

How could airport ownership remain as competitive as possible, while protecting Australia's national infrastructure?

Airports should be provided the opportunity to exercise their right to extend their head lease term as soon as possible. The initial term has less than 30 years to expiry making it increasingly restrictive on airport development plans. Property development at airports allows airport owners to diversify their revenue streams increasing resilience to shock events. Developers and their financiers require certainty around AAL's right to

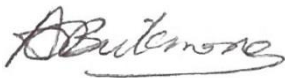
extend its lease with the Commonwealth when considering whether to invest on airport land. An early lease renewal option would be at no cost to the Commonwealth and would provide certainty for projects and investors and would allow jobs and economic growth to be created to stimulate the local construction industry, local tourism industry and the economy and employment markets in general. We have previously made separate submissions to the Department on this option.

Do you agree with the Department's estimate of the regulatory impact of proposed changes?

Whilst we are not in a position to comment on the estimates provides, we note that these changes will bring efficiencies and therefore financial benefit to all parties.

We appreciate the Department's ongoing consultation on this process and would be happy to discuss any of the above in further detail.

Yours faithfully



Alicia Bickmore

Executive General Manager Corporate & General Counsel