



Australian Government

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

Sunsetting of Airports Regulations Stage 1b: Infringement Notices

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* (Airports Act) and subordinate legislation since the airports were privatised. While privatisation had an obvious, significant deregulatory effect, the Airports Act and subordinate legislation have been designed as a system of safeguards to protect airport users and the general community while promoting their efficient and economic development and operation. The objects of the Airports Act are supported by the following six regulations (the regulations):

- ***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The regulations are due to sunset on 1 April 2024, which means they will be repealed unless action is taken to remake them.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. Sunsetting 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 the 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 the 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 the regulations before they sunset. 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:

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>

- **Stage 1a:** Cutting red tape, duplication, inconsistencies and reporting; leasing and management of airports; airport ownership.
- **Stage 1b (expected early 2022):** Modernising the Airports 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 Airports 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 made under the Airports Act will take place in four distinct stages. This paper focuses on policy options for Stage 1b. This stage is looking into potential reforms to the process of declaring Airport Sites under the Airports Act, and to the multiple infringement notice schemes that exist in regulations made under the Airports Act. This paper outlines potential reform options for infringement notice schemes and whether there is scope to streamline and harmonise their operation. The consultation paper for the process of declaring Airport Sites can be found on the Department's website www.infrastructure.gov.au/department/media/publications/sunsetting-airports-regulations-stage-1b-act-amendments-airport-sites-consultation-paper.

The reform options canvassed by this paper includes:

1. Option 1: Allow the infringement notice provisions to sunset;
2. Option 2: Remake the infringement notice provisions without changes;
3. Option 3: Remake the infringement notice provisions in a modern and streamlined way. Potential ways of doing this include:
 - 3.1 drawing on the standard framework provided by the the *Regulatory Powers (Standard Provisions) Act 2014*;
or
 - 3.2 designing a bespoke framework.

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 regulations under the Airports Act will be critical to determining the regulatory settings 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, Sunsetting 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 3) 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

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 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 fit for purpose regulatory settings 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 relates to the modernising and streamlining of the multiple infringement notice schemes that are present across airport regulation.

Infringement notices

Infringement notices are an alternate enforcement option to prosecuting offences formally through courts. They give the person to whom the notice is issued the option of either paying the penalty set out in the notice to conclusively resolve the alleged contravention or electing to have the matter dealt with by a court.

Infringement notices are usually issued in respect of minor or regulatory offences, where there is expected to be a higher volume of contraventions of a less serious nature. They can also be issued in respect of 'non-criminal offences' such as in relation to alleged contraventions of civil penalty provisions. Infringement notices are issued by administrative officials rather than judicial officials, and are most appropriate for offences that do not require the establishment of a mental element to make out the elements of the offence, such as for absolute and strict liability criminal offences or civil penalty provisions.

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.

The overarching rationale for an infringement notice scheme is to provide a mechanism to bring contravening conduct more efficiently and effectively to account. A person issued with the infringement notice can bring the matter to an end by paying the amount specified in the notice without question, providing a quick, easy and inexpensive way of conclusively resolving the matter without any admissions of guilt. Not paying the amount specified in the notice and contesting the offence is an option, but comes with the prospect of a heavier penalty if a court determines the matter, and the added costs and inconvenience of the proceedings themselves. Regulators also benefit from the use of infringement notices as they can be an effective tool to encourage compliance and bring contravening conduct to account, without having to prove the elements of the offence to the relevant standard before a court and to incur costs in prosecuting each contravention despite how minor they may be.

Infringement notice schemes come with administrative processes that support the overarching policy intent of the scheme. For example, there can be provisions that govern what offences can be subject to infringement notices, the maximum amount to pay that can be set out in an infringement notice, the timeframes for issuing an infringement notice after an alleged contravention, how it is to be issued, and how a person given an infringement notice may seek an extension of time to pay or seek to pay by instalments.

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

The current regulatory framework of airports is made up of the Airports Act and various regulations made under that Act. While the laws regulating airports have been amended from time to time to implement changes in policy or new policy since privatisation occurred, they have never been reviewed holistically and together to determine whether they remain relevant, fit for purpose and achieve intended outcomes. This has meant there has not been the opportunity to review more foundational or detailed aspects of the regulatory framework.

With the upcoming sunset of the regulations, action is required for the regulatory oversight they provide to continue. This presents the opportunity to review aspects of the regulations where there might not otherwise be much motivation for.

The infringement notice scheme is one such aspect. There are currently three different infringement notice frameworks in the various regulations made under the Airports Act. The frameworks have been in operation for at least 20 years without any major changes. They reflected best practice, appropriateness and were fit for purpose at the time in which they were developed. However, over time, accepted practices have changed, which has led to frameworks that do not reflect contemporary norms.

The three frameworks are largely similar in terms of governance, process and procedure. Differences lie in the detail of process and procedure specified in the law rather than in fundamental operation. A table summarising the differences between them is at Appendix 2. The provisions have generally stood the test of time well, however there is scope to modernise and streamline them.

Building Control Regulations

Part 5 of the *Airports (Building Control) Regulations 1996* (Building Control Regulations) governs the issuing of infringement notices in relation to offences against Part 5 of the Airports Act. Part 5 relates to land use, planning and building controls. The offences in Part 5 are generally ordinary criminal offences (that is, they are not strict or absolute liability), and are in the mid-range of seriousness. Infringement notices can be issued in respect of these offences if there are reasonable grounds for believing a person has committed an offence against Part 5. The maximum infringement notice amount is one-fifth of the penalty for the offence.

The infringement notice must be issued within 12 months of the alleged commission of the offence, and has to contain certain information such as the day it is issued, name of person it is issued to and details of the contravention. The infringement notice has to be paid within 28 days, however this time may be extended. It is not compulsory to issue an infringement notice, however liability for the alleged contravention is discharged if the infringement notice has been paid.

Control of On-Airport Activities Regulations

Part 7 of the *Airports (Control of On-Airport Activities) Regulations 1997* (Control of On-airport Activities Regulations) governs the issuing of infringement notices in relation to offences against those regulations marked as infringement notice offences. This includes offences against liquor supply and consumption, parking and smoking. The offences are generally strict liability, and minor and regulatory in nature and are the majority of offences for which infringement notices are issued in under the regulations.

Infringement notices can be issued in respect of these offences if a person authorised to issue an infringement notice has reason to believe a person has committed an offence. The maximum infringement notice amount is one-fifth of the penalty for the offence.

The framework does not specify the timeframe in which an infringement notice has to be issued, but does outline certain information that the infringement notice must contain, such as the day it is issued, name of person it is issued to and details of the contravention. The infringement notice has to be paid within 28 days and this time may be extended by no more than 28 days. It is not compulsory to issue an infringement notice, however liability for the alleged contravention is discharged if the infringement notice has been paid. Additionally, more than one infringement notice can be issued for the same offence, and an infringement notice can also be issued to the legal owner of a motor vehicle for parking offences.

Environment Protection

Part 8 of the *Airports (Environment Protection) Regulations 1997* (Environment Protection Regulations) governs the issuing of infringement notices in relation to offences against those regulations. The offences are generally a combination of ordinary and strict liability offences, and are generally minor in nature. Infringement notices can be issued in respect of these offences if there are reasonable grounds for believing a person has committed an offence. The maximum infringement notice amount is one-fifth of the penalty for the offence.

The infringement notice must be issued within 12 months of the alleged commission of the offence, and has to contain certain information such as the day it is issued, name of person it is issued to and details of the contravention. The infringement notice has to be paid within 28 days, however this time may be extended. It is not compulsory to issue an infringement notice, however liability for the alleged contravention is discharged if the infringement notice has been paid.

Issues with the existing frameworks

The three frameworks have been operational for at least 20 years without any major changes. They reflect norms and accepted practices of the past and do not cater for more recent advancements in enforcement and penalties. For example, the frameworks in the Building Control and Environment Protection Regulations allow infringement notices to be issued in respect of ordinary criminal offences – that is offences that are not strict or absolute liability offences and require the establishment of a mental element to make out the offence. This is not recommended as current best practice other than in exceptional circumstances due to infringement officers having to make an assessment of proof of fault, which often involves a complex assessment of evidence to establish the state of mind of the person at the time of committing the offence and can be difficult to assess with a level of certainty.

The three frameworks also do not cater for more recent advancements in enforcement and penalties, such as the greater utilisation of civil penalty provisions. A civil penalty is a penalty, often financial in nature, imposed by the courts applying civil rather than criminal processes. Just like criminal penalties, they aim to prevent or punish public harms and are another option that can be utilised in an enforcement toolkit.

The dated nature of the frameworks could pose the following problems when operating in a modern environment:

- The effectiveness of an infringement notice scheme depends on the reliability of the assessments made by the infringement officers as to whether an offence has occurred. The more difficult and complex the assessment, the more potential there is for uncertainty and differing views as to whether a contravention has occurred, undermining the infringement notice scheme.
- The legitimacy of the schemes could be called in to question if there are constant ‘overreaches’ for infringement notices being issued in borderline instances of contraventions.
- The current frameworks do not cater for more recent advancements, and are not futureproofed to allow utilisation of other enforcement options.
- A non-fit for purpose infringement notice scheme can compromise the ability to deter contravening conduct and place pressure on more traditional methods of enforcement, which are often time consuming and burdensome.
- An ineffective infringement notice scheme can make it more difficult to bring non-compliance to account, and could risk safety and compromise the governance of airports, increasing costs for, and placing additional burdens on, businesses and other users of airports.

While the three frameworks are largely similar in terms of governance, process and procedure, there are differences between them. Having three slightly different frameworks is inefficient, confusing and could increase risks that infringement notices are not properly issued due to particular procedures not being followed. Users of infringement notices would bear the most burden of having multiple frameworks as there would be multiple and different procedures to follow depending on what contravention is being alleged and additional costs of maintaining multiple procedures.

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 disruptions from the COVID-19 pandemic continuing to impact 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.

The Australian Government has the capacity to take action to successfully review and amend the infringement notice frameworks, as it is ultimately the one who generally imposes regulation on industry and decides the most appropriate regulatory settings. Regulation in the form of legislation is important as it provides a level playing field amongst industry, and provides clarity to those engaged in the sector of the rights and obligations of all players. Government action is critical in providing a strong foundation to regulation in the form of enforcement regimes due to the obligations, sanctions and penalties that can potentially be imposed on individuals and business under them. Due to the coercive nature of infringement notices, Government action is needed to provide the legal foundations for process and procedure, and to balance the rights of those subject to them.

Sunsetting is an important mechanism to reduce red tape, deliver clearer laws, and align existing legislation with current government policy. The upcoming sunseting of airport regulations, and in particular the sunseting of infringement notice frameworks, presents an opportunity for the Australian Government to review the regulatory frameworks to ensure they are fit for purpose, modern and streamlined and support a strong and effective regulatory environment.

The objectives of Government action include ensuring the regulatory framework:

- is fit for purpose and future proofed;
- is clear and unambiguous in its drafting;
- maintains an appropriate level of government oversight while minimising regulatory burden on its users; and
- provides flexibility while maintaining overall Government policy objectives.

3. What policy options are being considered?

The Department is considering the following three options in respect of reforms to the infringement notice provisions:

1. Allow the existing infringement notice provisions to sunset.
2. Remake the existing infringement notice provisions in the same form.
3. Remake infringement notice provisions in a modern and streamlined way.

Option 1 – let the provisions sunset

This option involves not remaking the infringement notice provisions when undertaking the exercise to remake the various regulations that are due to sunset, effectively allowing the infringement notice frameworks to sunset. This option may be appropriate if there is no further need for alternate enforcement options to address or bring to account contraventions of the law, and the view is that infringement notice schemes in airport regulation are obsolete and no longer provide any utility in the regulatory environment.

Option 2 – remake the provisions in the same form

This option involves remaking the infringement notice provisions in the same form and scope as the law currently provides – that is three frameworks that are not contemporary and with differences between them. This option may be appropriate if the current provisions are fit for purpose and would remain fit for purpose into the future, and it is desirable to continue the separation between infringement notice frameworks. This option would involve modernising the provisions to the extent of aligning their drafting with contemporary drafting practices.

Option 3 – remake the provisions in a modern and streamlined way

This option is to remake the infringement notice frameworks in a modern, efficient and consistent way. This would involve reducing the existing frameworks into one standard overarching framework, and modernising it so it meets contemporary expectations.

The Attorney-General's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 edition (the AGD Guide) provides guiding principles that are widely accepted in respect of the operation and scope of modern infringement notice frameworks. For example, the AGD Guide suggests that primary legislation should provide for an infringement notice scheme, infringement notices should only be allowed for minor offences with strict or absolute liability and where a high volume of contraventions is expected, and that the offences for which an infringement notice can be issued in respect of be specified. Using the AGD Guide as a benchmark will ensure an infringement notice framework is modern and strikes an appropriate balance between its coercive nature and protecting the rights and freedoms of those subject to it.

There are two possible ways to achieve an efficient and consistent scheme – drawing on the standard framework provided by the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), or a bespoke framework that solely governs infringement notices in the airports space.

The ideal option would depend on what is required of an infringement notice scheme and whether special provisions are needed to ensure the framework operates as intended in the regulatory environment.

Option 3.1 – draw on the Regulatory Powers Act

Under this option, the Regulatory Powers Act standard infringement notice provisions would govern the issuing of infringement notices under the Airports Act and the regulations.

The Regulatory Powers Act framework is modern, acceptable to Government, scrutiny committees and users, and will provide consistency across airports law and other Commonwealth laws that use it. It will reduce risks stemming from differences in competing frameworks and minimises administration costs for users and regulators.

The standard infringement notice provisions are contained in Part 5 of the Regulatory Powers Act. Under this framework, infringement notices can be issued in respect of strict and absolute liability offences, and civil penalty provisions, if triggered. Infringement notices can be issued in respect of these offences if there are reasonable grounds for believing a person has contravened a provision that is subject to an infringement notice. The maximum infringement notice amount is one-fifth of the penalty for the offence, but not exceeding 12 penalty units for an individual and 60 penalty units for a body corporate. As at 1 July 2020, one penalty unit is equal to \$222.

The infringement notice must be issued within 12 months of the alleged contravention, and has to contain certain information such as the day it is issued, name of person it is issued to and details of the contravention. The infringement notice has to be paid within 28 days, however this time may be extended. It is not compulsory to issue an infringement notice, however liability for the alleged contravention is discharged if the infringement notice has been paid, but not if it has been withdrawn. A summary of the Regulatory Powers Act provisions, alongside existing infringement notice provisions, is in the table at Appendix 2.

The benefits of using the Regulatory Powers Act framework might be defeated if multiple additions are required to ensure infringement notices operate as intended within airport regulation. This could end up providing two separate sets of provisions that make up the regulation underpinning infringement notices.

Option 3.2 – a bespoke framework

Under this option, a bespoke framework could be designed to govern the issuing of infringement notices under the Airports Act and the regulations. Such a framework could sit in primary legislation and be available for use by regulations as needed.

A bespoke framework could be designed consistent with the principles provided in the AGD Guide and draw on many of the standard provisions from the Regulatory Powers Act, but it would better cater for additional or special provisions, should they be required for an effectively operating infringement notice framework.

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

This section outlines the net benefits of each reform option, and seeks stakeholder views and feedback on the assessment presented. This section also contains questions where stakeholders are invited to provide an opinion to help inform Government policy.

Option 1 – Status Quo – let the provisions sunset

Under this option, the infringement notice provisions would be allowed to sunset, effectively repealing them without any substitute or replacement. This would result in no ability to issue infringement notices in respect of alleged contraventions of the law, and would take away a key enforcement option to bring contravening conduct to account.

Allowing the provisions to sunset would be deregulatory in nature, but would come at the cost of paring back of enforcement mechanisms that encourage and incentivise compliance with laws. Not having an infringement notice scheme would be appropriate if it is considered there is no future need for infringement notices, or if they have become obsolete and no longer provide utility or benefit in the regulation of airports.

This option could adversely affect users of airports, as it could impact business operations, increase costs, and risk the integrity and safety of airports, due to a reduced incentive to comply with the law and reduced ability to bring contravening conduct to account. Without infringement notices, enforcement of airport regulation would heavily rely on the prosecution of offenders before a court, which comes with a financial cost to both an accused and the Commonwealth, and can take time and resources. A lack of incentive to comply with the law could also reduce a level playing field amongst those regulated under the law, and could reward taking unnecessary risks and engaging in contravening conduct.

Questions for consideration

1. Should the infringement notice provisions be allowed sunset?
2. What are the benefits/consequences of not having an infringement notice scheme?

Option 2 – remake the provisions in the same form

Under this option, the infringement notice provisions would be remade in the same form and with the scope. That is, existing Government policy settings would remain in place and the provisions would be remade to reflect this, but would be drafted in accordance with modern drafting practices.

A benefit of remaking the provisions in the same form is that there would be no change in regulatory impacts on users, as users of the law would not have to learn any new laws or adjust any existing compliance mechanisms, practices or procedures.

This option however may result in the infringement notice provisions not being fit for purpose in a future operating environment. The existing provisions reflect thinking, policy and norms of the 1990s when most of the provisions were inserted. It is questionable whether such an aged framework would remain fit for purpose into the future and achieve its intended purpose in a changing operating environment.

Any underlying complexities and differences would remain as this option involves renewing the multiple and slightly differing frameworks. Having three slightly different frameworks could increase risks that infringement notices are not properly issued or managed in accordance practice and procedure. Users of infringement notices would likely bear the most burden of having multiple frameworks, as there would be multiple procedures to follow depending on what contravention is being alleged and additional costs of maintaining multiple procedures.

The existing frameworks may also be subject to a heightened level of scrutiny due to reflecting dated norms on the scope of their operation. For example, under this option, infringement notices can continue to be issued in respect of non-strict liability offences. This departs from the suggested scope of an infringement notice framework as provided in the AGD Guide and drawn from principles outlined by Senate committees, the Australian Law Reform Commission and Administrative Review Council.

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 having separate infringement notice frameworks for different subject matters?
5. Should infringement notices continue to be issued in respect of non-strict liability offences?

Option 3 – remake the provisions in a modern and streamlined way

Under this option, the infringement notice frameworks would be remade in a modern, efficient and consistent way. This would involve reducing the existing frameworks into one standard overarching framework that would govern the issuing of infringement notices across airport regulation. The framework would be modernised so that it would meet contemporary standards and would be aligned with the guiding principles provided by the AGD Guide.

There are two possible options to achieve a modern, efficient, and consistent infringement notice scheme. The first is to draw on the standard provisions from the Regulatory Powers Act. The second is to design a bespoke framework that solely governs the issuing of infringement notices under airport regulations. The best option would depend on what is needed of an infringement notice framework, whether the standard framework in the Regulatory Powers Act can operate as effectively within airport regulations, and to what extent special requirements or provisions would be needed to ensure an infringement notice scheme is fit for purpose.

Reducing the existing infringement notice frameworks into one overarching framework has discernible benefits:

- It presents an opportunity to align the infringement notice scheme with modern expectations.
- It would enable the provisions to be drafted in accordance with modern drafting practices.
- It may reduce regulatory costs, as users and regulators would only have to engage and comply with one overarching framework when issuing or complying with infringement notices.
- It may reduce risk of errors in following processes and procedures stemming from differences that are present in the existing frameworks.

A modern infringement notice framework can also utilise more recent advancements in enforcement options. The use of civil penalties as an alternate to criminal sanctions for instance has been used in many Commonwealth regulatory frameworks such as in the *Corporations Act 2001*. While civil penalty provisions do not form part of the current enforcement regime in airport regulation, it may be desirable to ensure an infringement notice framework can cater for such an advancement, should be it be considered suitable to form part of the enforcement toolkit in the future.

Questions for consideration

6. Should the infringement notice scheme cater for the future ability to issue infringement notices in respect of civil penalty provisions?
7. Should all strict liability offences across airports law be subject to infringement notices? Are there any particular offences that should or should not be subject to an infringement notice?
8. Are the existing maximum infringement notice penalty amounts appropriate?

Option 3.1 – draw on the Regulatory Powers Act

Under this option, the Regulatory Powers Act framework would be utilised to govern the issuing of infringement notices across airport regulations. This would apply a single standard framework that is contemporary, accepted and is utilised in other Commonwealth regulatory frameworks. This option may contribute to further efficiencies where users have obligations under other Commonwealth laws that use the Regulatory Powers Act infringement notice provisions.

There are only minor differences between the existing frameworks in airport regulations and the standard framework in the Regulatory Powers Act. Some of these differences might not affect the underlying operation of the frameworks, and relate to requirements of documentation for instance. Transitioning the existing frameworks to the standard Regulatory Powers Act framework may not be a burden on regulators and users.

However, the benefits of this option might be defeated if a number of special requirements are needed to ensure the infringement notice framework would operate effectively within airport regulation. The more adjustments that are needed, the less value there is in drawing on the Regulatory Powers Act framework, as too many adjustments could result in processes and procedures residing in two different parts of the law. This would result in users having to engage with multiple legal frameworks when dealing with infringement notices, increasing regulatory burden.

Question for consideration

9. Would the Regulatory Powers Act Framework provide an appropriate and fit for purpose infringement notice framework across airport regulation?

Option 3.2 – a bespoke framework

Under this option, a bespoke framework would be designed to govern the issuing of infringement notices across airport regulations. This option would still result in a single standard framework and would provide the same core benefits of using the Regulatory Powers Act framework. However, it would better manage any special requirements or provisions needed to ensure the scheme operates effectively within airport regulation.

If not effectively managed, too many adjustments could result in a framework that has substantially similar issues to the existing ones, and could result in effectively putting the existing frameworks into one place rather than streamlining them.

Questions for consideration

10. Would it be preferable to design a bespoke infringement notice framework to operate across airport regulations?
11. Are there any special provisions that should be carried over from existing infringement notice frameworks into the single standard framework?

Appendix 1

Consolidated list of questions

1. Should the infringement notice provisions be allowed sunset?
2. What are the benefits/consequences of not having an infringement notice scheme?
3. Are the existing provisions fit the purpose in the current and a future operating environment?
4. What are the benefits/consequences of having separate infringement notice frameworks for different subject matters?
5. Should infringement notices continue to be issued in respect of non-strict liability offences?
6. Should the infringement notice scheme cater for the future ability to issue infringement notices in respect of civil penalty provisions?
7. Should all strict liability offences across airports law be subject to infringement notices? Are there any particular offences that should or should not be subject to an infringement notice?
8. Are the existing maximum infringement notice penalty amounts appropriate?
9. Would the Regulatory Powers Act Framework provide an appropriate and fit for purpose infringement notice framework across airport regulation?
10. Would it be preferable to design a bespoke infringement notice framework to operate across airport regulations?
11. Are there any special provisions that should be carried over from existing infringement notice frameworks into the single standard framework?

Appendix 2

Table comparing infringement notice frameworks

	Regulatory Powers (Standard Provisions) Act 2014	Airports (Control of On-Airport Activities) Regulations 1997	Airports (Building Control) Regulations 1996	Airports (Environment Protection) Regulations 1997
Location of provisions	Part 5	Part 7	Part 5	Part 8
Enabled by	Regulatory Powers Act	Section 176 of the Airports Act	Section 111 of the Airports Act	Section 138 of the Airports Act
Who can issue an infringement notice?	Infringement officer A person is an <i>infringement officer</i> if an Act provides that the person is an infringement officer in relation to that provision.	Authorised person. (a) a person appointed by the Secretary as an authorised person; or (b) a person who is an authorised officer for Part 1A.	Airport building controller.	Airport environment officer.
What can you issue an infringement notice for?	n/a	Offences against liquor supply and consumption. Offences against landside and airside vehicle parking, and airside vehicle operation. Offences against smoking.	Offences against Part 5 of the Airports Act.	Offences against the regulations.
Maximum infringement notice amount	1/5 of maximum penalty for the offence, not exceeding 12 penalty units for individual and 60 penalty units for bodies corporate. Currently penalty unit amount is \$222. Indexes on 1 July 2023.	1/5 of maximum penalty for the offence. Maximum infringement notice amount is set it out in Airports Act.	1/5 of maximum penalty for the offence. Maximum infringement notice amount is set it out in Airports Act.	1/5 of maximum penalty for the offence. Maximum infringement notice amount is set it out in Airports Act.

	Regulatory Powers (Standard Provisions) Act 2014	Airports (Control of On-Airport Activities) Regulations 1997	Airports (Building Control) Regulations 1996	Airports (Environment Protection) Regulations 1997
When can an infringement notice be issued?				
When an infringement notice may be issued?	If an infringement officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice.	If an authorised person has reason to believe that a person has committed an infringement notice offence.	If there are reasonable grounds for believing that a person has committed an offence against Part 5 of the Act.	If an airport environment officer believes, on reasonable grounds, that a person has committed an offence against regulations.
Timeframes for issuing the notice	Within 12 months after the day of alleged contravention.	Not specified.	Not more than 12 months after the alleged commission of the offence.	Not more than 12 months after the alleged commission of the offence.
Specific matters to be included in an infringement notice				
Unique number	Yes.	Yes, or the signature and job classification of the issuer.	No.	No.
Day on which it is issued	Yes.	Yes and where.	Yes and where.	Yes and where.
Name of the person to which the notice is issued to	Yes.	Yes.	Yes.	Yes.
Name, contact details of the infringement officer	Yes.	Yes, or a unique number. Each other copy of the notice must set out the issuer's name.	Yes, name only.	Yes, name only.

	Regulatory Powers (Standard Provisions) Act 2014	Airports (Control of On-Airport Activities) Regulations 1997	Airports (Building Control) Regulations 1996	Airports (Environment Protection) Regulations 1997
Brief details of the alleged infringement	Yes, and a single infringement notice must only relate to a single infringement of a single provision. However, it can include multiple infringements of the same provision if the provisions requires the person to do a thing within a particular period or before a particular time, and the failure or refusal to do so occurs on more than one day.	Yes, and more than one infringement notice can be issued for the same offence.	Yes.	Yes.
Payable when?	within 28 days after the day the notice is given, unless extended or withdrawn.	within 28 days after the day the notice is given, unless extended.	within 28 days after the day the notice is given, unless extended. Can be paid in instalments.	within 28 days after the day the notice is given, unless extended. Can be paid in instalments.
Infringement Notice must state that the payment is not an admission of guilt or liability	Yes.	No.	No.	No.
Set out how to seek extension or withdrawal of notice	Yes, noting that withdrawal must be sought in writing.	No.	Yes.	Yes.
Consequences if not paid	Yes.	Yes	Yes.	Yes.
Format of infringement notice	Not specified.	Format must be approved by the Secretary for the offence.	Not specified.	Not specified.

	Regulatory Powers (Standard Provisions) Act 2014	Airports (Control of On-Airport Activities) Regulations 1997	Airports (Building Control) Regulations 1996	Airports (Environment Protection) Regulations 1997
Withdrawal of the infringement notice				
Are extensions for payment allowed?	Yes, by applying to the relevant chief executive.	Yes, only one extension of no more than 28 days from the allowed period can be granted by the Secretary or authorised persons for an infringement notice.	Yes, on written application.	Yes, on written application.
When is the deadline to pay if an extension is not given?	The later date of the following dates: original deadline, or 7 days after the day the person is notified of the chief executive's decision.	Not specified.	The later date of the following dates: original deadline, or 7 days after the day the person is notified of the Secretary or airport building controller's decision.	The later date of the following dates: original deadline, or 7 days after the day the person is notified of the airport environment officer's decision.
How can the person with an infringement notice seek withdrawal of the notice?	Written representations to the relevant chief executive.	Seek the Secretary's approval to withdraw the notice, within the 28 days after the notice is issued.	Seek the Secretary's approval to withdraw the notice, within 28 days after the notice is issued.	Seek the Secretary's approval to withdraw the notice, within 28 days after the notice is issued.
Notice of withdrawal of infringement notice required?	Yes.	Yes.	Yes.	Yes.
Refund of amount if notice withdrawn?	Yes.	Yes.	Yes.	Yes.
Others				
Infringement notices compulsory?	No.	Not specified.	No.	No.
Liability of owner of vehicle for offences	n/a.	Outlines the liabilities of owner of the vehicle.	n/a.	n/a

	Regulatory Powers (Standard Provisions) Act 2014	Airports (Control of On-Airport Activities) Regulations 1997	Airports (Building Control) Regulations 1996	Airports (Environment Protection) Regulations 1997
Liability for alleged contravention discharged if infringement notice amount paid?	Yes, but not if infringement notice has been withdrawn.	Yes.	Yes.	Yes.
Specifies evidence for hearings	No.	Yes.	Yes.	Yes.

Appendix 3

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.