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Sunsetting Airports Regulations Stage 1a: Cutting Red Tape

Brisbane Airport Corporation Pty Limited (**BAC**) is grateful for the opportunity to contribute to the review of Australia's airport regulations.

General

BAC has reviewed the Consultation Regulatory Impact Statement titled "*Sunsetting Airports Regulations Stage 1a: Cutting Red Tape*" and sets out its comments and responses below.

Generally, BAC agrees that the *Airports Regulations 1997 (Airports Regulations)* regarding subleases and licences and the *Airports (Ownership – Interests in Shares) Regulations 1996* place an administrative burden on airport lessee companies (**ALCs**), are overly complex and need to be simplified.

Given that, BAC is of the view that these regulations should be remade with changes (as per Option 3).

Subleasing and licenses

BAC's experience aligns with the Department's comment that the vast majority of exception applications are approved by the Department without amendment. The requirement to obtain a declaration does create a distortion between on and off airport sites, imposing an additional condition to many sublease or licence arrangements with BAC's tenants.

In principle, BAC agrees with the proposal to permit declaration about types of subleases and licences by exception. However, before finalising its position, BAC will need to review the amendments proposed to the Airports Regulations to understand:

1. the detail of the exception proposal and how it would work in practice;
2. what detail would be kept in the proposed register; and
3. in what circumstances and timeframes would the Department have the right to intervene.

Declaration by exception

The consultation paper proposes to permit declaration by exception but as noted above, does not include any detail about this proposal. Regulation 2.04(4) of the Airport Regulations sets out factors to be taken into account when considering whether to make a declaration under that regulation (being duration, size of the area and the terms of the sublease). BAC suggests that factors such as these, as well as permitted use, would provide guidance as to what subleases or licences might require declaration.

Register details

A declaration is not currently required for every sublease or licence. If it is the case that the proposed amendments require a record to be kept of all subleases and licences, this would significantly increase the administrative burden on ALCs and would require further consideration by BAC. However, if it is only those subleases and licences currently prohibited that need to be included on the register, BAC expects these changes will reduce administrative burden and will go some way to streamline requirements between on and off airport sites (subject to the Department's ability to intervene).

BAC will need more information about what detail will be recorded in the register to provide a more detailed response. If commercial-in-confidence information is to be included in the register, this will require additional administrative effort to review and potentially redact certain information.

Department's right to intervene

In relation to the Department's proposed ability to intervene, the Airport Regulations will need to be clear about the reasons for which the Department could intervene and the timing of any intervention. For example, any intervention made once a transaction is well-progressed would negatively impact on the ability of ALCs to attract tenants and would create a further distortion between on and off airport sites. Any ability of the Department to intervene would need to be included in the list of AAT reviewable decisions in regulation 2.20 of the Airports Regulations.

Ownership

BAC generally supports amendments that simplify the language in the regulations, consolidate the ownership provisions and streamline the process (including to make ownership reporting less frequent). However, it is not clear from the consultation paper what amendments are proposed to simplify and consolidate the language in the ownership provisions and BAC will need to consider the proposed amendments to finalise its position.

Due to the complexity of the regulations, BAC outsources part of the annual ownership review to an external law firm. In addition to this cost, there is significant time spent by BAC, as well as its shareholders, to provide the requested information. BAC agrees that reducing the frequency of reporting on airport ownership will save administrative costs for ALCs.

As noted in the consultation paper, there has been very little change in ownership of airports in the past 20 years, which means that a lot of the information reported to the Department each year does not change. An additional improvement would be for information only to be reported to the Department if it had changed from the previous reporting period. For example, regulation 3.23(3) of the Airports Regulations requires ALCs to advise the Minister of details of each of its directors. This requirement could be amended so that ALCs are to provide details of changes to directors in the previous reporting period. There are other examples of information that could be dealt with in a similar way.

Early exercise of lease option

Finally, BAC welcomes the opportunity to explore the early exercise of its airport lease option. As with the wider airport sector, BAC has experienced unprecedented revenue losses during the COVID 19 pandemic. These revenue losses are set against the significant investments