



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

SUNSETTING OF AIRPORTS REGULATIONS STAGE 1B: ACT AMENDMENTS ON AIRPORT SITES

Consultation Paper

April 2022



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Executive Summary

Australia's airports are a major component of the national transport network and make a significant contribution to Australia's overall economic prosperity. As a country with a large proportion of its population located in regional areas, aviation and airports play an integral role connecting regional and metropolitan areas, and providing critical services such as medical, search and rescue, and tourism.

The Australian Government has historically played a role in managing and regulating airports in Australia. The leased federal airports have been regulated under the *Airports Act 1996* (the Act) and subordinate legislation since the airports were privatised. While privatisation had an obvious, significant deregulatory effect, the Act and subordinate legislation have been designed as a system of safeguards to protect airport users and the general community while promoting their economic development and efficient operation. The objects of the Act are supported by the following six legislative instruments:

- ***Airports Regulations 1997***, which deals with leasing and management of airports; land use, Master Plans and Major Development Plans; accounting, financial reporting and quality of services.
- ***Airports (Ownership—Interests in Shares) Regulations 1996***, which deals with restrictions on ownership of Airport Operator Companies and exemptions from the foreign and airline ownership provisions.
- ***Airports (Building Control) Regulations 1996***, which deals with the mandatory process for all building activity approvals and certificates of compliance.
- ***Airports (Environment Protection) Regulations 1997***, which deals with environmental management and protection.
- ***Airports (Control of On-Airport Activities) Regulations 1999***, which deals with the control of certain on-airport activities such as liquor, gambling, parking, smoking.
- ***Airports (Protection of Airspace) Regulations 1996***, which deals with the protection of airspace around airports.

Sunsetting of Airport Regulations

The regulations are due to sunset on 1 April 2024, which means they will be repealed unless action is taken to remake them. In effect, sunset provides a 'use-by date' for legislative instruments, including regulations. Sunset is an important mechanism for reducing red tape, delivering clearer laws and aligning existing legislation with current government policy. The sunset framework ensures that legislative instruments are reviewed by the responsible agency at least every 10 years to determine whether they:

- remain fit for purpose and should be replaced by an instrument substantially the same in form;
- should be replaced with substantial changes and improvements; or
- are spent or redundant and can be actively repealed or allowed to sunset without replacement (cease to exist)¹.

While these regulations have been amended from time to time, they have never been holistically reviewed. The Australian Government is now undertaking a thematic review to streamline and modernise these regulations. This will ensure they remain fit-for-purpose for a rapidly changing aviation sector, and provide flexibility for the industry.

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) will undertake a staged approach to reviewing these regulations before they sunset.

¹ Guide to managing the sunset of legislative instruments (July 2020)- <https://www.ag.gov.au/sites/default/files/2020-07/Guide%20to%20Managing%20Sunsetting%20of%20Legislative%20Instruments.pdf>

This approach will allow for more detailed consideration of complex issues as required. The review will be staged as follows and each stage will have an associated period of consultation:

- **Stage 1a:** Cutting red tape, duplication, inconsistencies and reporting, leasing and management of airports and airport ownership.
- **Stage 1b (expected early 2022):** Modernising the Act including examining the definition of an airport site and infringement notice schemes.
- **Stage 2 (expected mid-2022):** Streamlining Commonwealth responsibilities, control of on-airport activities and quality of service monitoring, reports and accounting.
- **Stage 3 (expected late 2022-early 2023):** Increasing flexibility and modernising environment protection, building control and protection of airspace.
- **Stage 4: Legislative reform (2023):** Amendments to the Act.

In 2017-2018, the Department engaged in considerable stakeholder engagement on changes to a number of legislative instruments relevant to airports. This feedback indicated there is room to clarify, streamline and simplify the regulations, while removing administrative burden on Airport Lessee Companies (ALCs). This feedback has been considered when drafting proposed options and changes outlined in this consultation paper.

Policy Options in this paper

The thematic review of the six regulations under made the Act will take place in four distinct stages. This paper focuses policy options for Stage 1b. This stage is looking into potential reforms to the process of declaring Airport Sites under the Act, and to the multiple infringement notice schemes that exist in regulations made under the Act. This paper will consider Airport Sites under Schedule 1 (land titles) of the *Airports Regulations 1997* (the regulations) and will focus on amendments and alignment in these areas. The consultation paper for the process of streamlining and modernising infringement notice schemes can be found on the Department's website www.infrastructure.gov.au/departments/media/publications/sunsetting-airports-regulations-stage-1b-infringement-notices-consultation-paper.

The available options for Airport Sites in Stage 1b include:

Option 1: Allow the Airports Regulation to sunset;

Option 2: Remake the Airport Regulation without changes;

Option 3: Remake the Airport Regulation with changes:

- 3.1 Allow the minister to declare an airport site via legislative instrument;
- 3.2 Change the definition of Airport Sites from Land Titles to a different mechanism, e.g. GPS coordinates.

Other subject areas that form part of airport regulations, such as the management of on-airport activities, land use, planning, environment, and building controls, will be subject to consultation in later stages.

Consultation

Responding to this paper

Please provide input on proposed options and reform areas according to your area of interest and professional expertise. It is not expected that individuals provide feedback beyond the scope of their professional responsibilities. Sharing this paper with an appropriately qualified person between or within organisations is encouraged. You are welcome to respond to some or all of the questions included in this paper, as appropriate.

A consolidated list of questions is at [Appendix 1](#). You can provide written submissions on the discussion paper until 5PM Friday, 3 June 2022.

The Australian Government appreciates your engagement with this paper. Remaking the sunseting regulations under the Act will be critical to determining the regulatory setting as we establish fit-for-purpose regulations and the sector emerges from COVID-19 and into the next decade.

The preferred method for receiving submissions is electronically to the email aviationreform@infrastructure.gov.au.

Submissions may also be made in hard copy to:

Attention:
Director, Airport Reform, Sunseting and IFAM Section
Airports Branch
GPO Box 594
CANBERRA ACT 2601

Please provide your contact details so the Department can get in contact with you should the need arise to follow up on any issues raised.

Written submissions to this discussion paper **will be made publicly available** in full on the Department's website unless you indicate you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Any personal information respondents provide to the Department will be used for purposes related to considering issues raised in this paper, in accordance with the *Privacy Act 1988* (see [Appendix 2](#)). You are also welcome to provide submissions confidentially.

Questions?

If you have any questions about the process for responding to the discussion paper, please contact the Department:

Email: aviationreform@infrastructure.gov.au

1. What is the problem we are trying to solve?

1.1 Background

Australia's airports are a major component of the national transport network and make a significant contribution to Australia's overall economic prosperity. As a country with a large proportion of its population located in regional areas, aviation and airports play an integral role connecting regional and metropolitan areas and providing critical services such as medical, search and rescue and tourism.² Before the COVID-19 pandemic, aviation contributed \$20 billion to the economy each year and it employed around 90,000 people. Aviation moved over 100 million domestic and international passengers each year. At the same time, around 20 per cent of international trade (by value) was transported by air, up to 80 per cent for some time-sensitive exports.³

Aviation and airports enable our most important industries such as mining, construction, manufacturing and international education. Airports are fundamental to providing critical connections within Australia and with the world, facilitating passenger movement and the maintenance of international supply chains. The Australian Government is working to support an efficient, sustainable, safe and accessible aviation industry. Establishing the right regulatory settings for airports are key to recovery from the effects of COVID-19 and the ongoing success of Australia's aviation sector and economy more broadly.

Aviation has been devastated by the COVID-19 pandemic, in Australia and around the world. At the peak of the crisis in 2020 in Australia, passenger numbers fell by 97 per cent and over 30,000 aviation workers were stood down or made redundant. In 2019, the total passenger movements in Australian airports was 164 million and in 2020, this decreased by 70.9 per cent to 48 million total passenger movements.

The Australian Government's response to support aviation at the height of the COVID-19 pandemic was swift and decisive, with initial measures in place to keep Australians connected despite international aviation collapsing. Since the initial COVID-19 response measures, the Australian Government has committed over \$5.3 billion to maintain essential air connectivity, preserve critical aviation capacity, and keep supply chains open for air freight imports and exports. As the COVID-19 pandemic has progressed, the Australian Government has released the four step National Plan to Transition Australia's COVID-19 Response. International travel is now recommencing in jurisdictions in line with the National Plan. Providing a fit-for-purpose regulatory setting for airports will support aviation as it emerges from, and adapts to, the impacts of COVID-19.

The Australian Government is undertaking a thematic review to streamline and modernise the six subordinate regulations made under the Airports Act that are due to sunset on 1 April 2024, with the aim to ensure that when remade, they are fit for purpose, modern, efficient and effective. The thematic review will take place in four distinct stages. This paper is for Stage 1b and focuses on the definition of an Airport Site within Schedule 1 the Airports Regulations.

1.2 Airport Sites

An 'Airport Site' is defined according to certificates of title of specific land lots as listed in Schedule 1 to the *Airport Regulations 1997* (the Regulations). This means that Schedule 1 to the Regulations becomes out of date every time the land folio numbers change, for example due to subdivision, which necessitates changes to the Regulations that have to go through the Executive Council process.

² The Future of Australia's Aviation Sector: Flying to Recovery Department of Infrastructure, Transport, Regional development and Communications (Issues Paper 2020), p. 5.

³ Ibid.

While the Regulations have been drafted to manage outdated folio numbers and lot designations, over time this becomes an issue as users have to trace through an increasing number of title changes that overlap either fully or partially with each other. This may make it problematic for those who engage with the definition of Airport Sites, such as ALCs and other stakeholders, when working out the scope of the regulatory environment or dealing with land titles listed in airport leases.

The Department has sought to manage this issue by including, as part of some lease obligations, the requirement for ALCs to report any changes to land titles to the Department. The Department is now considering creating a new legislative obligation to report changes approximately once per year. This will allow the Schedule to be kept more up-to-date, reduce the burden of reporting requirements on ALCs by reducing reporting frequency, and assist the Department to effectively manage its resources to ensure compliance with obligations and enable routine changes to the law.

1.3 Definitions

Section 5 of the Act sets out the definition of an Airport Site (**see Table 1**). An Airport Site is declared by the Regulations (regulation 1.03) and set out in Schedule 1 (**See Table 2**).

Airports Act 1996

Table 1:

Part 5	Details
Provides the legal definition of an Airport Site	<p>airport site means a place that is:</p> <ul style="list-style-type: none"> (a) declared by the regulations to be an airport site; and (b) a Commonwealth place; and (c) used, or intended to be developed for use, as an airport (whether or not the place is used, or intended to be developed for use, for other purposes). <p>Note: The boundaries of an airport site are ascertained in accordance with the regulations.</p>

Airport Regulations 1997

Table 2:

Regulation 1.03	Details
Declares Airport Sites	<p>For the definition of airport site in section 5 of the Act, an airport site is a place made up of the land described in Schedule 1.</p> <p>In Schedule 1, a reference to land by reference to the number of a certificate of title, or registered or deposited plan, is taken to continue to be a reference to the land if the certificate of title or plan is cancelled, replaced or consolidated with another certificate or plan, so long as the interest of the proprietor of the land remains unchanged.</p>

2. Why is Government action needed?

The Australian Government regulates leased federal airports and is dedicated to supporting Australia's critical infrastructure and transport networks, of which airports play a key role. It is important that the Australian Government maintains a modern fit-for-purpose regulatory framework to support the viability of and economic developments on leased federal airports. With the COVID-19 pandemic continuing to cause significant disruptions to airports and the aviation industry, it is crucial to review current regulations and identify ways to streamline and provide flexibility for airports as they recover from the impacts.

Schedule 1 of the Regulations provides a comprehensive list of places declared to be an Airport Site (for federally leased airports). However, as it forms part of the Regulations, any amendments are administratively burdensome to make and requires approval of the Executive Council. Given the nature of the current process, it takes a substantial amount of time and resources to make changes that are more mechanical in nature. Government action is needed if this process is to change to make it more streamlined and efficient.

Sunsetting is an important mechanism for the Australian Government to implement policies to make amendments that reduce administrative burden and align existing legislation with current government policy. While the six sunseting regulations under the Act have been updated over time, they have not been holistically reviewed. As they are sunseting on 1 April 2024, this is an opportunity to complete a review of the regulations. Sunsetting also aligns with the Australian Government's deregulation agenda to support Australia's economic recovery from the COVID-19 pandemic by streamlining processes and regulations.

3. What policy options are being considered?

3.1 Option 1 – Let the provisions sunset

This option involves letting the Airport Site provisions in the Airports Regulations sunset. This would involve not remaking the provisions when remaking the rest of the Regulations.

3.2 Option 2 – Remake the Airport Regulation without changes

This option involves remaking the Airport Site provisions in the same form and scope as the law currently provides. This would continue current practices and procedures familiar to users.

3.3 Option 3 – Remake the Airport Regulation with changes

Under this option, the Airport Site provisions would be remade to minimise the potential for inconsistency between the regulations and land titles registers, with minimal impact on the Airports or users of the law themselves.

3.3.1 – Change how the boundaries of Airport Sites are defined

An option to circumvent the problem of plots being subdivided and gaining new land titles in the process is to ascertain whether there is a way of defining the boundaries of an airport site that is a sound alternative to certificates of title. A potential option could be defining boundaries using GPS coordinates.

3.3.2 – Allow the Minister to declare an Airport Site via a legislative instrument

Under the current framework, changes to Schedule 1 of the Regulations can only be made through the Executive Council process. Any changes to the Regulations must also be tabled in Parliament and be subject to disallowance.

The proposed amendment would move Schedule 1 from the Regulations into a separate instrument and provide the Minister, or a Delegate of the Minister, with a new power to declare Airport Sites, allowing the Minister or Delegate to make changes more efficiently once notified of a change to land titles, without the burden of engaging in more formal and time consuming processes. The instrument could still be subject to disallowance affording it an appropriate level of Parliamentary scrutiny.

In NSW, once a plot is subdivided, the ALC must engage with the NSW Government Department responsible for land to accommodate land title changes. The Department proposes that the same obligations should apply to enable notification to the Department of changes in Title. This is unlikely to be burdensome on ALCs and as it does not introduce any new requirements for them to follow.

4. What is the likely net benefit of each option?

This section identifies the net benefits of each reform option and seeks stakeholders' views on the assessment presented.

4.1 Option 1 – Let the provisions sunset

Let the Airport Site provisions in the Airports Regulations sunset. This would involve not remaking the provisions when remaking the rest of the Regulations.

This option would be deregulatory in nature, however there would be no existing frameworks to take over if we allow this regulation to sunset, leading to uncertainty for users of the law. Removing clarity on what is Airport Site land can also draw into question the applicability of airport regulation, compromising its integrity.

Questions for consideration

1. Should Schedule 1 of the Regulations be allowed sunset?
2. What are the benefits/consequences of not having a provisions defining what land is part of an Airport Site?

4.2 Option 2 – Remake the Airport Regulation without changes

This option involves remaking the provisions in the same form and scope as the law currently provides. This would continue current practices familiar to users.

This option risks maintaining inconsistency and unnecessary administrative burden, as any change in land titles could result in the law not reflecting the land title register. Amendments to regulations might not be immediate as they take time to make due to current administrative processes involved.

While this option would result in no change in law or regulatory impacts for stakeholders, any underlying issues and complexities with existing frameworks would remain; uncertainty and inconsistency in the law would continue.

We understand this problem particularly affects NSW due to the operation of its land laws. It may also pose an ongoing issue with the upcoming development of the Western Sydney Airport.

Questions for consideration

3. Are the existing provisions fit the purpose in the current and a future operating environment?
4. What are the benefits/consequences of the remaking the provisions in Schedule 1 without changes?

4.3 Option 3 – Remake the Airport Regulation with changes

Under this option, the regulation would be remade to remove the potential for inconsistency between the regulations and land titles register, with minimal impact on the Airports themselves.

Questions for consideration

5. Is there benefit in ensuring consistency between the law and the land titles register in respect of the land that makes up an Airport Site?
6. Is there benefit in introducing an obligation to report to the Department changes to land titles?
7. Does your particular State or Territory have any notification obligations upon the subdivision of land that could be drawn upon?

4.3.1 – Change how the boundaries of Airport Sites are defined

Under this option, the problem of plots being subdivided and gaining new land titles in the process could be circumvented if there is a way of defining the boundaries of an Airport Site that is a sound alternative to certificates of title. There are, however, potential issues with this option.

An Airport Site must be a Commonwealth Place under the current law. Currently, it does not appear that there would be any alternative means of determining whether a particular place is a Commonwealth Place other than by reference to certificates of title.

If Airport Sites were defined by another mechanism, it might conflict with other regimes driven by land titles that interact with Airport Sites (such as Commonwealth places) causing potential discrepancies as to what legally constitutes an Airport Site. It is important for various parts of the Act⁴ that the boundaries of the airport site are clearly ascertainable and legally sound. If the land parcels and the boundaries of an airport site ever fell out of alignment, multiple regulatory regimes could apply on different parts of the parcel of land. This might cause legal and practical difficulties for lessees and also potentially for enforcement. It could also affect previous uses of land titles such in Airport Leases, and the applicability of airport regulation to airports more generally.

If the boundaries of an airport site were defined by some means other than certificates of title, there may also be some practical issues around surveying and mapping that would need to be considered. For example, certain parcels of land may have irregularly shaped boundaries such as boundaries which adjoin a river, or which run to the mean high tide mark. Consideration would need to be given to the technical task of translating these boundaries to coordinates of some form.

Any changes to the identification number for a certificate of title is likely to impact other sections and may require further amendments (i.e. any provisions that relate back to section 5(2) of the Act).

Question for consideration

8. Would an alternative mechanism for identifying parcels of land be suitable for identifying Airport Sites? Why / Why not?
9. What alternative mechanisms for identifying parcels of land might be appropriate to be used?

⁴ For example: Part 2 (management and leasing), part 5 (land use, planning and building controls), Part 7 (Accounts and reports of airport-operator companies), Part 8 (Quality of service monitoring and reporting) and Part 11 (Control of certain on-airport activities)

4.3.2 – Allow the Minister to declare an Airport Site via legislative instrument;

Under the current framework, changes to Schedule 1 of the Regulations can only be made through the Executive Council process. Any changes to the Regulations must also be tabled in Parliament and be subject to disallowance.

This option would move Schedule 1 from the Regulations into a separate instrument and provide the Minister, or a Delegate, with a new power to declare Airport Sites. This avoids unnecessarily burdensome processes what is in effect a mechanical change to the law. Consideration can also be given as to what level of Parliamentary scrutiny it should be afforded.

Placing the definition of Airport Sites in a Ministerial Instrument allows for a much quicker amendment processes and reduces administrative burden. The list of Airport Sites would also be more up-to-date, providing a single source of consolidated accurate information.

An additional legislative obligation should be considered as a way to support consistent and up to date law, as the benefits of this streamlining the process of defining Airport Sites could be frustrated if there is no requirement to inform the Commonwealth of changes in land titles.

Creating a new legislative obligation is likely to have a regulatory impact on ALCs due to the need for additional reporting to the Department. However, the Department expects that the impact of the legislative obligation will be minimal as the reporting is not live and is only expected once per year. Some ALCs have similar reporting obligations to other Departments and therefore may already have systems and processes in place.

Questions for consideration

10. Would it be preferable for an instrument to allow the Minister or a Delegate to define an Airport Site?

Appendix 1

Consolidated list of questions

1. Should Schedule 1 of the Regulations be allowed sunset?
2. What are the benefits/consequences of not having a provisions defining what land is part of an Airport Site?
3. Are the existing provisions fit the purpose in the current and a future operating environment?
4. What are the benefits/consequences of the remaking the provisions in Schedule 1 without changes?
5. Is there benefit in ensuring consistency between the law and the land titles register in respect of the land that makes up an Airport Site?
6. Is there benefit in introducing an obligation to report to the Department changes to land titles?
7. Does your particular State or Territory have any notification obligations upon the subdivision of land that could be drawn upon?
8. Would an alternative mechanism for identifying parcels of land be suitable for identifying Airport Sites? Why / Why not?
9. What alternative mechanisms for identifying parcels of land might be appropriate to be used?
10. Would it be preferable for an instrument to allow the Minister or a Delegate to define an Airport Site?

Appendix 2

Privacy Statement

Any personal information supplied in your submission is collected by the Department of Infrastructure, Transport, Regional Development and Communications (the Department), in accordance with the Privacy Act 1988 (the Privacy Act).

Personal information may be needed by the Department to us to make further contact with you about the consultation process, and so that the Department can record interactions between you and the Department.

Your personal information will not be disclosed to any other parties, except in the circumstances outlined below. Submissions, in part or full, including the name of the author may be published on the Department's website or in the Australian Government's response, unless the submission is confidential. Confidential submissions (including author name) will not be published. Private addresses and contact details will not be published or disclosed to any third parties unless required by law.

Submissions will be treated as confidential only if they are expressly stated to be confidential. Automatically generated confidentiality statements or disclaimers appended to an email do not suffice for this purpose. If you wish to make a confidential submission, you should indicate this by ensuring your submission is marked confidential.

Confidential submissions will be kept securely and will only be disclosed in the following circumstances:

- in response to a request by a Commonwealth Minister;
- where required by a House or a Committee of the Parliament of the Commonwealth of Australia; or
- where required by law.

The Department may also disclose confidential submissions within the Commonwealth of Australia, including with other Commonwealth agencies, where necessary in the public interest.

Please note that in order to protect the personal privacy of individuals in accordance with the Privacy Act any submissions containing sensitive information, personal information or information which may reasonably be used to identify a person or group of people may not be published, even if not marked as confidential.

The Department's Privacy Policy contains information regarding complaint handling processes and how to access and/or seek correction of personal information held by the Department. The Privacy Officer can be contacted at privacy@infrastructure.gov.au.